

## **CTI's IDD 1666 "Ultimate Price Guarantee"**

**Complaint against :** City Telecom (H.K.) Ltd. ("CTI")

**Issue :** Breach of the Advertising Code

**Relevant Instrument :** The Advertising Code of Practice issued by the Telecommunications Authority in January 1996 (the "Advertising Code")

**Case opened :** April 2000

**Case closed :** May 2000

**Decision :** Breach of the Advertising Code

**Outcome :** CTI has been asked to amend the advertisements on its IDD 1666 Ultimate Price Guarantee in the future in order to comply with Advertising Code

**Case reference :** T55/00(a)

1. Further to the complaint on the Ultimate Price Guarantee of City Telecom (H.K.) Ltd. ("CTI") ("First Complaint") received by the Telecommunications Authority ("TA") in March 2000, the TA has received another complaint ("Second Complaint") against CTI alleging that CTI's advertisement on its IDD 1666 Ultimate Price Guarantee was in breach of the Advertising Code of Practice ("Advertising Code") issued by the TA in January 1996. In his letter dated 28 April 2000, the TA set out the issues referred to in the complaint.
2. After considering CTI's representations and the documents enclosed in its letter, the TA is of the view that CTI's advertisements on IDD Ultimate Price Guarantee was in breach of the Advertising Code for the reasons set out below.

## **I. Methodology of the Ultimate Price Guarantee**

3. The methodology of the Ultimate Price Guarantee is that CTI will first calculate the total monthly IDD charges which would be billed by each of the four operators of Fixed Telecommunication Network Services (“FTNS”)(that is Cable & Wireless HKT Telephone Limited, New T & T Hong Kong Limited (“New T & T”), Hutchison Global Crossing Limited (formerly Hutchison Communications Limited) and New World Telephone Limited) for the relevant IDD calls of a customer. CTI will then select from these four competitors the operator with the lowest total IDD monthly charges.

### **(i) Meaning of the phrases “the lowest IDD monthly charges” and “Ultimate Price Guarantee”**

4. The complainant contended that the methodology used by CTI was not consistent with layman’s understanding of the meaning of the phrases “the lowest IDD monthly charges” and “Ultimate Price Guarantee” in the CTI’s advertisements and Ultimate Price Guarantee Registration Form (“Registration Form”). The complainant alleged that if, for example, operators A, B and C offered the lowest IDD rates to USA, Australia and China respectively and a customer made IDD calls to these three countries, CTI should calculate “the lowest IDD monthly charges” of that customer by adding the IDD rates of that customer which would be charged by operator A for USA, operator B for Australia and operator C for China instead of taking the lowest total IDD monthly charges of a particular operator.
5. In his letter dated 28 April 2000, the TA asked CTI to:
  - (i) explain the basis and justification for using the existing methodology in determining the IDD charges under the Ultimate Price Guarantee;
  - (ii) explain how CTI’s methodology is explained to the customers; and
  - (iii) identify those clauses of its Terms and Conditions (“Terms and Conditions”) in the Registration Form which enable CTI to come up with this method of calculation.

6. According to its reply dated 5 May 2000, CTI had “never claimed [that its IDD rate was] the lowest IDD rate on countries basis as alleged by the complainant”. CTI stated that it had explained the methodology to customers by means of leaflets, fax messages and e-mails (Attachments 1 to 6 in CTI’s letter dated 5 May 2000). CTI also briefly described each clause in the Terms and Conditions without identifying any particular clause which enables CTI to come up with this method of calculation. The TA, in his earlier letter, referred to clause 7 of the Terms and Conditions which was presumably used by CTI to justify the existing methodology regarding the Ultimate Price Guarantee:

“When “Ultimate Price Guarantee” guarantees that upon the registration is completed and effective, the customers’ monthly total IDD 1666 call charges to be billed by CTI, would be the lowest when compared to the **IDD call charges** billed by the other IDD operators under the “Ultimate Price Guarantee” system.” *(Emphasis added)*

The Chinese version of clause 7 reads :

“當「無底價收費保證」登記程序完成及生效後, CTI 用戶的通話收費會自動按上述五間長途電話公司的收費計算, 而「無底價收費保證」系統將分別計算出五個 IDD1666 收費總和並於每個月底選取當中之最低收費總和作為客戶該月賬單之 IDD1666 收費。”

The Chinese version of clause 7 can be translated literally as follows:

“When registration for “Ultimate Price Guarantee” is completed and becomes effective, the IDD charges of CTI’s customers will be automatically calculated in accordance with the rates of the 5 above-mentioned IDD operators. The “Ultimate Price Guarantee” system will separately calculate 5 different total IDD charges and select, at the end of each month, the lowest total IDD charges as the monthly IDD 1666 charges for that customer.”

7. The TA notes CTI’s argument that it had never claimed its IDD rate was “the lowest IDD rate on countries basis”. The TA has also considered Attachments 1 to 6 of CTI’s letter. However, the TA finds that there is difference between the English and the Chinese version of clause 7 of the Terms and Conditions and the English version does not set out clearly the existing methodology of the Ultimate Price Guarantee. The English version merely states that the IDD

charges billed by CTI “would be the lowest when compared to the IDD call charges billed by the other IDD operators”. The English version of clause 7 does not refer to the comparison of the *total* monthly IDD charges of the 5 IDD operators (prescribed by CTI in clause 1 of the Terms and Conditions) and the selection of the lowest one as the monthly IDD charges of the customer. On the other hand, Chinese version of clause 7 makes reference to the term “the lowest total IDD charges” (“最低收費總和”), the comparison of the *total* IDD charges of the 5 IDD operators and the selection of the lowest one as the monthly IDD charges of the customer. For this reason, while the Chinese version of clause 7 can explain the existing methodology of CTI’s Ultimate Price Guarantee, the English version is by no means clear.

8. The Terms and Conditions do not state which version prevails in case of difference between the English and Chinese version. To avoid any misunderstanding on the part of the customers, CTI should amend the English version of clause 7 of the Terms and Conditions to explain clearly the methodology of the Ultimate Price Guarantee.

**(ii) Limitation of Ultimate Price Guarantee to four IDD competitors only**

9. According to the complainant, CTI only compares its IDD rates with those of the four FTNS operators but not with the rates of the other operators of external telecommunication services (“ETS”) in Hong Kong. For this reason, the complainant alleged that CTI could not claim to be providing an ultimate price guarantee. In addition, although clause 1 of the Terms and Conditions provides that the IDD operators selected for call charges comparison are the four FTNS operators, the words “the lowest price **in town**” (Emphasis added) or phrases to that effect in CTI’s IDD advertisements (for example marketing leaflet in April 2000 in Attachment 3 in CTI’s letter dated 5 May 2000 as well as CTI’s website) and the Registration Form seem to indicate that CTI’s IDD rate is the lowest in Hong Kong (which presumably will involve a comparison with the IDD rates of the other ETS operators).
10. In CTI’s reply, it admitted that CTI’s Ultimate Price Guarantee did not compare its IDD rates with those of the other ETS operators. CTI stated that as the 5 major IDD operators had 90% of the market share, the existing methodology of Ultimate Price Guarantee had “wide coverage of the prices in the market” and “it can be interpreted as ‘the lowest price in town’”. In addition, according to

CTI, in view of considerable number of ETS operators, it was “rather impractical and uneconomical” to include the IDD rates of all ETS operators in the Ultimate Price Guarantee. CTI explained that it was because this would involve “a high level of administration cost” which “would be transferred to customers at the end” and “would not be beneficial to the customers”.

11. It is not for the TA to decide the basis on which CTI makes the offer. However, the limitation of the Ultimate Price Guarantee to the 5 IDD operators is a material fact which should be disclosed clearly in the Terms and Conditions and the marketing materials and explained to customers **before** they join the Ultimate Price Guarantee. The TA is of the view that the use of the phrase “the lowest price **in town**” or words to that effect in the advertisements on Ultimate Price Guarantee is misleading unless it is capable of substantiation or, in other words, it also involves a comparison of the IDD rates of the other ETS operators. In other words, CTI cannot on one hand claim to offer “the lowest price **in town**” and at the same time exclude the IDD rates of the other ETS operators from the comparison under the Ultimate Price Guarantee. As a result, the references to the words “the lowest price **in town**” or phrases to that effect in CTI’s advertisements on Ultimate Price Guarantee were in breach of the Advertising Code and CTI should delete these wordings from those advertisements if it continues to use its existing methodology for the Ultimate Price Guarantee.

## **II. Exclusion of competitor’s offers from CTI’s “Ultimate Price Guarantee”**

12. CTI refers to the phrases “lowest IDD monthly charges” and “lowest IDD rates in town anytime” in the Registration Form, the advertisement on its website and marketing leaflet (for example in April 2000 in Attachment 3 in CTI’s letter dated 5 May 2000).
13. The complainant stated that CTI excluded on at least three previous occasions the discount in price of IDD calls or offer of free IDD calls of a competitor from its Ultimate Price Guarantee:
  - (i) CTI excluded IDD calls to USA and Canada from its Ultimate Price Guarantee from 24 December 1999 for a period of 60 days.
  - (ii) CTI excluded the offer of free IDD calls to Australia and Canada by New

T & T during off-peak period in March (“March Exclusion”).

- (iii) CTI also excluded from the Ultimate Price Guarantee New T & T’s discount in IDD calls to Shekou and Shenzhen at the rate of \$0.47 per minute (which was effective during 1 to 30 April 2000) (“April Exclusion”) (The March Exclusion and April Exclusion are collectively referred to as “Exclusions” below.)

In view of clause 1 of the Terms and Conditions (which provides that the IDD operators selected by CTI for call charges comparison are the four FTNS operators) and CTI’s frequent exclusions of IDD offers of a competitor from its Ultimate Price Guarantee, the complainant alleged that the references to the terms like “the lowest IDD monthly charges” in the Registration Form, its advertisements and the phrase “Ultimate Price Guarantee” itself were no longer valid and may be in breach of the Advertising Code.

14. In response to the above question on the exclusions, CTI pointed out that it was not in breach of the Advertising Code because the Terms and Conditions had already set out the “comparison mechanism”. CTI also referred to its earlier fax dated 29 March 2000 concerning the First Complaint on the Ultimate Price Guarantee lodged with the TA. In its fax dated 29 March 2000, CTI stated that New T & T’s offer of free IDD calls was “of the same nature of special bonus offer such as gift, coupon, or calling bonus” and “should not be directly compared with per minute rate payable by customer for the services”. In addition, CTI also contended that the advertisements were not in breach of the Advertising Code because CTI already referred to a “remark about the Exclusion” in materials made available to the public through various channels.
15. The TA did not accept CTI’s submission. In the first place, the TA did not agree that New T & T’s offer of free IDD calls was not comparable because this would otherwise give rise to the ironic result that a discount in IDD rates was comparable whereas free IDD calls (which offered greater benefit to customers) was not comparable.
16. In the second place, even if one adopts CTI’s argument of treating free IDD calls in March 2000 as “bonus offer”, it is difficult to understand why, in view of clause 2 of the Terms and Conditions, New T & T’s discount in IDD rates for Shekou and Shenzhen in April (which, unlike the March Exclusion, was not in

the form of “bonus offer”) was not comparable to CTI’s IDD rates. Clause 2 of the Terms and Conditions provides:

“Selection of rate comparison among the mentioned IDD operators would be based on the general criteria of being the **most economical and popular IDD calling rates [which] would be applicable to the general public**. CTI reserves the final decision on the aforesaid selection.” (Emphasis added)

The New T & T’s discount in IDD rates for Shekou and Shenzhen in April was clearly one of the “most economical and popular IDD calling rates [which] would be applicable to the general public”. It would appear that CTI tried to exclude a competitor’s IDD offer if it could not match that competitor’s IDD rates. For instance, CTI stated in its advertisement at its website in March after the March Exclusion:

“Owing to the recent unhealthy competitions [due to a] particular IDD operator, CTI regret[s] to decide that, starting from March 04 until March 31 2000, we will suspend the “Ultimate Price Guarantee” comparison with New T & T for Canada and Australia routes in the Off-peak period ...”.

CTI could not on one hand claim that it offered the lowest IDD rates among the five selected IDD operators by referring to phrases to that effect in its advertisements, and at the same time excluded competitors’ offer of free IDD calls or discount in IDD rates from the Ultimate Price Guarantee. In view of the existing Terms and Conditions, in particular clause 2, if CTI purports to exclude a more competitive IDD offer from a competitor and CTI refers to the exclusion in an advertisement, the advertisement (especially if it refers to the term like “the lowest IDD rate”) will be in breach of the Advertising Code because it is misleading. It will not be sufficient for CTI to simply include a remark on the exclusion in its advertisement. For this reason, the advertisements which referred to the phrases like “the lowest IDD rate” and the exclusion on the three previous occasions were in breach of the Advertising Code.

**Reference to the phrase “historically low new prices” in CTI’s television commercial on 4 March 2000**

17. According to the complaint, CTI launched a television commercial promoting its 5 cents per minute IDD rates to, among other places, Canada and Australia on 4 March 2000 and the commercial referred to the phrase “俾你歷史新低價” (“historically low new prices” in English). The complainant alleged that this phrase was no longer valid in the light of the New T & T’s offer of free IDD calls to Australia and Canada which was announced on 1 March 2000 and reported in the press on 2 March.

18. The voice-over script of the commercial (Attachment 7 in CTI’s letter dated 5 May 2000) was partly in English and partly in Chinese. The relevant part of the script reads :

“Canada, 英 美 澳洲, 傾一分鐘just5仙

CTI

俾你歷史新低價 ...”

The English translation of the relevant sentence is as follows:

“Canada, *the U.K., U.S.A., Australia, just 5 cents for one minute\**

CTI

*gives you historically low new prices ...”*

(\*The English translation of the Chinese wordings is shown in *Italics*.)

19. In its reply dated 5 May 2000, CTI stated that CTI was merely “providing the historically low new prices in CTI history” and CTI had “never claimed [that] CTI was providing the historically low prices in IDD history”. The TA does not accept CTI’s argument because an average reader watching the television commercial or listening to the voice-over script would have the impression that CTI’s price would involve a comparison with the IDD rates of the other IDD operators and the price of 5 cents set a new record of the lowest price by historical standard.

20. According to the complainant, New T & T’s offer of free IDD calls to Australia

and Canada was announced on 1 March 2000 and reported in the press on 2 March. For this reason, the phrase “historically low new prices” in CTI’s commercial regarding calls to Canada and Australia was not valid on 4 March 2000, that is the date on which the commercial was shown. The commercial was therefore in breach of the Advertising Code. As a result, CTI should not refer to this phrase in the future unless such phrase can be substantiated.

### **III. Explanation of March Exclusion and April Exclusion to customers**

21. According to the complainant, when CTI hotline staff were asked in March why New T & T’s offer of free IDD calls to Canada and Australia was excluded from CTI’s Ultimate Price Guarantee, CTI’s staff claimed on five occasions that New T & T’s offer was excluded because it was “trial only”.
22. According to CTI, enquiry on the details of the Exclusions was passed to CTI’s customer service hotline. In its letter dated 5 May 2000, CTI enclosed two sets of internal memo from CTI’s Marketing Department to all staff (Attachment 8 of CTI’s letter) regarding customers’ enquiry on the March Exclusion and April Exclusion under the title “Standard Script for replying customer’s enquiry on Canada & Australia promotional rates in March with UPG” and “Standard Script for replying customers’ enquiry on China’s promotion in April with UPG”. It was stated in the script that in case of customers enquiry, CTI’s customer service executives would state that the exclusions were due to “unhealthy competition in IDD market”. CTI stated that it took the complainant’s allegation seriously and disciplinary action would be imposed on CTI’s staff under such circumstances. CTI pointed out that due to insufficient information provided by the complainant, it was difficult for it to identify the staff involved and verify that particular complaint.
23. In view of the documents enclosed in CTI’s letter and the limited information provided by the complainant, the TA could not be satisfied that CTI’s staff referred to New T & T’s offer as “trial only” and was therefore excluded from the Ultimate Price Guarantee. The complaint against CTI’s staff on this point was therefore not substantiated.
24. In his letter dated 27 March 2000 concerning the First Complaint on CTI’s Ultimate Price Guarantee, the TA requested CTI to confirm whether its sales

staff explained orally to prospective IDD1666 customers or provided them with written material on the March Exclusion before they signed the Registration Form. This was due to the fact that the so-called “welcome pack” (which contained the information on March Exclusion) was only given to customers after they had signed the Registration Form. According to CTI’s fax dated 29 March 2000, CTI sales staff would explain to prospective customers about the March Exclusion “*if required*” but CTI did not keep any documentary evidence on instructions to its sales staff. The TA then indicated that the TA had just received another complaint against CTI on similar issue and he would deal with that matter in the second complaint against CTI. Irrespective of the above mentioned findings of the TA, where a licensee has held itself out as being cheaper than named competitors, and has decided to exclude certain offers of those competitors from time to time, then it has a duty to ensure that new customers are expressly made aware of these possible exclusions before signing up for the service. This is due to the fact that such exclusions can be crucial to the customer in deciding who he or she will use as a service provider. In addition it is equally crucial that CTI ensures that all customers are made aware of any actual exclusions before these become effective. This is to ensure that customers will not make calls at rates that are higher than what they have been previously notified.

#### **IV. Failure to verify information provided to the TA**

25. Under Special Condition 5 of CTI’s Public Non-Exclusive Telecommunications Service (“PNETS”) Licence, CTI shall furnish to the TA such information as the TA may reasonably require in order to perform his functions under the Telecommunication Ordinance. In the letter dated 27 March 2000 (paragraph 2 in page 1 of that letter) on the First Complaint, the TA, pursuant to Special Condition 5 of CTI’s PNETS licence, asked CTI to supply documentary evidence on instructions to sales staff on the March Exclusion. In its reply on 29 March 2000, CTI stated :

“CTI confirms that our related staff will explain to the prospective IDD 1666 “Ultimate Price Guarantee” customers about the exclusion of New T & T before registration if required. For evidence about the instruction to staff on the above issue, **CTI hopes that OFTA can kindly understand that it is not an usual practice in CTI to keep such [documentary] evidence.**” (Emphasis added)

In view of this reply and the second complaint received, the TA, in his letter dated 20 April 2000, indicated that the TA would deal with this point again in the second complaint.

26. However, in Attachment 8 to CTI's letter dated 5 May 2000, the TA notes that there was an internal memo dated 3 March 2000 under the title "Standard Script for replying customer's enquiry on Canada & Australia promotional sales in March with UPG". The TA is extremely concerned as to why CTI stated that it did not have record of this document in the reply to the TA on the First Complaint. It would appear that inaccurate information was given to the TA in CTI's reply dated 29 March 2000 in responding to a formal request for information. The TA warns CTI that it should exercise due care in verifying facts before providing information to the TA in that the supply of wrong or inaccurate information in response to a formal request would constitute a breach of Special Condition 5 of its licence.

