

Telecommunications Users and Consumers Advisory Committee (TUCAC)

Minutes of the 17th Meeting held at 3:00 p.m.

on 7 December 2018 (Friday) in Conference Room,

Office of the Communications Authority (“OFCA”),

29/F Wu Chung House, Wan Chai

Present:

Mr. Chaucer LEUNG (Chairman)	Deputy Director-General, OFCA
Mr. Ricky CHONG	Representative of Communications Association of Hong Kong
Ms. June IP	Representative of Consumer Council
Mr. Keith LI	Representative of Hong Kong Wireless Technology Industry Association
Mr. W S IP	Member appointed on an ad personam basis
Mr. K LAU, MH, JP	Member appointed on an ad personam basis
Dr. Jonathan TANG	Representative of the aged community services
Mr. C M CHUNG	Representative of the disabled
Ms. Eva LAU	Representative as a member of the public
Mr. W T CHAN	Representative as a member of the public
Mr. H C HUNG	Representative as a member of the public
Mr. Y M KUNG	Representative as a member of the public
Dr. K W LAU	Representative as a member of the public
Ms. Katy LAU	Representative as a member of the public
Dr. Mary LEE	Representative as a member of the public
Mr. Richard TSANG	Representative as a member of the public
Mr. W C CHENG	Representative of Education Bureau
Ms. Jamay WONG (Secretary)	OFCA

In attendance:

Mr. Jordan LEE	OFCA
Mr. Kenneth LEUNG	OFCA
Miss Edith YAU	OFCA

Absent with apologies:

Mr. Eric YEUNG	Representative of small and medium enterprises
Ms. Edith HUI	Representative of the Hong Kong General Chamber of Commerce
Mr. William TANG	Representative of the disabled
Ms. P Y CHAN	Representative as a member of the public
Ms. W K CHENG	Representative as a member of the public

I. Welcome Message

1. The Chairman said that this meeting was the first meeting of the new term. He introduced and welcomed the newly joined members and thanked all members for attending the meeting. He hoped to continue gauging comments and views through meeting with the members so that OFCA could further enhance its regulatory arrangements and educational work regarding telecommunications services.

II. Minutes of the 16th Meeting of the Telecommunications Users and Consumers Advisory Committee (“TUCAC”)

2. The Secretary had not received any proposed amendment to the draft minutes of the 16th meeting from the members and no amendment was proposed by the members in the meeting. The Chairman announced that the minutes of the 16th meeting were confirmed.

III. The Proposed Review of the Class Licence for Offer of Telecommunications Services under Section 8(1)(aa) of the

Telecommunications Ordinance (Cap. 106)

3. Mr. Jorden LEE briefed the members on matters concerning the proposed review of the Class Licence for Offer of Telecommunications Services (“CLOTS”) under section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (“TO”), including the scope, background of creation and salient features of CLOTS, examples of services offered under CLOTS, and the proposed scope of review. Related information was set out in TUCAC Paper No. 5/2018.
4. Ms. June IP expressed support for the scope of review of CLOTS, in particular the requirement for provision of contact information of the CLOTS licensees, as the Consumer Council had also encountered difficulties in contacting the CLOTS licensees when following up on complaints.
5. Mr. K K LAU said that he had once purchased telecommunications services offered under CLOTS, but the services were unusable. He therefore welcomed the Communications Authority (“CA”) to strengthen the regulation of the CLOTS licensees. However, he opined that the CA should strike a balance between safeguarding the interests of small and medium enterprises (“SMEs”) and protecting consumers when setting the scope of regulation.
6. The Chairman thanked Ms. June IP and Mr. K K LAU for their support.
7. Mr. W T CHAN suggested that the CA should embark upon its work on consumer publicity and education after strengthening the regulation of CLOTS, as most consumers might not be aware that the CA had created CLOTS to regulate the CLOTS licensees.
8. Mr. C M CHUNG was concerned that strengthening the regulation of CLOTS would stifle the room for SMEs to provide innovative services, thereby reducing consumers’ choices.

9. Mr. Jordan LEE responded that when CLOTS was created in 2007, the former Telecommunications Authority adopted a relatively light-handed regulatory regime for related reseller activities, taking into account that most of the service providers back then were SMEs with smaller scale of operation. With the development of the market, consumers nowadays demanded more than before. The CA considered it necessary to review whether the existing regime remained relevant and appropriate. Mr. Jordan LEE understood Mr. C M CHUNG's concern and reiterated that the CA would carefully consider comments and views from the industry and the public before making a final decision on relevant matters in order to strike a proper balance between the development of the industry and consumer protection.

10. The Chairman said that the current review of the CLOTS regime mainly aimed at further protecting consumer interests by putting in place new administrative measures. Among others, consideration would be given to whether the CLOTS licensees should be required to register with the CA before providing services and thereafter submit relevant updated information on a regular basis, depending on their scale of operation and the types of services provided. The CA kept an open mind on the review of CLOTS and the proposed amendments, and would collect views extensively in the public consultation in order to fully consider different views and the direction of the review.

11. Mr. Ricky CHONG noted that one of the reasons for the CA to propose reviewing CLOTS was related to the proliferation of online retail outlets which called for more effective means to get in touch with the CLOTS licensees when necessary. He opined that as many smaller service providers in the market nowadays launched innovative value-added services or applications through the Internet to test market response, he fully supported the Chairman's proposal to impose regulatory requirements on service providers by their scale. Moreover, given that service providers might not be well informed of the salient features of CLOTS and the related requirements, Mr. Ricky CHONG suggested that the CA should consider stepping up its publicity and educational efforts, such as conducting regular training seminars/courses for the CLOTS licensees or providing details of relevant licence

conditions and other regulations for the licensees' information and compliance.

12. The Chairman said that he understood that there were currently numerous services or applications provided through the Internet. However, section 8(1)(aa) of the TO (Cap. 106) was only applicable to the offer of telecommunications services. Providers of services or applications with no communications functions were not covered by CLOTS.

13. Mr. Richard TSANG would like to know (1) the penalty imposed on service providers for failing to register as required before providing services under CLOTS and on registered CLOTS licensees for contravening relevant licence conditions; and (2) whether the CA would provide a list of CLOTS licensees for public information to strengthen confidence of the public in choosing the services while facilitating business operation of the service providers.

14. The Chairman welcomed Mr. Richard TSANG's suggestion and said that the CA would consider the feasibility of publishing the list after confirming amendments to be made. The Chairman then briefly elaborated on the penalty for contravening licence conditions, including issuance of advisory letters, public warning, financial penalty or even revocation of licence.

15. Mr. K K LAU suggested that the CA should consider issuing labels to the registered CLOTS licensees for easy identification by consumers. In addition, the CA may make reference to the Consumer Council's practice of naming contravening service providers and/or products in question to enable consumers to make informed choices.

16. The Chairman said that, generally, if the contraventions committed by the licensees had caused impact on consumers, the CA would announce the names of the licensees and the details of the cases through press releases or consumer alerts and would remind consumers to think carefully whether they should continue to purchase and use the services provided by the licensees concerned.

17. Dr. Mary LEE supported the CA to strengthen the regulatory oversight. She was of the view that the level of regulation should be based on the scale of operation of licensees. She also enquired what updated information had to be provided by the CLOTS licensees to the CA.

18. Mr. Jordan LEE responded that facilities-based and services-based licensees were currently required to submit on a regular basis information such as traffic/usage and number of customers to facilitate the CA to monitor their operations. As for CLOTS, the CA had considered requiring the licensees to submit information such as updated contact details. However, taking into account that regular submission of information might place a burden on some SME licensees, the CA would make its decision after due consideration of public views and practical regulatory needs.

19. Mr. H C HUNG considered it necessary to regulate service providers covered by CLOTS for consumer protection. The types of information required to be provided by service providers should depend on the purposes of obtaining such information. He believed that service providers even as small as one-man operations should be able to provide the CA with information which was for communication purpose only.

20. The Chairman said that the CA would collect views from the public and the industry regarding information to be provided by the CLOTS licensees in the consultation paper.

21. Mr. Keith LI expressed concern over the services to be covered by and the regulatory scope of CLOTS.

22. The Chairman replied that the CA would examine the matters. In revising the conditions of CLOTS, the CA would not align the revised conditions with those of the Unified Carrier Licence (“UCL”) and the Services-based Operator (“SBO”) Licence. Rather, it would make reference to those licences and introduce suitable

conditions to CLOTS. The CA would provide a sample of the revised CLOTS for public reference when conducting the public consultation.

23. Mr. Richard TSANG enquired (1) whether the existing CLOTS licensees would still be permitted to continue their businesses if they failed to register in advance as required by the CA; and (2) whether free instant messaging applications (“IMAs”), such as WhatsApp, provided by service providers would fall within the regulation of CLOTS.

24. The Chairman explained that although an amendment would be proposed to require the CLOTS licensees to register before being authorised to offer telecommunications services in the market, the definition of and arrangements for the CLOTS licensees remained unchanged, i.e. any person offering a telecommunications service was automatically deemed to be a CLOTS licensee. Upon the implementation of the proposed arrangement, any CLOTS licensee who provided services without registration would contravene the licence conditions. Apart from approaching licensees to urge their compliance with the registration requirement, the CA would impose penalty on those remaining unregistered. As regards free IMAs, since those applications were not equipped with an inbuilt data function for direct communication but had to operate via users’ mobile data services or Wi-Fi network connections, they were generally not regarded as telecommunications services subject to the regulation of CLOTS.

25. Mr. Richard TSANG further enquired whether paid IMAs were regulated under CLOTS.

26. Mr. Jordan LEE said that according to section 8(1A) of the TO, making “an offer” meant the offer, if accepted, would give rise to an agreement, arrangement or understanding for the provision of the telecommunications service. Whether the provision of a free telecommunications service would give rise to an agreement, arrangement or understanding should depend on the facts and circumstances of the actual case. For both paid and free IMAs, OFCA had to consider if the

telecommunications services involved establishment and maintenance of means of telecommunications in accordance with section 8 of the TO. If yes, the telecommunications services concerned would not be covered by CLOTS, and the service providers would be required to apply for suitable licences from the CA.

27. Dr. Mary LEE was of the view that whether a telecommunications service fell within the regulatory scope of CLOTS should not be determined solely by whether an “offer” involving monetary exchange had been made since some free services might carry terms of use requiring users to provide information such as personal data and particulars in the phonebook of their handsets. The service providers could in turn make use of the information collected to obtain pecuniary or other benefits indirectly.

28. The Chairman appreciated Dr. Mary LEE’s concern and said that the detailed interpretation of “offer” fell within the scope of contract law. He pointed out that when determining whether a service was a telecommunications service, the CA would not solely consider whether the service provider had made an “offer”. It would also consider whether the service was regarded as a communications service under the TO. Some IMAs in the market fell outside the scope of CLOTS. The reason was not merely that they were free-of-charge, but that they could not be used independently. They could be used only via users’ mobile data services or Wi-Fi network connections. The case was similar to the Personal Emergency Link service, which could not operate independently and had to be connected to users’ telephone lines for reaching the service centre. Generally, both services were not considered as telecommunications services.

29. Ms. Eva LAU would like to clarify whether certain sellers of mobile pre-paid phone cards or international phone cards would automatically become the CLOTS licensees according to the arrangements of CLOTS under section 8(1)(aa) of the TO, and whether those licensees were aware that they should register with the CA in advance or agreed to do so. She suggested that the CA could encourage the CLOTS licensees to register with the CA through the assistance of mobile phone operators

who provided the phone cards. For example, when the CLOTS licensees purchased mobile pre-paid phone cards from mobile phone operators, the mobile phone operators should check and confirm with the CLOTS licensees that they had registered with the CA before selling the mobile pre-paid phone cards to them.

30. The Chairman thanked Ms. Eva LAU for the suggestion. The Chairman supplemented that not all phone card sellers were the CLOTS licensees. If the phone cards they sold were issued by the existing holders of the UCL or the SBO Licence, the phone card sellers were merely the contractors or agents of those licensed operators. If they purchased wholesale services from the existing holders of the UCL or the SBO Licence and offered services to consumers in the retail market under their own brand names or service packages, they were then resellers of those licensed operators and fell within the scope of CLOTS under section 8(1)(aa) of the TO.

31. Dr. K W LAU would like to know whether the objective of the proposed review of CLOTS was to enhance consumer protection or to strengthen the regulation of operators. He enquired whether the Consumer Council had any complaint statistics on that type of service providers. Dr. K W LAU queried whether it would be necessary for the CA to strengthen the regulation of the CLOTS licensees under the existing business environment if the number of complaints received was small. Dr. K W LAU hoped that the CA could define clearly the amendments involved and make them known to the public and the industry before the consultation. He was concerned that the implementation of new regulation would hinder the development of SMEs in the communications industry.

32. Ms. June IP responded that she did not have the relevant complaint statistics on hand, but she believed that the number was small. However, the Consumer Council had encountered difficulties in contacting the CLOTS licensees in individual complaints, making it unable to assist consumers effectively. Ms. June IP believed that the scope of review put forward by the CA, such as requiring the CLOTS

licensees to register and requiring the CLOTS licensees to notify the CA and make an announcement before close down of business, could indeed enhance consumer protection.

33. Mr. Jordan LEE said that the CA had proposed to review CLOTS in the hope of protecting consumers through strengthening the existing regulatory regime. Section 8(1)(aa) of the TO had been put into effect since 2007 for more than a decade. Throughout the time, the CA had kept abreast of the market developments. Taking into account the latest market situation and the aforementioned potential concerns, the CA considered it necessary to review the existing regulatory regime of CLOTS.

34. The Chairman supplemented that CLOTS was not a new regime created by the CA to put resellers under regulation. Rather, it was a regime implemented for a decade, albeit with a relatively light-handed approach. The proposed amendments aimed at introducing additional requirements to the existing regulatory regime, such as requiring the CLOTS licensees to register before offering services in the market and to provide updated information. The CA was consulting the public at the present stage and had not yet finalised the amendments. The CA would make a decision on the matters after carefully considering the views and comments received from the industry and the public.

35. Mr. W S IP suggested that the CA should strengthen the educational efforts in promoting CLOTS since some people who offered telecommunications services might not be aware that they had automatically become the CLOTS licensees.

36. The Chairman thanked Mr. W S IP for the suggestion.

37. The Secretary shared the difficulties encountered by the CA in handling and following up on complaints against the CLOTS licensees. She said that the current scope of review was proposed partly in the light of the situation.

[Post-meeting note: The Consultation Paper on the Review of the Class Licence for Offer of Telecommunications Services under section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (English version only) was issued on 4 January 2019. Members of the public might download the document from the CA's website.]

IV. How CA Handles Consumer Complaints against Telecommunications Service Operators

38. Ms. Jamay WONG briefed the members on the way the CA handled consumer complaints against telecommunications service operators. She introduced the CA's role, scope of jurisdiction, complaint channels and performance pledge in handling consumer complaints. In addition, she enumerated possible contraventions of the TO or licence conditions and cases that fell beyond the scope of authority of the CA. She also explained the measures implemented by the CA to safeguard consumer interests. Related information was set out in TUCAC Paper No. 6/2018.

39. Dr. Mary LEE said that she kept receiving messages or notifications from a certain application even though she did not download any mobile application at all. She could not delete that application which occupied her phone memory. Dr. Mary LEE enquired whether the CA could look into the matter.

40. Ms. Jamay WONG responded that the issue fell outside the jurisdiction of the CA. She explained that some mobile phone manufacturers would pre-install applications in newly manufactured mobile phones and some of them could not be deleted. Ms. Jamay WONG suggested that Dr. Mary LEE should try uninstalling that application and/or disabling the message or notification function in the setting of that application. Should it still fail, she might consider contacting the mobile phone manufacturer concerned for enquiries.

41. Dr. Mary LEE said that she did not know that there would be pre-installed applications on her mobile phone before she purchased it. She enquired whether relevant information would be available for consumers' reference.

42. Ms. Jamay WONG said that the CA was mainly responsible for regulating telecommunications services provided by telecommunications operators. As far as the quality of mobile phones was concerned, customers should reflect their views to mobile phone manufacturers for follow-up or consider contacting the Consumer Council. Ms. Jamay WONG advised consumers to try out the demo mobile phones provided by sellers (if available), or consult manufacturers or sellers directly before making any purchase.

43. Ms. June IP responded that since the Consumer Council conducted tests on products in the market regularly and provided test results for consumers' reference, she would reflect Dr. Mary LEE's concern to the relevant division of the Consumer Council, such that the Consumer Council could consider providing consumers with information concerning which mobile phones were pre-installed with applications as well as the details of the applications when conducting surveys on mobile phones.

44. Mr. C M CHUNG enquired whether the CA had provided any interactive mobile applications for sharing information, making enquiries and/or lodging complaints.

45. The Chairman said that the CA currently did not provide such an application.

46. Ms. Jamay WONG supplemented that consumers could lodge complaints to the CA through many different channels, including emails and online electronic forms. In addition, the CA would disseminate information through its website and Facebook Fan Page. The CA had also received complaints from consumers who converted audio to text by using a mobile phone or an application that supported voice typing.

47. Ms. Jamay WONG said that she had received a request from Mr. William TANG (representative of the disabled (hearing impairment)) asking her, as the Secretary, to help brief the members on a mobile application called “Silence Sign Language Interpretation App” launched by the organisation for which Mr. William TANG worked. Customised for the deaf or persons with hearing impairment, the application provided pre-booked and instant video sign language interpretation services. In particular, the deaf or persons with hearing impairment who had difficulty in writing could recapitulate what they had encountered in daily lives through the sign language interpretation services of the application and lodge complaints when necessary. The application could be downloaded for use by anyone in need at any time.

V. Any Other Business

Report on Consumer Complaints

48. The Secretary reported that the CA had received 399 cases of consumer complaints in the 3rd Quarter of 2018. Among these complaints, 395 cases (99%) were outside the CA’s jurisdiction. Most of these complaints involved dissatisfaction with customer service, disputes on contract terms/service termination, dissatisfaction with the quality of mobile/fixed network/Internet services and disputes on bills. Four cases (1%) in the 3rd Quarter were related to the possible breach of the Telecommunications Ordinance or licence conditions, including one for dissatisfaction of failing to send international short messages with a mobile pre-paid phone card, one for dissatisfaction with an Internet service provider for disclosing customer information to a third party, one for dissatisfaction with an Internet service provider for not monitoring its network performance constantly, and one for alleged exploitative conduct by an Internet service provider for selling bundled service packages. One substantiated case was confirmed to be in breach of licence conditions in the 3rd Quarter of 2018. The CA issued a warning to that mobile communications service provider. The latest consumer complaint statistics are in Annex 1.

VI. Date of Next Meeting

49. The Secretary informed the members that the next meeting would be held on 28 March at the same time and venue.

50. There being no other business, the meeting was adjourned at 5:15 p.m.

Report on Consumer Complaints on Telecom Services

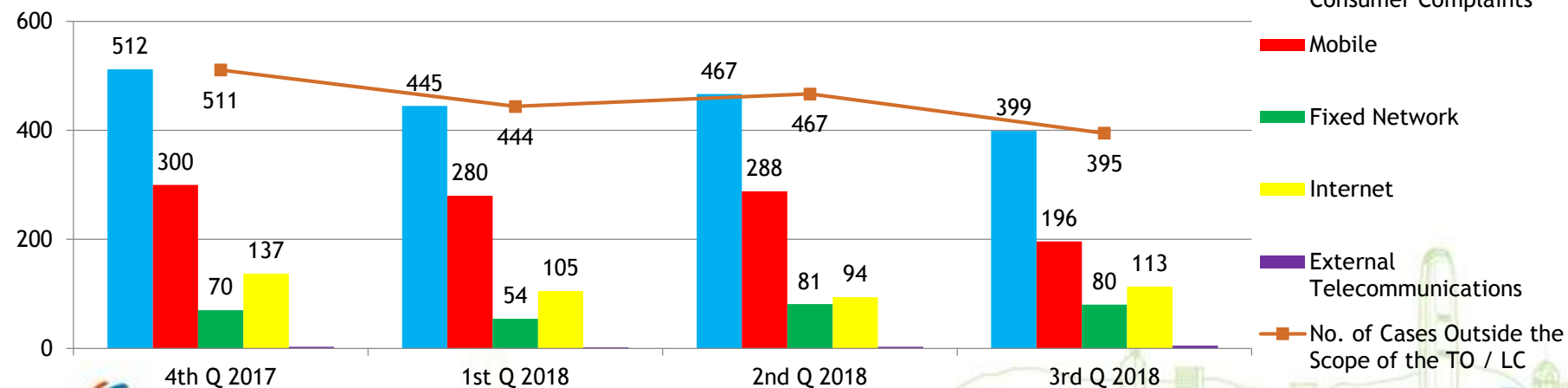
The Telecommunications Users and
Consumers Advisory Committee
The 17th Meeting
7 December 2018



Overview (3rd Quarter of 2018)

(Categorised by service types)	4 th Q 2017	1 st Q 2018	2 nd Q 2018	3 rd Q 2018		
Total No. of Consumer Complaints	512	445	467	399	395	No. of Cases Outside the Scope of the Telecommunications Ordinance ("TO") / Licence Conditions ("LC")
Mobile	300	280	288	196	195	
Fixed Network	70	54	81	80	80	
Internet	137	105	94	113	110	
External Telecommunications	3	2	3	5	5	

No. of Consumer Complaints



No. of Complaints (3rd Quarter of 2018)

Number of complaint cases decrease significantly

In the 3rd Quarter of 2018, the Communications Authority (“CA”) received 399 cases of consumer complaints, representing a significant drop of 14.6% from the 467 cases received in the 2nd Quarter of 2018.

No. of cases not involving any breach of the TO or LC : 395 cases

The cases mainly involved :

- Dissatisfaction with customer service : 115 cases
- Disputes on contract terms / service termination : 83 cases
- Dissatisfaction with the quality of mobile/fixed network/Internet services : 71 cases
- Disputes on bills: 70 cases

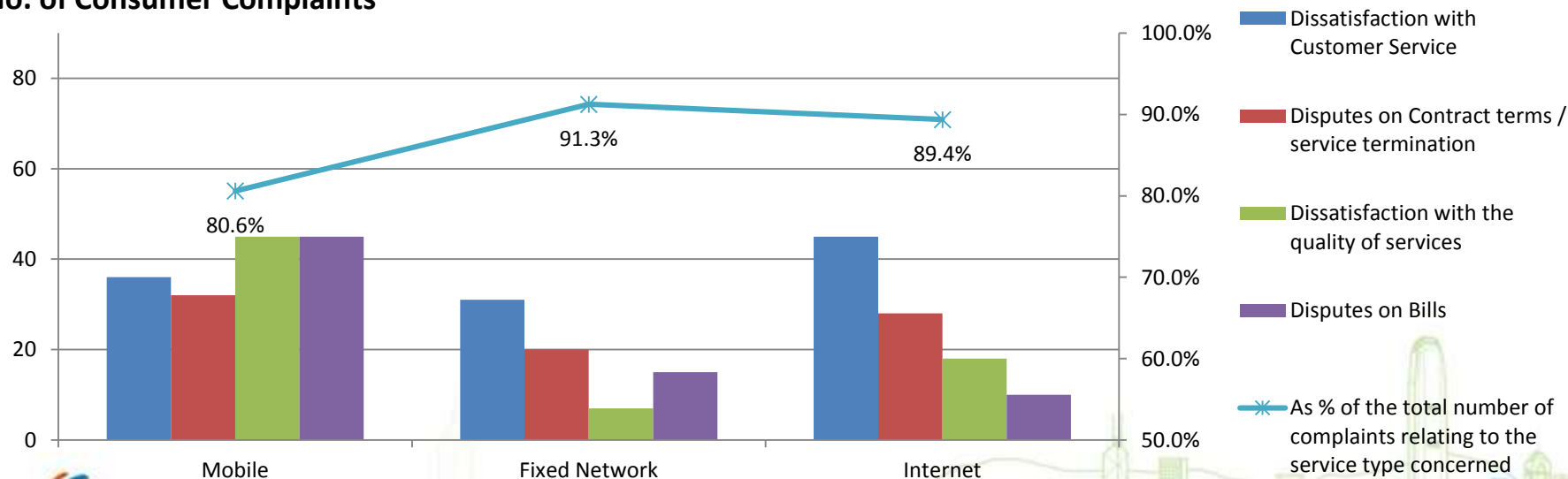
No. of cases involving possible breach of the TO or LC : 4 cases

- Alleged exploitation conduct as service is sold only in bundled package : 1 case
- Disclosure of personal data to third party : 1 case
- Failure to send international SMS through prepaid mobile SIM : 1 case
- Service provider did not monitor its network performance regularly : 1 case

No. of Complaints (3rd Quarter of 2018)

<i>(Categorised by major service types)</i>	<u>Dissatisfaction with customer service</u>	<u>Disputes on contract terms / service termination</u>	<u>Dissatisfaction with the quality of services</u>	<u>Disputes on bills</u>	<u>As percentage of the total number of complaints relating to the service type concerned</u>
Mobile	36	32	45	45	80.6%
Fixed Network	31	20	7	15	91.3%
Internet	45	28	18	10	89.4%

No. of Consumer Complaints



No. of Complaints (3rd Quarter of 2018)

Case Analysis of Breach of the TO / LC

In the 3rd Quarter of 2018, there was 1 case of breach which was related to a mobile service provider ported out consumers' mobile numbers from their original mobile service providers to its reseller without consumers' consent between February and March 2018. The service provider was found to have contravened licence conditions. The CA had issued a warning to the mobile service provider concerned.

Thank You

