

CUSTOMER COMPLAINT SETTLEMENT SCHEME

Statement of the Telecommunications Authority

14 March 2012

Introduction

The Office of the Telecommunications Authority (“OFTA”) conducted a pilot programme of alternative dispute resolution (“ADR”) scheme in the telecommunications sector, known as the Customer Complaint Settlement Scheme (“CCSS”) for 18 months from September 2008 to February 2010 (“Pilot Programme”). Such an ADR scheme seeks to resolve contractual disputes between telecommunications service providers and customers outside the judicial system. The objective was to offer the parties concerned a quick and economical way to resolve disputes with less legal formality and without the need for expensive legal cost. Similar schemes are in force in some overseas economies, such as Australia, New Zealand and the United Kingdom. The Pilot Programme was conducted with a view to testing the practicality and efficacy of the CCSS under local Hong Kong conditions. Three service providers¹ volunteered to join the Pilot Programme. A report summarizing the outcome of the Pilot Programme and the feedback of the participants was published in June 2010².

2. Drawing on the experience of the Pilot Programme, the Telecommunications Authority (“TA”) issued a consultation paper on 8 June 2010 entitled “Consultation Paper on the Customer Complaint Settlement Scheme” (the “Consultation Paper”)³ to solicit the views of the public and the industry on the salient issues in relation to the implementation in Hong Kong of the CCSS on a long term and sustainable basis. The consultation closed in December 2010.

¹ They were CSL Limited, Hutchison Telecommunications (Hong Kong) Limited and PCCW.

² The report is available at <http://www.ofta.gov.hk/en/report-paper-guide/report/rp20100608.pdf>.

³ The Consultation Paper can be viewed at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/cp20100608.pdf>.

Discussion with the Industry

3. At the close of the consultation, we received 13 submissions. The responses to the Consultation Paper were mixed. OFTA has studied the submissions carefully and has since continued to engage in dialogue with the industry with a view to formulating a CCSS that would both meet the objectives of the ADR, while receiving broad support of the industry. We are encouraged to see that these discussions have borne fruits. All the major telecommunications service providers are agreeable to implement a CCSS on a voluntary basis. In addition, the Communications Association of Hong Kong (“CAHK”), the industry association representing telecommunications service providers and other stakeholders of the telecommunications sector, has indicated its readiness to act as an independent agent (“CCSS Agent”) for operation of the voluntary industry scheme.

4. Noting the positive progress of discussion with the industry and also the views and comments that he has received in response to the Consultation Paper, the TA sets out in this Statement his conclusion on the implementation of the CCSS. His responses to the submissions to the Consultation Paper are given in the Appendix to this Statement.

5. Unlike the Pilot Programme, which was conducted on a managed and restricted basis with the participation of but three operators, the voluntary CCSS that the TA has in mind now will be open for participation by all telecommunications service providers and for referrals for handling billing disputes by all customers. The CCSS will follow a one-stage mediation approach. As the voluntary CCSS is much larger and different in terms of scale and mode of operation as compared with the Pilot Programme, the TA and the industry agree that it is appropriate to conduct a two-year trial so that all parties concerned may fully assess the effectiveness of the CCSS and the public demand for it. The TA and the participating service providers will review the result of the voluntary CCSS during the two-year trial period in considering and deciding on the long-term implementation of CCSS.

Key Elements of the Voluntary CCSS

6. The TA considers that the voluntary CCSS should consist of the following key elements:

- (a) The scheme should be (i) cost-effective, user friendly and flexible; (ii) able to resolve customer disputes in a timely manner; and (iii) fair to customers and service providers;
- (b) The scheme should be managed and operated by an independent CCSS Agent. The TA would however play an active role in monitoring the effectiveness of the scheme. The scheme will not prejudice the power of TA to conduct investigations under the Telecommunications Ordinance for any suspected regulatory breaches;
- (c) Since the scheme is for the benefit of both the service providers and the customers in resolving disputes, it would be reasonable for both parties to share some of the cost of running the scheme. Having said that, to kick-start the CCSS trial and to ensure the smooth and continual operation of the scheme, the TA would provide in the inaugural stage the necessary funding to meet the operating cost. To ensure the effective use of the funding, the TA will impose certain acceptance criteria for admission of disputes to be handled under the CCSS;
- (d) The scope of CCSS will primarily cover billing disputes between residential/personal customers and telecommunications service providers;
- (e) The scheme will consist of a one-stage mediation (viz. without adjudication); and
- (f) If the customer and the service provider reach a settlement after the mediation provided by the CCSS Agent, the two parties will sign a settlement agreement which will be binding on both parties.

Way Forward

7. Along the foregoing parameters, OFTA will continue its dialogue with CAHK and the industry to (a) map out the implementation details of the voluntary CCSS and (b) establish the CCSS Agent to operate the scheme for the two-year trial period. Subject to the progress of such discussion, the TA targets to commence the trial operation of the CCSS in the second half of 2012. There will be further announcement upon the launch of the CCSS.

8. After the two-year trial period, the TA will assess whether the voluntary CCSS has achieved the intended objective as stated in the first paragraph of this Statement. He will then make a decision on the way-forward.

Office of the Telecommunications Authority

14 March 2012

Submissions to the Consultation Paper and the TA's Responses

In the Consultation Paper, the TA sought the views of the public and the industry on the salient issues in relation to the implementation of the CCSS on a long term and sustainable basis. At the close of the consultation on 8 December 2010, a total of 13 submissions⁴ were received from the following parties (listed in alphabetical order).

- (1) China Mobile Hong Kong Company Limited (“CMHK”)
- (2) Communications Association of Hong Kong (“CAHK”)
- (3) Consumer Council (“CC”)
- (4) CSL Limited (“CSL”)
- (5) Hong Kong Broadband Network Limited (“HKBN”)
- (6) Hong Kong Cable Television Limited (“HKCTV”)
- (7) Hutchison Telecommunications (Hong Kong) Limited (“HTHK”)
- (8) Maurice WM Lee Solicitors (“Maurice WM Lee Solicitors”)
- (9) New World Telecommunications Limited (“NWT”)
- (10) Pacnet Internet (Hong Kong) Limited (“Pacnet”)
- (11) PCCW (“PCCW”)
- (12) SmarTone Mobile Communications Limited (“SmarTone”)
- (13) Wharf T&T Limited (“WTT”)

2. The TA asked a number of questions in the Consultation Paper to help focus respondents on issues that require deliberation. A summary of the views and comments of the respondents to each of the questions, and the responses of the TA to these views and comments, are set out in this Appendix.

(I) *Basic features of an effective CCSS*

3. Taking into account the outcome of the Pilot Programme and similar practices in overseas economies and other local sectors, the TA considered that an effective ADR scheme should possess the following basic features: (a) it

⁴ All submissions are available at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20100909/table.html>.

should be cost-effective, user friendly and flexible; (b) it should aim to resolve customer disputes in a timely manner; and (c) it must be fair at all times. The following question was raised in the Consultation Paper:

Question 1: Do you agree the above features and objectives are essential to an effective ADR scheme? Do you think there are any other features and objectives which are important for the future CCSS? If yes, please elaborate.

Respondents' Views and Comments

4. In general, the respondents giving comments on this question agreed to the proposed basic features of an effective ADR scheme. WTT supplemented that reference should be made to the established rules and underlying principles of the Hong Kong International Arbitration Centre ("HKIAC"). CC, CSL, HKBN and HTHK considered that the disputes should be handled by individuals with knowledge of telecommunications services and consumer protection.

TA's Considerations and Responses

5. The TA agrees that if the CCSS is to be implemented, there should be a set of clearly defined rules and principles, and those promulgated or adopted by reputable ADR organizations such as HKIAC can serve as good references when he draws up the details of the CCSS in the telecommunications sector. In addition, the TA considers that the development of local legislation⁵ and authoritative guidelines related to ADR should be taken into account so that the formulation of the CCSS follows the commonly accepted standards in the society.

6. The TA expects that the day-to-day operation of the CCSS will be managed and performed by an independent CCSS Agent. Depending on the scope of the CCSS, the TA considers that some telecommunications disputes may involve technical and industry specific issues and hence he agrees that it will be desirable for the CCSS Agent to possess adequate industry knowledge in order to resolve the disputes in a timely and effective manner.

⁵ For example, the Government has introduced a draft Mediation Bill in November 2011 which is now being scrutinized by the Legislative Council.

7. **Having considered the views and comments received, the TA affirms that the CCSS should possess the basic features as summarised in paragraph 3 of this Appendix.** In this connection, there is also a need to ensure that the CCSS Agent should possess adequate industry knowledge to deal with service disputes in the telecommunications sector in a timely and effective manner.

(II) Should the future CCSS be a voluntary scheme or should it be made mandatory?

8. The implementation of CCSS can be either based on voluntary participation of individual service providers or mandatory participation of all service providers if so required by the TA under their licence conditions. While special condition (“SC”) 36 of the unified carrier licence (“UCL”) and SC 15 of the service-based operator (“SBO”) licence⁶ provide a formal framework for handling contractual disputes between service providers and their customers including submission of such disputes to an independent dispute resolution scheme, the TA has made clear in his Statement on “Licensing Framework for Unified Carrier Licence” issued on 9 May 2008⁷ that the industry would be encouraged to continue tackling these issues voluntarily. A self-regulatory regime driven and supported by the industry which is operating efficiently and effectively will obviate the need for the TA to issue any code of practice under the UCL or SBO to mandate an ADR scheme for the industry. The following question was raised in the Consultation Paper:

Question 2: Do you have any comments on whether the CCSS should be implemented on a voluntary or mandatory basis? Please elaborate. If you are a service provider, you are welcome to state whether you intend to join a voluntary scheme.

Respondents’ Views and Comments

9. There were mixed responses on this issue. CC, HTHK and Pacnet supported mandatory implementation of CCSS whereas CMHK and PCCW

⁶ Similar licence condition (Condition 17) was also added to the Class Licence for Offer of Telecommunications Services on 26 November 2010.

⁷ The TA statement is available at <http://www.ofta.gov.hk/en/tas/others/ta20080509.pdf>.

preferred voluntary implementation. CAHK indicated that it will be willing to draw up an agreeable framework after collecting service providers' preferences. Other parties objected to CCSS or did not indicate preference. HTHK supplemented that service providers should have the sole right to refer disputes to CCSS with the customers having the right to decide whether to participate.

TA's Considerations and Responses

10. Consistent with his light-handed and market-driven approach in the regulation of the telecommunications sector, the TA prefers a voluntary solution agreed by the industry rather than a mandatory one imposed by the regulator. If the industry can on its own initiative set up a voluntary scheme, the TA trusts that such industry driven measure will better take into account the operational characteristics of the local telecommunications business and have more flexibility to deal with different issues in the fast changing telecommunications market in Hong Kong.

11. The TA notices that there are quite a number of successful examples of voluntary self-regulation schemes recently implemented by the industry to deal with customer disputes. In January 2010, in cooperation with OFTA, CAHK issued the "Code for the Provision of Chargeable Mobile Content Services" to address billing disputes in relation to chargeable mobile content services. In December 2010, having made reference to a code of practice issued by OFTA and taking into account the circumstances specific to the local telecommunications industry, CAHK issued a "Code of Practice for Telecommunications Service Contracts" which has been adopted and implemented by all the major fixed and mobile service providers since July 2011. The results are rather encouraging, with the drop in the number of consumer complaints concerning chargeable mobile content services from 146 cases in 2010 to 52 cases in 2011, those relating to service contracts from 1,466 cases in 2010 to 1,277 cases in 2011. And, there is not a single breach of either Code.

12. The TA has expressed in the Consultation Paper that his main concern with a voluntary scheme was that there might be a low participation of service providers which would not be conducive to the development of an effective scheme on industry-wide level to deal with telecommunications service disputes. Having considered the positive feedback of some respondents and

following subsequent discussion with the industry after the close of the consultation, the TA is optimistic that the industry would be ready and willing to support the implementation of a voluntary scheme. **Subject to a firm commitment from the industry to the TA for implementing a self-regulatory industry scheme, the mode of its operation and the scale of participation in the scheme, the TA will give his support to a voluntary CCSS.** The TA will continue to monitor the market situation and will not hesitate to mandate a CCSS scheme when necessary.

(III) Role of OFTA and the CCSS Agent

13. As the regulator of the telecommunications industry, the TA is empowered to conduct investigations and to sanction a licensee in breach of the statute and licence conditions in accordance with the Telecommunications Ordinance (“the Ordinance”). This power is distinguishable from the power of an adjudicator, who has to decide on a case or a claim on the basis of its merits, with the underlying causes not necessarily linked to any alleged breach of statute or licence conditions. Drawing references from the similar ADR schemes in overseas economies⁸, the TA is of the view that the future CCSS should operate on a fully independent basis and OFTA’s involvement in the day-to-day operation of the scheme should be kept to the minimum. The TA should retain some degree of control by incorporating appropriate terms in an agreement or undertaking to be entered into with the future CCSS Agent and by setting appropriate criteria or rules for compliance by the CCSS Agent. The following question was raised in the Consultation Paper:

Question 3: Do you have any comments on the roles of OFTA and the selected ADR organisation(s) in the implementation of the CCSS? In particular, do you agree that the appointed ADR organisation(s) has to be independent but subject to certain degree of monitoring control by the TA? Please elaborate.

⁸ The ADR schemes in UK, the Ombudsman Services: Communication and Communications and Internet Services Adjudication Scheme (CISAS), are approved by OFCOM and run independently. In Australia, the Telecommunications Industry Ombudsman Ltd is independent from the industry, the government and the consumer organisations.

Respondents' Views and Comments

14. There were no adverse views on this question from the respondents. CC, CSL, Pacnet and PCCW agreed while CMHK and HTHK were neutral. HTHK opined that the powers of the TA and CCSS should not overlap.

TA's Considerations and Responses

15. To maintain the impartiality and independence of the CCSS, **the TA affirms his views that the CCSS should be managed and operated by a separate and independent CCSS Agent.** The CCSS Agent should have the maximum latitude in the day-to-day operation and handling of the complaints. Nevertheless, **in order to ensure the smooth and continual operation of the scheme, especially in the inaugural stage, the TA would play an active role in monitoring the effectiveness of the scheme,** for example, by considering and approving the framework and relevant rules and procedures of the scheme and requiring the CCSS Agent to provide statistics on complaints received and handled. Furthermore, OFTA would be willing to sponsor the establishment and operation of CCSS through relevant training, funding and other kinds of administrative support. As mentioned in the Consultation Paper, **the CCSS will not prejudice the power of the TA to conduct investigations under the Ordinance for any suspected regulatory breaches.**

(IV) Scope of the scheme

16. To test the robustness of the voluntary scheme, the Pilot Programme did not clearly define the scope of services that might be subject to the ADR mechanism. Participating service providers might submit cases concerning content or TV services for adjudication. If the future CCSS were a voluntary one, the TA would not consider it necessary to confine the scope of complaints to licensable services. A wider scope could benefit more customers. However, if the future CCSS were mandated under the relevant licence condition, then the fact that the TA did not have jurisdiction over content and TV services would imply that the scheme might not be available to these services. To enable more customers to benefit from the CCSS, the TA proposed to permit service providers to declare voluntarily to subject all or certain types of their contracts relating to content and TV services to the

mandatory CCSS. Customers of such declared type of contracts might then submit their cases to the CCSS if they so wish. The following question was raised in the Consultation Paper:

Question 4: Do you have any comments on the scope of the CCSS and these proposed arrangements?

Respondents' Views and Comments

17. Most respondents expressed that the scope of the CCSS should be confined to licensable services, except for CC which submitted that the CCSS should cover non-licensable services. There were also other comments from the respondents on the types of telecommunications service disputes which should be handled under the CCSS. CC and HTHK submitted that the CCSS should apply to all types of telecommunications licensees, not just limited to holders of UCL and SBO licences. HTHK opined that the scope of the CCSS should be limited to individual consumers only. CSL suggested that the CCSS should exclude complaints concerning commercial decision on whether to offer a telecommunications service; level of charge; and cases already brought to court. CMHK, HTHK, and PCCW considered that the CCSS should only handle non-monetary claims/deadlock disputes.

TA's Considerations and Responses

18. The TA considers that the scope of the CCSS will depend on whether the scheme is mandatory or voluntary. A mandatory scheme established pursuant to SC 36 of UCL and SC 15 of SBO licences will be restricted to licensable services and holders of UCL and SBO licence only. A wider scope of CCSS can be achieved if it is run under a voluntary model. Having said that, if a voluntary CCSS should be implemented by the telecommunications industry, the participating service providers should have the discretion to decide whether non-licensable services would be covered. Similarly, while other service providers not holding UCL or SBO licence are encouraged to join a voluntary scheme, it would be their discretion as to whether to do so or otherwise.

19. Since the CCSS is intended as a consumer protection initiative, and given the resource implications for both the industry and OFTA for

implementation of the scheme, the TA opines that it should focus on handling disputes of residential/personal customers only but not business customers, which are expected to have more resources and/or bargaining power in direct negotiations with the service providers in resolving disputes.

20. The TA would also like to clarify that it is not the aim of the CCSS to cover complaints on commercial matters such as the range of service offered by service providers and the related service charges unless the disputes relate to the terms of service contract between the customer and the service provider. As the CCSS is intended to be an ADR scheme outside the judicial system, cases already brought to be court should also be excluded from the scope of the CCSS

21. The TA cannot agree with some respondents to restrict the scope of CCSS to non-monetary claims only. Indeed, in view of the experience of the Pilot Programme, monetary disputes are considered more suitable for resolution under a CCSS. The TA also expects that the CCSS will handle less straight-forward cases since the service providers and their customers should strive to resolve the disputes by themselves first before they resort to the CCSS.

22. According to the consumer complaints on telecommunications services received by OFTA from the year 2009 to 2011⁹, billing disputes ranked top amongst all the complaint categories. To kick start the CCSS, the TA considers that the CCSS should deal with disputes related to this complaint category as a priority.

23. Having considered the views and comments received, **the TA concludes that the scope of CCSS should primarily cover billing disputes between residential/personal customers and telecommunications service providers in the initial stage of operation.** In the formulation of the CCSS and its rules and procedures, the types of cases which would be excluded from handling under the CCSS would be clearly defined.

⁹ Bill disputes accounted for 21% - 30% of total consumer complaints received by OFTA from year 2009 to 2011.

(V) *The mode of operation of the Long Term CCSS*

24. Taking into account the experience gained from the Pilot Programme, the TA proposed two options which were considered to be more cost-effective and accessible by both the service providers and the customers for the future operation of the CCSS: (a) informal mediation plus adjudication, the approach adopted in the Pilot Programme; or (b) pure mediation without adjudication, which is likely to solicit the participation of the service providers and is encouraged by the court. The following question was raised in the Consultation Paper:

Question 5: Do you have any preference for or comments on the form of ADR to be adopted for the future CCSS? Please elaborate.

Respondents' Views and Comments

25. CC, CMHK, HTHK and Pacnet preferred informal mediation plus adjudication. PCCW favoured pure mediation without adjudication. In addition to the indicated preferences, however, HKBN, PCCW and WTT considered that both options fail to achieve the objective of expeditious settlement under the CCSS. They considered that Small Claims Tribunal ("SCT") is a quicker and more economical channel when compared to the Pilot Programme in resolving contractual disputes.

TA's Considerations and Responses

26. The TA considers that it would not be appropriate to compare the SCT directly with the approach adopted in the Pilot Programme. The SCT provides a judicial mechanism (though with less strict rules and procedures than in most other courts) to the public to deal with monetary disputes below HK\$50,000. This is a formal and face-to-face adjudication process conducted by a court that produces binding result enforceable on both the claimant and the defendant. The SCT requires both parties to attend the court proceedings which comprise different stages, namely, call-over, mention hearing(s), and trial. At present, according to the understanding of the TA, the SCT is not a common means for customers to resolve. This is apparently due to the time and effort to file a claim to the SCT and to go through the court proceedings. In contrast, in the Pilot Programme, the CCSS adopted less formal and more

flexible proceedings through paper and phone hearing for which both the service providers and customers were not required to attend in person. The CCSS can also potentially address the disputes more effectively if the CCSS Agent is specialized with the industry knowledge and experience to deal with telecommunications service disputes. The TA therefore reaffirms his views on the need and role of the CCSS as a sector-specific ADR scheme to more effectively resolve the disputes in the telecommunications sector in Hong Kong.

27. Having said that, the cost of the CCSS is highly dependent on the mode of operation adopted. The experience gained in the Pilot Programme shows that mediation has the practical benefits of being relatively simple, flexible and quick. The cost of mediation is generally much less than that for adjudication, especially if the parties involved can reasonably agree to settle during the early stage of the process. Moreover, given most telecommunications services in Hong Kong involve relatively low amount of service charges¹⁰, an ADR scheme which is simple, efficient and low-cost is more suitable for the local market environment. If the CCSS process could be conducted in a speedy and efficient manner, this would also allow the concerned party to resort to the formal legal system without undue delay for settling unresolved case after going through the CCSS.

28. Taking into consideration the above factors, **the TA has come to the view that mediation with one stage only will be a more pragmatic and cost effective mode of operation for the CCSS in the Hong Kong setting.** A pitfall of the mediation model is that it cannot accommodate situations where mediation fails to resolve a dispute between the service provider and customer. If no settlement agreement can be reached after mediation, it would not prejudice either one of the parties in bringing the case before the judiciary, including the SCT, for a final settlement.

(VI) *Funding arrangement and fee levels*

29. Having regard to overseas practices and similar schemes in the local insurance and financial sectors, the TA expected that the funding for the long

¹⁰ According to the statistics of complaints received by OFTA in 2011, over 85% of the dispute amounts in the bill dispute category were under HK\$5,200.

term CCSS would have to be borne by the industry primarily. If necessary, OFTA would consider making a one-off contribution for the initial setting up costs or parts thereof so as to kick start the initiative. The TA believed that ADR is for the benefit of both the industry and the customers and so it would be reasonable for customers to pay a reasonable amount of fee for taking part in the CCSS. Requiring a customer to pay a reasonable amount of fee would also minimise submission of wholly unmeritorious claim and possible abuse.

30. Having considered the operation of the Pilot Programme and the consultation with the organisations providing ADR services in the market, the TA proposed, for indicative purpose, the following level of fees under the CCSS.

Model: Informal Mediation plus Adjudication

	<u>Customer</u>	<u>Service provider</u>
Application Fee	\$100	
First Stage Fee (covering informal mediation and incidental services)		\$1,200 per case
Second Stage Fee (covering adjudication and incidental services)	\$100 or 5% of the disputed amount, whichever is higher	\$4,000 - \$8,000 per case
Review Fee (paid by party who made the request)	\$200	\$2,000

Informal Mediation plus Formal Mediation

	<u>Customer</u>	<u>Service provider</u>
Application Fee	\$100	
First Stage Fee (covering informal mediation and incidental services)		\$1,200 per case
Second Stage Fee (covering formal mediation and incidental services / costs)	\$100 or 5% of the disputed amount, whichever is higher	\$4,000 per case

31. The following questions were raised in the Consultation Paper:

Question 6: Do you agree that both the industry and customers shall bear the on-going cost for the future CCSS and that the industry should bear the substantial part of the fees?

Question 7: Do you have any view on the above fee proposals? Please give supporting reasons for your views.

Respondents' Views and Comments

32. CC suggested a fee waiver to customers under certain circumstances¹¹ while Pacnet proposed that customers should have access to the first stage of the CCSS at no charge. However, other parties (CMHK, Hutchison, CSL, PCCW, HKBN, NWT, Maurice) gave opposite views as summarised below:

- (a) Both customers and service providers would benefit from the CCSS so it was unfair to have asymmetric fee structure in favour of customers;
- (b) The CCSS was not cost effective as the fees levied on service providers were higher than the amount of most of the telecom disputes. From users' perspective, the CCSS was unattractive when comparing the fees charged by the SCT (HK\$20 - HK\$120 only);
- (c) The CCSS would provoke more complaints as customers would abuse the scheme to bargain with service providers to settle the disputes for amount less than the proposed fees level;
- (d) The losing party should bear the cost and the adjudicator should have the discretion on who bear the costs; or an option should be available for parties to mutually agree to share the mediation cost prior to mediation;

¹¹ For examples, if the amount in dispute falls under a certain amount, or if a complainant cannot afford to pay.

- (e) The provision of a “Calderbank offer”¹² might be considered to help either party to secure his cost position in adjudication; and
- (f) there must be a threshold for refusing mediation if the amount in dispute was less than the minimum cost of mediation.

33. Apart from the above comments, HTHK proposed that all participating service providers should bear the fixed costs of the CCSS in equal share. CSL, PCCW and WTT opined that OFTA should also bear the ongoing cost of the CCSS.

TA's Considerations and Responses

34. Regarding respondents' view given in paragraph 32(a) above, the TA considers that, as stated in paragraph 50 of the Consultation Paper, one of the basic requirements for a successful ADR is that it cannot be overly expensive for access by consumers. In the similar overseas ADR schemes, taking the United Kingdom as example, the cost of operating the ADR service is mainly borne by service providers. In general, service providers have more financial and operational resources to deal with a dispute compared with individual consumers. Considering the practices overseas and the purpose of the CCSS as a consumer protection initiative, the TA opines that it would not be unfair to have asymmetric fees levied on individual customers and service providers.

35. Regarding respondents' view given in paragraph 32(b), the TA has already pointed out that it is not appropriate to have a direct comparison between the CCSS and the SCT (see paragraph 26 of this Appendix). While the TA agrees that the CCSS should be simple and cost effective (see paragraph 27 of this Appendix), he is of the view that it is not appropriate to measure the cost effectiveness of the CCSS by comparing the fees levied on service providers against the amount of telecom disputes alone. From customers' perspective, the CCSS provides an alternative avenue for dissatisfied customers to seek redress and relieve their grievances through dispute resolution by an independent third party. From service providers' perspective, the CCSS will

¹² If a party has made a “Calderbank offer” at any stage of the negotiations which is no worse than the decision made by the adjudicator ultimately, the party unreasonably rejecting that offer should bear the full cost of the adjudication after the offer is made, including the cost of the opposite party (if any).

help them save internal resources in handling customer complaints. The deadlock cases, in particular, can be passed on to the CCSS for an independent mediation. The implementation of the CCSS will, among other things, identify recurring and systematic problems and trends so that the service providers can rectify and hence improve the quality of customer service. As a whole, the CCSS will enhance customer protection and satisfaction. It will help to build a credible reputation for the telecommunications sector and in turn strengthen the competitiveness of service providers participating in the CCSS.

36. Regarding respondents' view given in paragraph 32(c), the TA is of the view that a reasonable amount of case fee levied on the customers would prevent any possible abuse. In fact, drawing reference from similar schemes in overseas administrations where the costs are mainly borne by the service providers, there is no evidence to suggest that customers would abuse an ADR scheme and generate more complaints.

37. Regarding respondents' views given in paragraphs 32(d) and 32(e), as stated in paragraph 28 of this Appendix, the TA is of the view that mediation with one stage only is a more pragmatic and cost effective mode for the CCSS. If mediation is adopted as the mode of operation for the CCSS, the suggestion on losing-party-pay and the Calderbank offer would not be applicable. On the other hand, prior to the mediation, it might be impractical to ask the parties who are still in dispute to mutually agree to share the mediation cost. It would only create another dispute among the parties on the mediation fee, and defeat the purpose of the CCSS as resolving the disputes on the telecommunications service in the first place.

38. Regarding respondents' view given in paragraph 32(f), the TA would like to reiterate that the CCSS is intended for consumer protection. In order to achieve this purpose, the TA will take the cost of conducting mediation as one of, but not the only, considerations into account in designing the scheme. Nevertheless, to weed out frivolous and vexatious cases, the TA agrees that a threshold of dispute amount might be set.

39. Lastly, regarding respondents' view given in paragraph 33, the TA considers that since the CCSS is for the benefit of both the service providers and the customers in resolving disputes, it would be reasonable for both parties to share the cost of the CCSS. Nonetheless, if service providers are to

conduct the CCSS on a voluntary basis, the TA will consider providing funding support, at least in the initial stage, so as to encourage a wide participation in the CCSS.

40. Having considered the views and comments received, **the TA concludes that it is reasonable for both the industry and customers to share the cost of running a practical and sustainable CCSS.** The exact level of fees that should be paid by service providers and customers would need to be specified after the details of the CCSS including its mode of operation, institutional structure and funding arrangement are finalised.

(VII) Quota of cases to be handled

41. In the Consultation Paper, the TA proposed to set an annual quota of cases that would be handled under the CCSS, at least for the first three years of its operation. By setting an annual quota, the CCSS could be kept to a manageable scale capable of being supported by the industry and handled by the CCSS Agent. To ensure that the cases would spread evenly throughout the year, the TA proposed a monthly quota of 85 cases for the first year. This translated into a total of 1,020 cases for the first year of operation. The following question was raised in the Consultation Paper:

Question 8: Do you agree that a quota should be set for the CCSS? If yes, what should be the appropriate quota?

Respondents' Views and Comments

42. There were diverse views on whether a quota should be set for the CCSS. CSL and WTT agreed that a quota should be set for the CCSS. CC, NWT, Pacnet and PCCW disagreed as they believed that it would defeat the purpose of CCSS. CMHK considered that there are pros and cons of having a quota, and there must be a “screening mechanism” to exclude certain complaints. On the other hand, HTHK considered that the proposal to allow unused quota in a month to be carried forward to the following month would create potential pressure on the resources of the CCSS.

TA's Considerations and Responses

43. The CCSS is a completely new initiative to service providers and customers in Hong Kong, and it is difficult to have an accurate estimate on the number of cases that will be admitted to the CCSS for handling on a yearly or monthly basis. The number of complaints may also fluctuate from time to time as a result of different marketing strategies of operators, the coming into operation of regulatory code of practice and guidelines, and the self-regulated measures adopted by the industry recently. If there is no quota system, the uncertain demand and workload on the CCSS would be a challenge in terms of providing adequate resources for the CCSS Agent to deal with the complaints received in a timely and effective manner. On the other hand, the TA agrees that if a rigid quota is set, it would undermine the value of the CCSS as an option to the customers to resolve disputes with service providers.

44. Having considered the above factors and the views given by the respondents, the TA inclines not to impose any rigid quota for the number of complaints which will be handled by the CCSS. Nevertheless, for practical consideration of the limited resources of the CCSS Agent, **the TA agrees that certain acceptance criteria for admission of disputes to be handled under the CCSS should be imposed to ensure the effective use of the resources in the initial stage of the CCSS.**

(VIII) Binding nature of decision

45. Under the Pilot Programme, decisions of the adjudicators were only binding on the service providers participating in the adjudication. Customers who were not satisfied with the adjudicator's decisions might still lodge a fresh claim in the court such as in the SCT. Thus, even if a service provider had a very strong case, the customer might choose not to accept the outcome. In such event, given that the service providers had devoted considerable time, effort and resources for participation in the process, this would not be just and fair to them who had participated in the process in good faith. The TA therefore considered a binding decision on both sides as a result of going through the CCSS process to be a more balanced and reasonable arrangement. The following question was raised in the Consultation Paper:

Question 9: Do you have any comments on whether the adjudicators' decision should be binding on the operators only or both parties?

Respondents' Views and Comments

46. The respondents to this question generally supported the TA's view that the adjudicators' decisions should be binding on both sides; otherwise it would be difficult for the service providers to enforce the adjudicators' decision if it was ruled in their favour.

TA's Considerations and Responses

47. Given the unanimous view in the submissions, the TA considers that, if adjudication is pursued under the CCSS, the adjudicators' decisions should be binding on both the service providers and the customers. However, **as set out in paragraph 28 of this Appendix, the TA prefers a one-stage mediation scheme for the future CCSS. Along the same vein however, if the customer and the service provider reach a settlement after the mediation provided by the CCSS Agent, both parties should sign a settlement agreement which should be binding on them both.**

(IX) Interest on disputed amount

48. It is observed in the Pilot Programme that customers were generally eager to lodge their claims with the Pilot Programme because they understood that if they did so, the service providers would suspend the debt collection till the adjudicator's final decision was made. Some laxity was observed on the complainant's behaviour during the information-collection stage that followed. To exercise some discipline on the complainants, the TA proposed that, as a matter of principle, interest should be awarded to the party whose payment was withheld as a result of the dispute, if the outcome of the adjudication was in its favour. If this proposal were adopted, then whether interest would be awarded and the exact amount of interest to be awarded would be decided on a case by case basis by the adjudicator. In deciding the amount of the interest to be awarded, the adjudicator should also have regard to the delay caused by the

service providers in the adjudication process. The following question was raised in the Consultation Paper:

Question 10: Do you have any comments on the proposal to award interest to party whose payment was held as a result of the dispute?

Respondents' Views and Comments

49. CMHK and HTHK supported the proposal to award interest to party whose payment was held as a result of the dispute; while CSL, Pacnet and PCCW did not support or have reservations. CSL considered that the interest amount might not justify the extra cost due to the time spent by the adjudicator in deciding the amount of interest. As an alternative, HTHK opined that the interest rate should be based on certain percentage over the prevailing best lending rate.

TA's Considerations and Responses

50. Having considered the respondents' feedback and the fact that the dispute amount for the telecommunications services is relatively small in general, **the TA agrees that it may not worth the effort to determine whether an interest will be awarded and the amount of interest to be awarded to a party whose payment is withheld as a result of the dispute.**