

Telecommunications Regulatory Affairs Advisory Committee

Proposed Code of Practice on the Cessation Arrangements for Mobile Virtual Network Operator Services

PURPOSE

This paper consults Members on the proposed Code of Practice on the Cessation Arrangements for Mobile Virtual Network Operator Services (“CoP”) and the associated performance bond requirement on mobile virtual network operators (“MVNOs”).

BACKGROUND

2. In the past eighteen months, there were two separate incidents of abrupt service cessation of mobile services offered by MVNOs, namely Easycall Limited (“Easycall”) in March 2016 and CMMobile Global Communications Limited (“CMMobile”) in January 2017. These two companies previously held the Services-Based Operator (“SBO”) Licence for the provision of MVNO services, through procuring wholesale network capacity services (“wholesale services”), from a hosting mobile network operator (“Hosting MNO”), which happened to be the same MNO in both cases.

3. For the purpose of this paper, service cessation is defined as –
- (a) any suspension or termination by a Hosting MNO of the provision of its wholesale services to an MVNO for whatsoever reason, resulting in the MVNO being unable to continue the provision of mobile services to its customers; or

- (b) any suspension or termination of the provision of mobile services by an MVNO of its own volition to all or any specific group of its customers.

Service Cessation of Easycall

4. In February 2016, the Hosting MNO of Easycall notified the Office of the Communications Authority (“OFCA”) of a commercial dispute with Easycall regarding its inability to settle the outstanding fee for the wholesale services. According to the Hosting MNO, it might terminate the wholesale services provided to Easycall if the latter failed to settle the outstanding payments by the specified deadlines.

5. After being notified of the dispute, OFCA immediately requested both parties to provide information about the possible service cessation including services that might be affected, the number of affected customers, and the timeline for the possible service cessation. OFCA also repeatedly urged Easycall to ensure that in the event of a service cessation, an advance notice must be provided to all its affected customers and that proper service cessation arrangements must be put in place to minimize the impact on the customers. At the same time, the Hosting MNO was requested to give a formal advance notice to Easycall with a copy to OFCA in case it came to a decision to cease the wholesale services provided to Easycall.

6. On 11 March 2016, the Hosting MNO informed OFCA that Easycall had failed to settle the outstanding payments before the agreed deadlines and as such it would terminate the wholesale services provided to Easycall by phases starting from 15 March 2016. Easycall informed its affected customers of the service cessation and associated arrangements by SMS, and by publishing a notification on its Facebook page in the evening of 14 March 2016. Subsequently, all mobile services of Easycall, which were offered on a pre-paid basis, were terminated by the end of March 2016.

7. In view of the short notice of service cessation by the Hosting MNO, OFCA urgently published a consumer alert on 15 March 2016 to advise the public not to purchase any pre-paid SIM cards from Easycall and to immediately arrange mobile number porting of their mobile numbers to other

operators if they wished to retain their mobile numbers. OFCA also liaised with other MNOs and MVNOs to facilitate mobile number porting requests by the affected customers. During the incident, about 50,000 activated pre-paid SIM cards issued by Easycall were affected and a total of 13 enquiries and complaints were received and handled by OFCA.

Service Cessation of CMMobile

8. In September 2016, the Hosting MNO of CMMobile informed OFCA of its commercial dispute with CMMobile, again over the latter's inability to settle the outstanding fee for the wholesale services. Similarly, according to the Hosting MNO, it might terminate the wholesale services provided to CMMobile. OFCA immediately contacted CMMobile and urged it to ensure that in the event of service cessation, an advance notice must be provided to its customers and that proper service cessation arrangements must be put in place to minimize the impact on them. OFCA also requested the Hosting MNO to formally serve an advance notice to CMMobile with a copy to OFCA, if it eventually decided to cease the service to CMMobile at least one week before the actual service cessation. Despite OFCA's repeated requests to the Hosting MNO to give sufficient advance notice before terminating the wholesale services, the Hosting MNO gave notice to OFCA in the afternoon of 16 January 2017 informing that it would terminate the wholesale services provided to CMMobile at 2:00 a.m. on 17 January 2017, with a notice of less than one day.

9. Following the receipt of the Hosting MNO's notification on 16 January 2017, OFCA immediately published a consumer alert in that evening to advise members of the public not to purchase any pre-paid SIM cards from CMMobile or subscribe to any of its mobile service plans. OFCA also reminded those who would like to keep their mobile numbers to arrange mobile number porting to other operators as soon as possible. Similar to the case of Easycall, OFCA liaised with other MNOs and MVNOs to facilitate mobile number porting requests by the affected customers. On 18 January 2017, OFCA published another consumer alert to give further advice to the affected customers giving more details about the number porting arrangements.

10. CMMobile did not immediately inform its customers of the cessation of its mobile services despite the termination of wholesale services by the Hosting MNO. In response to OFCA's repeated requests, CMMobile published a service cessation notice on its official website and Facebook page, and removed relevant sales messages from its customer services hotline on 19 January 2017. According to CMMobile, it would send service cessation notice by email to its post-paid customers starting from around 20 January 2017 and would arrange refunds to its customers subsequently.

11. According to the information available to OFCA, CMMobile had about 12,500 post-paid customers and about 49,000 activated pre-paid SIM cards in the market at the time of the incident. A total of 356 enquiries and complaints were received and handled by OFCA.

Regulatory Sanctions Imposed by the Communications Authority ("CA")

12. General Condition 5.1 of the SBO Licence for the provision of MVNO services stipulates that –

“The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority...”

13. Having considered the facts and circumstances of the two cases and the representations submitted by the concerned parties, the CA took respective regulatory actions against the two licensees, including the non-renewal of the SBO Licence of Easycall upon expiry on 30 September 2016 and the cancellation of the SBO Licence of CMMobile on 30 March 2017.

14. Notwithstanding the regulatory sanctions imposed by the CA, it is considered that in both incidents, the concerned MVNOs and the Hosting MNO failed to put in place satisfactory service cessation arrangements and in particular, the very short notice on the service cessation caused considerable confusion to the general public, as the affected users were all caught by

surprise and simply did not have sufficient time to make subscription arrangements with other operators before their existing mobile services provided by the concerned MVNOs were put abruptly out of service. As a matter of fact, among a total of nearly 370 complaints and enquiries lodged to OFCA for the two incidents, they were mainly concerned with (i) short or late notifications given by the concerned MVNOs prior to the service cessation, (ii) the difficulties in connecting to the customer service hotlines, and (iii) uncertainty about the mobile number porting arrangements and (iv) handling of contractual arrangements, including whether there would be any refund of advance payments made to the two MVNOs. Having regard to the feedback from the public, OFCA considers that there is a need to strengthen the licensing and regulation of MVNO services.

STRENGTHENING THE MVNO LICENSING REGIME

15. Since the occurrence of the first incident, OFCA has implemented a number of administrative measures to strengthen the licensing regimes for new licence applications and annual licence renewals for the SBO Licence for the provision of MVNO services, in order to ensure as far as practicable that all MVNOs shall have the required financial and technical capabilities in operating satisfactory and continuous mobile services throughout the validity period of their SBO Licences.

16. Starting from 18 May 2016, new applicants for the SBO Licence for the provision of MVNO services are required to provide sufficient documentary evidence, such as bank's confirmation of the amount of deposits or available credit facilities, copies of the audited accounts of the applicants, to prove that they have the financial capability to meet the capital investment required for the provision of the proposed MVNO services.

17. Furthermore, starting from 28 December 2016, MVNOs seeking annual renewal of their SBO Licences which are due for expiry and renewal on or after 1 July 2017 are required to submit additional supporting documents in their applications for the licence renewal. These supporting documents include the interconnection agreement or the memorandum of understanding in effect entered into between the MVNO and its Hosting MNO(s), and a letter

of confirmation issued by the Hosting MNO(s) to prove that the MVNO has secured the interconnection service with its Hosting MNO(s) and has the capability to continue to provide a continuous and satisfactory service during the new term of the licence.

18. With the occurrence of the second incident early this year and taking into account the inconvenience caused by the sudden service cessation, OFCA considers that there is a need to impose further obligations as set out in the proposed CoP on both the MVNOs and the Hosting MNOs. The proposed CoP seeks to ensure that the concerned parties will manage the service cessation arrangements in a better co-ordinated manner and that an earlier notice will be given to the affected customers and the general public about the impending service cessation so that they will be able to make timely arrangements to reduce the adverse impacts caused by the service cessation.

ISSUE OF THE COP UNDER LICENCE CONDITIONS OF MNOs AND MVNOs

19. Special Condition (“SC”) 1.2 of the Unified Carrier Licence (“UCL”) and SC 13.1 of the SBO Licence stipulate that –

“Without limiting or affecting in any way the licensee’s obligations under any other licence condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of –

(a) the provision of satisfactory service;

...

(c) the protection and promotion of the interests of consumers of telecommunications goods and services; ...”

20. The proposed CoP is issued pursuant to SC 1.2(a) and 1.2(c) of

the UCL, and 13.1(a) and 13.1(c) of the SBO Licence respectively, as the case may be, for the provision of practical guidance to the industry to safeguard the provision of satisfactory service and to protect and promote the interests of the customers of MVNOs.

SALIENT FEATURES OF THE COP

21. A proposed CoP is enclosed at **Annex**. It sets out the requirements which shall be observed and complied with by the concerned MVNOs and their Hosting MNOs in the event of service cessation. A summary of requirements on the Hosting MNOs and MVNOs is set out as below –

- (a) Both the hosting MNOs and MVNOs are required to publish a public notice (in a manner as specified under the CoP) announcing the service cessation at least 5 business days in advance and provide a copy of the concerned notice to the CA not less than 1 business day before the publication;
- (b) Both the hosting MNOs and MVNOs are required to, where applicable, provide mobile number portability services for at least 6 months after the date of service cessation to facilitate any affected customers to port out their mobile numbers to other service providers;
- (c) Both the hosting MNOs and MVNOs are required to maintain customer service hotlines for handling customer enquiries and complaints for at least 6 months after the date of service cessation, and providing regular information in connection with the service cessation as required by CA; and
- (d) MVNOs are required to stop all sorts of marketing and selling activities, and to properly handle all enquiries and complaints from their customers in relation to contractual matters (including handling requests for refunds).

ENFORCEMENT OF THE COP

22. Upon adoption of the CoP by the CA, it shall be complied with by all MVNOs and Hosting MNOs providing wholesale services to the MVNOs as part of their licensing obligations. In the event that there is any suspected breach of any provisions of the CoP, OFCA will commence an investigation in respect of the relevant licensee in accordance with the established investigation procedures. The CA will take into account OFCA's assessment, all the facts and circumstances of the case, and all representations made by the concerned parties before arriving at the decision as to whether the concerned licensee(s) is in breach of the CoP and in turn in breach of SC 1 of the UCL or SC 13 of the SBO Licence as appropriate, as well as the appropriate regulatory action in case of a breach.

ASSOCIATED PERFORMANCE BOND REQUIREMENT ON MVNOs

23. In order to ensure effective enforcement of the CoP on MVNOs, OFCA is considering the need to impose an additional performance bond requirement on MVNOs. Unlike the Hosting MNOs which are holding the UCLs with a validity period of 15 years, MVNOs are holding the SBO Licences with a validity period of one year and the risk for MVNOs to exit the market would be much higher. In that case, the effectiveness of the CoP, and any subsequent imposition of a financial penalty in case of any breach of the CoP, may be seriously undermined as an MVNO if found to be in breach of the CoP may just go out of business, thus evading all its responsibilities under the CoP and in relation to the payment of the financial penalty.

24. In order to safeguard the MVNOs' commitment to comply with the CoP, OFCA proposes to impose a performance bond requirement on the MVNOs to secure the payment of any financial penalty due to any established case of contravening licence obligations including any non-compliance of CoP. Pursuant to SC 29 of SBO Licence, the licensee is required to provide to the CA and maintain a duly issued performance bond in the amount as specified by the CA in favour of the Government to guarantee the licensee's payment of the financial penalty, if any, imposed on it by the CA pursuant to section 36C of

the Telecommunications Ordinance (Cap. 106) for any breach of specific licence conditions as referred therein. OFCA is conscious that the imposition of a performance bond may incur extra cost on MVNOs. However, having balanced the additional financial burden of MVNOs and the objective of promoting the interests of telecommunications service customers, OFCA considers that a performance bond in the amount of HK\$200,000 (i.e. representing the maximum financial penalty for the first breach of licence condition under section 36C(3)(a) of the Telecommunications Ordinance (Cap. 106)) to be lodged by the MVNOs, is reasonable and appropriate in the circumstances.

WAY FORWARD

25. OFCA will take into consideration all the views and comments received before finalising the CoP and the associated performance bond requirement on MVNOs.

26. Subject to the approval of the CA, the CoP will be adopted and published on the CA's website for information by the public. To allow sufficient time for MVNOs and the Hosting MNOs to make preparation for the implementation of the CoP, it is proposed that the CoP will be brought into effect one month from the date of the issue of the CoP. For the performance bond requirement, relevant amendment will be made to the SBO Licence for the provision of MVNO services, including SC 29 on the performance bond requirement and Schedule 5 on the form of performance bond. Upon the issue of the CoP, OFCA shall effect the licence amendment at the time when the MVNOs seek for annual renewal of their SBO Licences. As such, it is expected that the amendment of the SBO Licences of all MVNOs will be completed within one year's time.

VIEWS SOUGHT

27. Members are invited to give their views and comments on the proposals contained in this paper.

**Office of the Communications Authority
August 2017**

[DRAFT]**Code of Practice on the Cessation Arrangements for
Mobile Virtual Network Operator Services****Preamble**

Under Special Condition (“SC”) 1.2(a) and 1.2(c) of the Unified Carrier Licence and SC 13.1(a) and 13.1(c) of the Services-Based Operator Licence, the Communications Authority (“CA”) may issue a Code of Practice for the purpose of providing practical guidance to the licensee in respect of the provision of a satisfactory service and to ensure the protection and promotion of the interests of consumers of telecommunications goods and services. This Code of Practice on the Cessation Arrangements for Mobile Virtual Network Operator Services (“CoP”) issued by the CA sets out the requirements, in the event of Service Cessation, which shall be observed and complied with by the concerned mobile virtual network operators (“MVNOs”)¹ and their hosting mobile network operators (“Hosting MNOs”).²

2. For the purpose of this CoP, “Service Cessation” is defined as –

- (a) any suspension or termination by a Hosting MNO of the provision of its wholesale network capacity services to an MVNO for whatsoever reason, resulting in the MVNO being unable to continue the provision of mobile services to its customers; or
- (b) any suspension or termination of the provision of mobile services by an MVNO of its own volition to all or any specific group of its customers.

For the avoidance of doubt, Service Cessation does NOT include any potential or threat of Service Cessation by the Hosting MNO, or any service

¹ MVNOs refer to the holders of a Services-Based Operator Licence for the provision of mobile virtual network operator services.

² Hosting MNOs refer to the holders of a Unified Carrier Licence for the provision of public mobile radiocommunications services, which provide wholesale network capacity services to MVNOs.

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suspension or termination caused by temporary network outage or equipment failure by either the MVNO or the Hosting MNO.

3. Notwithstanding any provision in and without prejudice to the rights and obligations under any agreements entered into between an MVNO and a Hosting MNO, and any agreements entered into between the MVNO and its customers, in the event of a Service Cessation, both the MVNO and the Hosting MNO shall be subject to the respective duties and obligations as stipulated in this CoP.

Duties and Obligations of the Hosting MNO

4. For any Service Cessation under the scenario in paragraph 2(a), the Hosting MNO shall take the following actions in a manner satisfactory to the CA –

- (a) To publish, at least 5 business days in advance³ of the Service Cessation, a public notice announcing the Service Cessation (hereinafter referred to as the “Service Cessation Notification or “SCN”). The Hosting MNO shall provide a copy of the SCN to the CA not less than 1 business day before its publication. Publication of the SCN shall be effected by the Hosting MNO using all reasonable means including, but not limited to, posting to the Hosting MNO’s website, to social media, and issuing press statements etc.;
- (b) To provide mobile number portability (“MNP”) services for at least 6 months after the date of the Service Cessation to assist any affected customers of the MVNO to port out their mobile numbers to other service providers, where the Hosting MNO has been providing MNP services to the MVNO and carrying out mobile number porting activities for the MVNO before the date of the Service Cessation pursuant to an agreement between the parties;

³ Business day means 9:00 a.m. – 5.00 p.m. on any day (other than Saturday, Sunday, or any statutory or public holiday).

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- (c) To maintain customer service hotlines for handling public enquiries and complaints for at least 6 months after the date of the Service Cessation; and
- (d) To provide all relevant information in connection with the Service Cessation as may be required from time to time by the CA within the stipulated timeframe.

Duties and Obligations of the MVNO

5. For any Service Cessation under the scenarios in paragraphs 2(a) or 2(b), the MVNO shall take the following actions in a manner satisfactory to the CA –

- (a) To publish, at least 5 business days in advance of the Service Cessation, a public notice to announce, notify and alert all affected customers and the public in respect of the Service Cessation (hereinafter referred to as “Service Cessation Alert” or “SCA”). The MVNO shall provide a copy of the SCA to the CA not less than 1 business day before the publication. The SCA shall be made public and served on affected customers by the MVNO through all reasonable means, including but not limited to, use of short message services, making voice calls, writing letters, issuing emails to affected customers, publication of the SCA on the MVNO’s website and on social media, issuing press statements etc.;
- (b) To provide MNP services for at least 6 months after the date of Service Cessation to assist any affected customers to port out their mobile numbers to other service providers, irrespective of whether the MVNO has its own MNP platform and carries out its own mobile number porting activities, or whether it has engaged a third party for the provision of the required MNP service;
- (c) To cease, immediately after the publication of the SCA, marketing, selling and offering for sale of mobile services by any means, or entering into any agreement for the provision

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of telecommunications services with any customers or potential customers through any of its sale channels, retail outlets, distributors, resellers, agents, telesales, over the internet or otherwise;

- (d) To maintain customer service hotlines for handling public enquiries and complaints for at least 6 months after the date of the Service Cessation;
- (e) To properly handle all enquiries and complaints from its customers, including in relation to contractual matters (including handling requests for refund); and
- (f) To provide all relevant information on the number of affected customers, the number of customers ported out to other service providers, and all other information as may be required from time to time by the CA within the stipulated timeframe.

Required Information in the SCN and SCA

6. The SCN published by the Hosting MNO and the SCA published by the MVNO shall set out the following information in a clear and explicit manner –

- (a) the name of the concerned Hosting MNO or MVNO, as appropriate;
- (b) the date of publication of such notice;
- (c) the scheduled date and time of the Service Cessation;
- (d) the type(s) of services and customers that will be affected or are likely to be affected by the Service Cessation;
- (e) the customer service hotline number(s) and email address(es) of the Hosting MNO or the MVNO (as appropriate) that affected customers may use to make enquiries or complaints relating to the Service Cessation and all other subsequent

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arrangements; and

- (f) with respect to the SCA published by the concerned MVNO, details of the MNP arrangements for those of its customers who would like to port out their mobile numbers to other service providers.

Application and Update of the CoP

7. This CoP does not serve to replace or substitute the requirement for termination under any agreements made between the Hosting MNO and the MVNO, or between the MVNO and its customers. The CoP seeks to enhance the transparency of information and to minimise inconvenience caused to customers of the MVNO in the event of Service Cessation. The CA may at its discretion publish the SCN and the SCA provided by the Hosting MNO and the MVNO in whole or in part, or issue any public notifications including press statements and consumer alerts regarding the Service Cessation as it deems appropriate.

8. For the avoidance of doubt, all MNOs and MVNOs are obliged to provide services in compliance with the Telecommunications Ordinance (Cap. 106), the conditions of their licences and any other applicable laws and statutes. Nothing in this CoP shall be taken to absolve the licensees from such duties and obligations.

9. From time to time, the CA may review and update this CoP in accordance with developments in telecommunications policy, market and technology, as appropriate. If the CA considers that relevant amendments are necessary, it will take into account the views of the industry and other interested parties before effecting the amendments.

The Communications Authority

[Date]