

**FINAL DECISION OF
THE COMMUNICATIONS AUTHORITY**

**BREACH BY
SMARTONE MOBILE COMMUNICATIONS LIMITED OF
SPECIAL CONDITION 4.4 OF ITS UNIFIED CARRIER LICENCE
IN RELATION TO MOBILE NUMBER PORTING**

Telecommunications Licensee Investigated:	SmarTone Mobile Communications Limited (“SmarTone”)
Issue:	Mobile numbers were ported out from customers’ original mobile service providers not in accordance with the number porting procedural requirements
Relevant Instruments:	Special Condition (“SC”) 4.4 of SmarTone’s Unified Carrier Licence (“UCL”) (Licence No. 018)
Decision:	Breach of SC 4.4 of SmarTone’s UCL (Licence No. 018)
Sanction	Written warning
Case Reference:	LM T 44/18 in OFCA/R/T/49/13 C

BACKGROUND

Birdie Mobile Limited (“Birdie”) is a new business established under SmarTone Telecommunications Holdings Limited. It resells and offers telecommunications services provided by SmarTone, its affiliated company and holder of a UCL (Licence No. 018). Birdie mainly operates on an Internet-based platform for transactions with customers. According to the information published on Birdie’s website, it does not have any physical stores. All the procedures in relation to subscription to the services offered by Birdie,

including mobile number portability (“MNP”) applications for porting of customers’ existing numbers (used for mobile services provided by other mobile service providers) are handled online through Birdie’s website or its mobile application (“mobile app”). As Birdie is a reseller of SmarTone’s mobile services, all the work in relation to assignment of numbers to Birdie’s customers and porting in of mobile numbers to SmarTone’s network are undertaken by SmarTone. Under section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (“TO”), Birdie is deemed as a Class Licensee under the “Class Licence for Offer of Telecommunications Services” (“Class Licence”).

2. Between February and March 2018 when Birdie offered free trial of its service, the Office of the Communications Authority (“OFCA”) received a total of 11 complaints from consumers relating to the porting of mobile numbers to Birdie. The complainants alleged that after they had signed up for Birdie’s free trial services, their mobile numbers and/or that of their family members were ported out from their original mobile service providers without their consent, signatures, provision of identity documents, or a combination of the above. In some cases, this has resulted in the affected customers having to pay termination fees imposed by their original mobile service providers (i.e. the Donor Network Operators (“DNOs”)) due to early termination of their service contracts.

3. Upon receipt of the complaint cases, OFCA looked into the porting arrangement to ascertain whether it was in line with the established number porting procedural requirements which should be followed by all relevant mobile service providers. With a view to protecting consumer interests, OFCA urged SmarTone and Birdie to look into the matter and immediately take corrective and preventive measures to avoid the recurrence of similar problems. In response to OFCA’s inquiry, SmarTone provided information on 15 February 2018, depicting the step-by-step procedures of the MNP application via Birdie’s mobile app. Also, on the same day, OFCA was informed that Birdie’s online MNP application platform had ceased to accept new porting applications before the end of the free trial period on 25 March 2018.

4. Having made appropriate rectifications, SmarTone submitted on

16 April 2018 a set of updated procedures¹ of the MNP application through Birdie’s mobile app. An updated version of Birdie’s mobile app has also been implemented and launched for service subscription purpose.

5. Nevertheless, OFCA considers it necessary to follow up with an investigation of the suspected non-compliance with the number porting procedural requirements by SmarTone for the complaint cases received during the free trial period of Birdie.

OFCA’s INVESTIGATION

Relevant Licence Obligation

6. SC 4.4 of SmarTone’s UCL sets out the requirement of number portability. It specifies that –

“4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any unified carrier licensee, fixed carrier licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other unified carrier licensee, fixed carrier licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be.”

7. In issuing UCL (Licence No. 018) to SmarTone, the Communications Authority (“CA”) also issued a direction to SmarTone under SC 4.4 of the UCL (“Direction”), which requires SmarTone –

“1(b) ... to facilitate, at the Licensee’s own expenses, the portability of numbers from the numbering plan of Hong Kong as stipulated

¹ Under the updated procedures, Birdie’s customers are asked to return electronically their duly completed and signed MNP Application Forms together with copies of their Hong Kong Identity (“HKID”) cards for verification as part of their MNP applications.

in the Special Condition 4 of the Licence for (i) customers of mobile telecommunications services licensed under mobile carrier licences or unified carrier licences (with provision of mobile services authorized), (ii) customers of mobile virtual network operators services licensed under services-based operator licences or other licences, and (iii) customers of internal mobile telecommunications services for carrying real-time voice communications (which may be integrated with other types of communications) which is capable of allowing customers to make and receive calls to and from parties assigned with numbers from the numbering plan of Hong Kong and licensed under services-based operator licences ("Mobile Number Portability"), so that the Code of Practice entitled "Code of Practice related to the Implementation of Mobile Number Portability" issued by the Authority and as revised from time to time by the Authority can be fully complied with on and after the launch of the service."

8. Under paragraph 7 of the "Code of Practice Related to the Implementation of Mobile Number Portability" ("Code of Practice") which shall be complied with by SmarTone, it is specified that all operators, including relevant mobile service providers, have to *"fully comply with this Code of Practice and the "Requirements for Mobile Number Portability by Database Solution" and "Functional Specification of Administration Database for Mobile Number Portability" stipulated under HKCA 2103 and HKCA 2104 respectively and other documents as directed by the CA in relation to MNP."*

9. Both sections 1.2 and 1.3 of Annex 1 to HKCA 2104 "Functional Specification of Administration Database for Mobile Number Portability" ("HKCA 2104") and sections 4.6.1 and 4.6.2 of the "Procedures for Mobile Number Portability Provision" ("MNP Procedures") adopted by the CA stipulate the use of a specified "MNP Application Form" in the procedures for handling MNP applications according to the following provisions –

Sections 1.2 and 1.3 of Annex 1 to HKCA 2104

*"1.2 The customer requests number porting service from the Recipient Network Operator (RNO). This will involve the completion of the **Mobile Number Portability application form***

for subsequent entry to the internal provisioning process.

1.3 Upon receiving the customer service request, the RNO performs initial checks to confirm the number portability can be applied. If initial checks are passed, the RNO will send a Number Portability Request (NPR) with proposed cutover date/time to the DNO ...”

Sections 4.6.1 and 4.6.2 of the MNP Procedures

“4.6.1 Information Required

The RNO should ask the customer to fill in the MNP application form and should check the details therein. The following table sets out the information to be verified by the RNO and DNO:

	INFORMATION TO BE VERIFIED BY THE RNO	INFORMATION TO BE VERIFIED BY DNO in NPR (ALLOWS REJECTION BY DNO)
PERSONAL USERS	<ul style="list-style-type: none"> • MNP Application Form signed by Customer with: <ul style="list-style-type: none"> • Customer’s Full Name (English and Chinese if applicable as indicated in HKID/Passport)) • Customer’s HKID No (or Passport No if appropriate) • Customer’s Mobile No • Copy of customer’s HKID (or passport if appropriate) 	<ul style="list-style-type: none"> • Customer’s Full Name Customer’s HK Identity Card No (or Passport No if appropriate) • Customer’s Mobile No
...
PRE-PAID SIM USERS	<ul style="list-style-type: none"> • MNP Application Form signed by Customer with: <ul style="list-style-type: none"> • Customer’s Mobile No • copy of card holder certificate if applicable • Declaration for loss of card holder certificate, if applicable 	<ul style="list-style-type: none"> • The validity of the pre-paid SIM mobile [directory number or] DN such as the expiry date and the residual amount in the pre-paid SIM account

4.6.2 Actions by the RNO

The RNO should take the following actions on receiving a customer who wishes to port his/her number:

(a) Identify the following types of customers:

(i) For a Personal User: by checking the customer against his/her [HK]ID Card or Passport if appropriate.

...

(iv) For Pre-paid SIM Service User: by checking the validity of the number assigned to the pre-paid SIM service and the cardholder certificate, if applicable.

...

(d) Collect the information listed in section 4.6.1.....”
[Emphasis added]

SmarTone’s Representations

10. According to SmarTone’s submissions of 15 February, 6 March and 15 June 2018, a customer who wished to apply for free trial of Birdie’s services needed to fill in an online application form. He/she might choose to use a new mobile number assigned by Birdie or “carry over [his/her] number” (「攜號轉台」 in Chinese). SmarTone explained that, with Birdie being an online mobile service provider which did not have physical stores and its business was primarily conducted via online platform, all service subscription matters including customers’ requests for porting of mobile numbers would be handled by Birdie’s mobile app. While customers had not been asked to sign a physical copy of the MNP Application Form during the subscription process of the free trial of Birdie’s mobile services, the online MNP application procedures under Birdie’s mobile app had asked customers’ explicit confirmation to port their numbers with double confirmation prompt, and also authenticated the mobile numbers provided by customers by requesting them to fill in one-time verification codes delivered through Short Message Service.

OFCA’s Assessment

11. OFCA notes that in the 11 complaint cases, neither Birdie nor SmarTone (the latter being the recipient network operator (“RNO”)) had asked

each of the customers concerned, through Birdie's mobile app or any other means, to take the following steps in accordance with the relevant procedural requirements under HKCA 2104 and the MNP Procedures adopted by the CA –

- (a) fill in an MNP Application Form to provide the specified customer's information including, *inter alia*, the name, HKID card number and mobile number of the customer; and
- (b) submit a copy of his/her HKID card for verification of his/her identity, or sign the MNP Application Form to give his/her consent for acceptance of the terms and conditions as set out in the form including, among others, the following –

Terms and Conditions of the MNP Application Form

1. *Subject to the successful porting of the Mobile Number to the RNO, we/I request the DNO to terminate the voice/data/fax services on the Mobile Number with effect from the Requested Cut-over Time. The continuation of other services provided by the DNO, if any, shall be subject to the applicable terms and conditions for such services of the DNO.*
2. *We/I request the DNO and the RNO to effect the porting of the Mobile Number to the RNO's network with effect from the Requested Cut-over Time.*

12. Against the above, it is evident that as the RNO², SmarTone has failed to obtain the customers' completed MNP Application Forms and checking the details therein before sending the respective NPRs to the DNOs, and accordingly had not complied with sections 1.2 and 1.3 of Annex 1 to HKCA 2104 and sections 4.6.1 and 4.6.2 of the MNP Procedures. As such, SmarTone was in breach of SC 4.4 of its UCL (Licence No. 018) due to its

² Under section 1.2 "Definitions" of HKCA 2104, the RNO is the operator of the mobile network which has gained the ported number. It is noted that Birdie is just the reseller of SmarTone's mobile services using numbers allocated to SmarTone and has never been allocated with any mobile number by the CA, and SmarTone is the mobile network operator which has gained the ported numbers involved in the 11 complaint cases. SmarTone is regarded as the RNO responsible for compliance with the number porting procedural requirements adopted by the CA in the current incident.

non-compliance with the Code of Practice and hence the Direction of the CA under that special condition of the UCL.

13. As for Birdie, since it is a reseller of SmarTone's mobile services, the porting of mobile numbers used by its customers is handled by SmarTone and there is no licence condition under the existing Class Licence pertaining to number portability including MNP. This being the case, Birdie is not held accountable for non-compliance with the regulatory requirements pertaining to MNP in the complaint cases.

THE COMMUNICATIONS AUTHORITY'S CONSIDERATIONS AND DECISION

14. The CA agrees with OFCA's assessment and considers that SmarTone has failed to comply with the regulatory requirements on MNP which is in breach of SC 4.4 of its UCL.

15. Under the TO, the CA may impose a number of remedies on a licensee for contravening a licence condition. These include the issue of a direction and imposition of financial penalties. A number of administrative remedies are also available to the CA, such as the issue of advice and warning to the offending licensee.

16. In considering the sanction on SmarTone for the breach of SC 4.4 of its UCL in the current incident, the CA notes that –

- (a) the regulatory requirements pertaining to MNP have been put in place for nearly two decade. Hence, SmarTone should be familiar with the requirements;
- (b) the breach is considered to be serious in nature as it is not attributable to inadvertence or mistake. The 11 cases were received during Birdie's free trial promotion period. The number of complaints could be bigger had OFCA not proactively approached SmarTone to require it to take immediate actions to rectify the situation;

- (c) this is the first time where SmarTone has breached a licensing obligation of such a nature;
- (d) SmarTone and Birdie have taken the following remedial actions –
 - (i) immediately stopped accepting new MNP applications upon receipt of OFCA’s notification;
 - (ii) facilitated the complainants or their family members (as the case may be) to port their mobile numbers back to their original mobile service providers if they so wish;
 - (iii) rectified the procedures of the MNP application through Birdie’s updated mobile app; and
- (e) no new complaint case is received by OFCA after implementation of the abovementioned rectified procedures.

17. Taking into account all the facts and circumstances of the incident as well as the information provided by SmarTone including its representations of 15 June 2018, the CA has decided to issue a warning to SmarTone on this occasion for its failure to comply with SC 4.4 of its UCL; sections 1.2 and 1.3 of Annex 1 to HKCA 2104; as well as sections 4.6.1 and 4.6.2 of the MNP Procedures.

The Communications Authority
July 2018