

**FINAL DECISION OF THE  
COMMUNICATIONS AUTHORITY**

**BREACH BY  
CHINA MOBILE HONG KONG COMPANY LIMITED OF  
GENERAL CONDITION 12.1 OF UNIFIED CARRIER LICENCE**

<b>Licensee Concerned:</b>	China Mobile Hong Kong Company Limited ("China Mobile")
<b>Issue:</b>	Use of radiocommunications installation not specified in Schedule 3 to the Unified Carrier Licence ("UCL") held by China Mobile
<b>Relevant Instruments:</b>	General Condition ("GC") 12.1 of China Mobile's UCL No. 002
<b>Decision:</b>	Breach of GC 12.1 of China Mobile's UCL No. 002
<b>Sanction:</b>	Financial penalty
<b>Case Reference:</b>	OFCA/O/F/37 C

**BACKGROUND**

In May 2013, the Office of the Communications Authority ("OFCA") received a complaint from a member of the public about a suspected installation of an unauthorised radio base station at the rooftop of a building in Kowloon City, Kowloon ("the concerned premises"). During the investigation into the complaint, OFCA found that China Mobile had operated a radio base station at the concerned premises ("the Station") for the provision of its telecommunications services. The Station is not a radiocommunications installation that is specified in Schedule 3 to its UCL.

2. GC 12.1 of the China Mobile's UCL provides that- :

*“ 12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use”.*

### **CHINA MOBILE'S APPLICATION**

3. On 21 March 2013, China Mobile submitted an application for use of the Station at the concerned premises with receive and transmit frequencies in the bands 2555 - 2570 MHz and 2675 - 2690 MHz respectively. These frequency bands were assigned to China Mobile through a spectrum auction in 2009 for the provision of broadband wireless access (or commonly known as 4G LTE) services. Although the Station met the telecommunications requirements in respect of electromagnetic compatibility and radiation safety, in view of the fact that the installation of the Station would be in breach of government lease conditions, OFCA had put on hold the application of China Mobile, pending the measures taken by the owner of the concerned premises to rectify the breach of the lease conditions.

4. On 5 June 2013, OFCA advised China Mobile that the application for the Station could not be processed until the issue regarding the breach of government lease conditions was resolved.

### **THE COMPLAINT AND OFCA'S INVESTIGATION AND ASSESSMENT**

5. In May 2013, OFCA received a complaint from a member of the public about a suspected installation of an unauthorised radio base station at the concerned premises. In response to the complaint, OFCA conducted

on-site measurements on 3 June, 10 June and 11 June<sup>1</sup> and detected transmissions from a radio base station with receive and transmit frequencies in the bands 2555 - 2570 MHz and 2675 - 2690 MHz respectively.<sup>2</sup> As these frequency bands are assigned to China Mobile, OFCA suspects that the radio base station is one of China Mobile's the approval for the use of which is still pending (see paragraph 4 above). On 20 June 2013, OFCA informed China Mobile of the measurement results and required it to provide further information.

6. In response to OFCA's enquiry, China Mobile provided information and representations on 4 July 2013 and 26 July 2013. China Mobile admitted that the Station had been in operation all the time for three months between 21 March 2013 (i.e. the date of application for the Station) and 21 June 2013.<sup>3</sup> It also admitted that the Station had been deployed to provide public telecommunications services. However China Mobile alleged that the operation of the Station was for testing purpose in order to evaluate the coverage of the radio site at the concerned premises and inter-network interference.

7. OFCA does not consider China Mobile's explanation acceptable for the following reasons. Firstly, in general, a radio base station would be restricted for access by a limited number of designated handsets for testing purpose. OFCA notes that the Station has continuously been operated for three months without any access control or services restriction. For all intents and purposes, without access control or services restriction, the Station is essentially working full fledged as a normal radio base station for providing public telecommunications services. Secondly, GC12.1 of China Mobile's licence states that "*each radiocommunications installation operated by....the licensee shall be **used** only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 to this licence .....*". The wording of GC 12.1 makes it clear that the use by the licensee of radiocommunications installation (including the alleged testing

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<sup>1</sup> The on-site measurements confirmed that the radio base station under complaint met the telecommunications requirements, and is an approved radiocommunications installation. Therefore, the public complaint was not substantiated.

<sup>2</sup> According to OFCA's records, the Communications Authority has approved the use of six radio base stations at the concerned premises by three mobile network operators. The complainant filed a complaint against one of these six radio base stations. However, the transmissions detected by OFCA at the 2555 - 2570 MHz and 2675 - 2690 MHz bands were not from these six radio base stations.

<sup>3</sup> On 1 August 2013, OFCA conducted another on-site measurement and found that China Mobile has ceased the use of the Station.

purpose) outside the specification of Schedule 3 is prohibited. Thirdly, OFCA had clearly indicated to China Mobile in its letter of 5 June 2013 that the installation of radio base station at the concerned premises would be a possible breach of the lease conditions and that the application for the Station could not be processed.

8. In the light of the findings and having considered the explanation provided by China Mobile mentioned above, it is OFCA's assessments that China Mobile has breached GC 12.1 of its UCL for using the Station, which is not specified in Schedule 3 to the licence, without the prior approval of the Communications Authority ("CA").

## **THE CA'S CONSIDERATION AND DECISION**

9. OFCA completed its investigation and submitted its finding to the CA on 9 November 2013. Having considered the finding of OFCA, the CA issued its Provisional Decision to China Mobile on 12 November 2013. China Mobile submitted its representations to the CA on 26 November 2013.

10. Having further considered China Mobile's representations, the CA is of the final view that China Mobile has failed to comply with GC 12.1 of its UCL in respect of use of a radiocommunications installation not specified in Schedule 3 to its UCL.

11. In considering the sanction that it should impose, the CA has had regard to all circumstances of the case and notes that:

- (a) China Mobile had put the unauthorised radio base station into use right on the date when it submitted its application to the CA, knowing full well then the CA's authorization was not forthcoming. This can be viewed as a rather blatant disregard of its licence requirement;
- (b) during the three-month period when the Station was put into use

(between 21 March 2013 and 21 June 2013), China Mobile had more than one opportunity to review the status of compliance of its radio base stations (including the Station) with its UCL and to rectify any possible contraventions. The sanity check China Mobile was to conduct in response to a reminder letter sent by OFCA to all mobile operators at end February 2013, for them to ensure compliance with G.C 12.1 is one example. OFCA's letter of 5 June 2013 specifically advising China Mobile that the application for the Station could not be processed until the issue regarding the breach of government lease conditions was resolved is another; and

- (c) notwithstanding the above, not only had China Mobile continued to put the Station, an unauthorised radio base station, into use and perpetuate the breach, it had submitted written confirmation to OFCA in May 2013, to the effect that its radio base stations were in compliance with G.C 12.1 of its UCL.

Against this background and having considered all circumstances of this case, the CA has decided to impose a financial penalty on China Mobile.

12. This is the first occasion on which a financial penalty is imposed on China Mobile under GC 12.1 of its UCL and the maximum penalty stipulated by the Telecommunications Ordinance (“the TO”) is \$200,000. In considering the appropriate level of financial penalty in this case, the CA has had regard to the Guidelines on the Imposition of Financial Penalty issued under Section 36C of the TO (“the Guidelines”). Under the Guidelines, the CA is to consider the gravity of the breach (such as the nature and seriousness of the infringement, damage caused to third parties by the infringement, and duration of the infringement), whether the licensee under concern has previous records of similar infringements, and whether there are any aggravating and mitigating factors.

13. In considering the gravity of the breach and therefore the starting point for the level of penalty, the CA notes that:

- (a) this is the first occasion where China Mobile is found to commit a

breach of this nature;

- (b) the Station fulfilled the telecommunications requirements in respect of electromagnetic compatibility and radiation safety. It did not pose any threat of radiation hazard to members of the public, or had any adverse impact on telecommunications services or telecommunications service users; and
- (c) China Mobile had operated the Station at its own assigned frequencies to improve mobile coverage so as to better serve its customers.

In the light of the above considerations, the CA considers that the appropriate starting point for determining the level of financial penalty should be \$100,000. The CA has not been able to identify any aggravating factors.

14. In considering the mitigating factors, the CA notes that China Mobile has provided full cooperation to OFCA in the course of the investigation and that China Mobile has also taken appropriate remedial actions including ceasing the use of the Station eventually.

15. Having considered all circumstances of the case and taken all relevant factors into account, the CA concludes that a financial penalty of \$80,000 is proportionate and reasonable in relation to the breach.

**The Communications Authority  
December 2013**