

**Notice Pursuant to Section 36C
of the Telecommunications Ordinance
(Chapter 106)**

Interpretation

In this Notice, unless the context otherwise requires,

“Authority” means the Communications Authority;

“GC” means General Condition;

“Licensee” means SmarTone Mobile Communications Limited, holding a Unified Carrier Licence No. 018;

“OFCA” means the Office of the Communications Authority; and

“Ordinance” means the Telecommunications Ordinance (Cap. 106).

Background

On 20 September 2017, OFCA received a complaint referred by a District Council Member about a dispute between the Incorporated Owners of Kwai Ying Building (address: 1-5 Shek Man Path, Kwai Chung) and the Licensee regarding radio base stations installed at the rooftop of Kwai Ying Building (“the premises concerned”). Following investigation, OFCA found that the Licensee had operated radio base stations at the premises concerned (“the Stations”) for provision of public mobile radiocommunications services. The Stations are not radiocommunications installations that are specified in Schedule 3 to the Licensee’s Unified Carrier Licence No. 018. OFCA has completed its investigation into the matter and submitted its findings to the Authority.

2. Having considered the findings of the investigation, the Authority is satisfied that the Licensee has breached GC 12.1 of its Unified Carrier Licence, which requires 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.”

Notification

3. The Authority, in exercise of the power under section 36C of the Ordinance,

having been satisfied that the Licensee has failed to comply with GC 12.1 of its Unified Carrier Licence No. 018;

having also been satisfied that the Licensee has been afforded a reasonable opportunity in accordance with section 36C(7) of the Ordinance to make representations; and

having considered all representations made before the Authority decides whether or not to impose the financial penalty,

hereby exercises its power under section 36C of the Ordinance and gives notice to the Licensee requiring it to pay to the Government of the Hong Kong Special Administrative Region by **15 February 2018** a financial penalty of HK\$140,000.

4. In imposing the financial penalty, the Authority has noted that, subject to section 36C(3B), the maximum penalty that the Authority is empowered under section 36C to impose on the first occasion of imposing such penalty is HK\$200,000. The Authority has also considered the following relevant factors -

- (a) the nature and gravity of the breach;
- (b) the Licensee's cooperation during the investigation; and
- (c) the remedial action taken by the Licensee, including the ceasing of the use of the Stations from September 2017.

The Authority is satisfied that a financial penalty of HK\$140,000 is, in all the circumstances of the case, proportionate and reasonable in relation to the breach concerned.

5. This Notice will be made public.

(Agnes Wong)
for Communications Authority
1 February 2018