

Telecommunications Regulatory Affairs Advisory Committee

Proposed Review of the Class Licence for Offer of Telecommunications Services under Section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106)

PURPOSE

This paper briefs Members on the Communications Authority (“CA”)’s plan to conduct a review of the Class Licence for Offer of Telecommunications Services (“CLOTS”) under section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (“TO”) and the intended scope of the review.

BACKGROUND

Class Licensing Regime

2. Class licence is commonly used by telecommunications regulators worldwide as a light-handed licensing vehicle to authorise the operation of telecommunications networks, systems, installations or services under a common set of conditions. A class licence sets out the conditions under which any person is permitted to operate and/or trade in the telecommunications networks, systems, installations or services. Unlike individual licences which call for active application from applicants for approval by the regulator, a class licence does not require any application to be made by an individual operator or person. Any party which meets the criteria or conditions set out in the class licence would automatically be deemed as a class licensee. Since only minimal licence administration by the regulator is involved, the administration of a class licence usually does not require any licence fee payment by a licensee.

Creation of the CLOTS

3. Section 8(1)(aa) and the related section 8(1A) of the TO stipulate that –

“8. *Prohibition of establishment and maintenance of means of telecommunications, etc., except under licence*

(1) Save under and in accordance with a licence granted by the Chief Executive in Council or with the appropriate licence granted or created by the Authority, no person shall in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong –

(a)

*(aa) offer in the course of business a telecommunications service;
or*

(b)”

.....

(1A) For the purpose of subsection 1(aa), a person is to be regarded as offering a telecommunications services if –

(a) he makes an offer which, if accepted, would give rise to an agreement, arrangement or understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service; or

(b) he invites a person to make an offer of the kind referred to in paragraph (a).”

4. Following two rounds of public consultation conducted in October 2004 and March 2006, the former Telecommunications Authority (“TA”) issued a statement on 15 September 2006¹ (“Statement”) promulgating his decision on the full commencement of section 8(1)(aa) of the TO and the creation of the CLOTS to regulate all activities that fall under the section. After completion of the legislative process, section 8(1)(aa), and the related 8(1A), commenced operation on 2 February 2007 and the CLOTS was created and implemented in Hong Kong to regulate the offer of any telecommunications services to the general public without establishment, operation or maintenance of any means of telecommunications. The terms and conditions of the CLOTS are available from CA’s website² for public information.

¹ https://tel_archives.ofca.gov.hk/en/tas/others/ta20060915.pdf

² [https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_\(Eng\).pdf](https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_(Eng).pdf)

5. Under the CLOTS regime, any person³ offering a telecommunications service is automatically deemed to be a CLOTS licensee without any requirements to make any prior licence application to the CA. No licence fee payment is required. There is no restriction on the nature of services that may be offered under the CLOTS and thus all kinds of public telecommunications services, including those offered in Hong Kong but are to be consumed elsewhere, will be subject to the same regulation. In general, the CLOTS regime regulates resellers who would usually purchase wholesale services from other telecommunications licensees, i.e. wholesale service providers, and resell the services in the retail market under their own brand names. Typical examples of public telecommunications services offered under CLOTS include:

- (a) Local mobile voice and/or data services operated by local mobile network operators and offered through resale of mobile telecommunications services to Hong Kong consumers by CLOTS licensees under their own brand names but without involving the latter's establishment and/or maintenance of any telecommunications means;
- (b) Local fixed voice and/or broadband services operated by local fixed network operators and offered through resale of fixed telecommunications services to Hong Kong consumers by the CLOTS licensees under their own brand names but without involving the latter's establishment and/or maintenance of any telecommunications means;
- (c) Prepaid International Direct Dial ("IDD") services operated by external telecommunications service ("ETS") operators and offered through resale of ETS to Hong Kong consumers by the CLOTS licensees under their own brand names but without involving the latter's establishment and/or maintenance of any telecommunications means;
- (d) "Wi-Fi Eggs" services offered by the CLOTS licensees under their own brand names to Hong Kong consumers for use during overseas visits⁴; and

³ Including incorporated entities as well as unincorporated persons, such as sole proprietors or partnerships.

⁴ For the avoidance of doubt, "Wi-Fi Eggs" services offered as a bundle of a local mobile service and a Wi-Fi router by service providers in Hong Kong to foreign visitors for use in Hong Kong would generally fall outside the scope of the CLOTS as the Wi-Fi router would be deemed as a telecommunications equipment

- (e) Prepaid international voice/data roaming services offered by the CLOTS licensees under their own brand names to Hong Kong consumers for use during overseas visits.

6. Agents or contractors of licensed operators who sell or promote telecommunications services for or on behalf of the operators within the scope of the respective agency agreements will not fall under the regulatory regime of section 8(1)(aa) of the TO. In this regard, the licensed operators will remain fully responsible for the offer and provision of services under their own licences if there is breach of the licence conditions by their agents.

7. Regulation under the CLOTS regime is a light-handed one, with licence conditions aiming at protecting consumer interests. At present, there is no registration requirement for CLOTS licensees. The objective of the regime is to bring resellers into the regulatory regime and subject them to the statutory provisions and licence conditions, but without placing unnecessary administrative burden on these resellers, especially for those that are small in scale and operation. Notwithstanding this, the former TA was aware of the views of the industry received at the time of the two rounds of public consultation and hence indicated in the Statement that he would consider if there was a need to review the registration requirement after accumulation of more operational experience of the CLOTS regime.

NEED FOR REVIEW OF THE CLOTS

8. The CLOTS regime has been put into operation for over a decade. During the period, the telecommunications market in Hong Kong has undergone significant changes with the emergence of new technologies and the adoption of new business models and commercial practices by market players. Amidst such changes, the following specific trends in respect of the resale of telecommunications services in the market are observed:

- (a) “Brick and mortar” retail outlets are increasingly supplemented, if not substituted, by online platforms or smartphone apps whereby resellers will deliver their telecommunications products (e.g. prepaid local mobile voice/data service packages) to their customers by regular mail or commercial courier service direct, and service subscription and after-sales customer support are

established and/or maintained for the provision of a public telecommunications service and therefore the providers of such services should be subject to other individual licences under the TO.

provided through online channels. As a result, it becomes difficult for both the CA and the general public including the customers of these resellers to contact the resellers when needed, since their up-to-date contact details may not be readily available in the public domain;

- (b) An increasing number of licensees, particularly mobile network operators (“MNOs”), has set up entities using new brand names to resell their own services. Unlike the MNOs which are in general subject to a stringent set of conditions under the Unified Carrier Licence (“UCL”), these entities are offering similar service package but are only subject to a much lighter regulation under the CLOTS regime and the licence conditions thereunder. Given these entities are having a mass subscriber base, it seems that it is no longer appropriate to deem these entities as small in scale of operation;
- (c) In the past, a number of consumer complaints relating to CLOTS licensees have been received and handled by the Office of the Communications Authority (“OFCA”). In some cases, there are practical difficulties for OFCA to refer the complaint cases to the relevant CLOTS licensees for follow-up as their contact details may not be readily available; and
- (d) Some CLOTS licensees such as those in the mobile market are fast gaining a sizeable market share. Failure to provide a good, efficient and continuous service at a satisfactory level (e.g. service outage, suspension and termination) will potentially have a significant impact on the general public and give rise to numerous complaints.

9. In view of the above observations in relation to the operation of CLOTS licensees, there is a need to review whether the existing light-handed CLOTS regime remains relevant and appropriate to the existing market conditions. The CA therefore considers it necessary to conduct a review at this juncture in respect of the licence administration and control of the CLOTS. In particular, it is opportune to re-visit the considerations on whether the registration requirement should be imposed on all or any group(s) of the CLOTS licensees.

10. Furthermore, there is a need to ensure that the conditions of the CLOTS would be up-to-date in view of the latest market and industry

developments and that the regulatory obligations imposed on the CLOTS licensees should generally tally with other licences (such as UCL and Services-Based Operator (“SBO”) Licence) offering similar telecommunications services to the end users.

SCOPE OF REVIEW

11. In view of the rationale discussed above, the CA plans to conduct a public consultation in respect of the review of the CLOTS regime, including the proposed variation to the existing form of the CLOTS. The following scope of review is preliminarily identified as follows –

- (a) Should new conditions be introduced to the CLOTS such that all or any group(s) of CLOTS licensees would be obliged to register their information, such as their names, contact details, scope of services offered, name(s) of wholesale service provider(s), regulatory contact, etc. with the CA before being authorized to offer telecommunications services to the consumers in the market?
- (b) Should new conditions be introduced to the CLOTS such that all or any group(s) of CLOTS licensees would be obliged to provide annual update of information, including but not limited to number of subscribers, to the CA;
- (c) Should the conditions of the CLOTS be amended to ensure that they are up-to-date in view of the latest developments in the market and regulatory environment? Is there any need to align some of the conditions and regulatory requirements of the CLOTS with those of the UCL and SBO Licence? and
- (d) Should all or any group(s) of the CLOTS licensees be subject to the existing codes of practice or guidelines issued by the CA, including those related to service provision, service cessation and reporting of network / service outages?

WAY FORWARD

12. The CA plans to issue a public consultation paper for the subject review and set out details of its proposed variation to the CLOTS for the public

and the industry to comment. In accordance with the requirement stipulated under section 7C(4) of the TO in respect of variation of class licence, the CA will at the same time publish a notice in the Gazette to invite representations in respect of the proposal. The CA will take into consideration all the views and comments received before finalising its decision on the subject matter.

VIEWS SOUGHT

13. Members are invited to note the scope of the proposed review and offer any initial views on the subject matter.

**Office of the Communications Authority
September 2018**