

**Speech by Mr M H Au, Director-General of Telecommunications to
Luncheon Meeting of Internet and Telecom Association of Hong Kong
on 18 December 2003**

Ladies and Gentlemen,

I am very pleased to speak to you this afternoon on the collaboration between Internet and Telecom Association of Hong Kong (ITAHK) and OFTA in industry self-regulation.

“Self-Regulation” and “Co-Regulation”

First of all, what is “self-regulation”?

“Self-regulation” is the operators voluntarily regulating themselves, normally through an industry association like ITAHK, instead of regulation formally imposed by statute or licence conditions and enforced by the regulator.

I would also like to introduce the concept of “co-regulation”.

“Co-regulation” would be a form of collaboration between the industry and the regulator in regulation. A possible form will be that the industry will set performance standards while the regulator will enforce them.

Why Regulation?

Why do we need regulation anyway?

Firstly, because the business of telecommunications operators can rarely be self-sufficient. The business of one depends to a certain extent on other operators. For example, a call originated on one network may need to be terminated on another network. Operators need to cooperate in road opening to avoid unnecessary disruption to the environment. Numbers need to be ported among networks for user convenience. Unified directory services need to be provided in a multi-network environment. Therefore we need interconnection, sharing of facilities, number portability, sharing of directory information, etc.

Secondly, limited resources like radio spectrum, telephone numbers, etc. need to be managed to ensure efficient and orderly usage.

Thirdly, telecommunications market normally develops from a monopoly to a competitive one. The market cannot be fully competitive within a short period. When the competition in the market is not yet fully effective, regulation is to act as a surrogate to market forces.

Finally, the market alone cannot address all community needs. For example, universal service may not be achieved if we leave the decisions to supply or not to supply to a particular location or a particular group of users to pure market forces. So we need a universal service mechanism. Another example is that market competition may lead to degradation of quality of service or consumer protection.

Although regulation is necessary, we do agree that when the market becomes more competitive, the level of sector specific *ex ante* regulation should be gradually reduced and taken over by *ex post* regulation. In other countries where there is general competition law, the *ex post* regulation would not be sector specific, but in Hong Kong, competition law is sector specific so some form of sector specific *ex post* regulation is still necessary.

We are also conscious that the sector specific regulation should be proportionate and the benefits should be balanced against the cost.

Why Self-Regulation?

From the operators' point of view, their attitude towards regulation is ambivalent. On the one hand, they expect regulation to protect and further their interest. On the other hand, they would not want regulation to interfere with their business decisions.

In some areas, self-regulation would have advantages over formally statutory regulation.

- Operators in the front line know about the business and systems better than the regulator

- Operators do not like the sanctions for breach of statutory regulation
- To regulate oneself is more acceptable than to be regulated
- Self-regulation is likely to be more flexible than statutory regulation and can be changed quickly to suit the market environment
- Self-regulation can resolve problems in a less confrontational manner. Outcome will not be challenged in the court.

Overseas Practices

Australia is the most successful country implementing self-regulation. The regulator, Australian Communications Authority (ACA), places a lot of emphasis on self-regulation.

The Australian Communications Industry Forum (ACIF) is an organization set up and funded by the telecommunications industry to undertake self-regulation. The carriers and carriage service providers in Australia need to be members of the ACIF.

The Australian industry also funds the Telecommunications Industry Ombudsman (TIO)'s office to handle consumer complaints which cannot be settled by the operators themselves.

The UK likewise has also implemented self-regulation and co-regulation. The Ofcom to formally take over the regulatory duties this month will encourage self-regulation and co-regulation where possible. Websites funded by operators and endorsed by Oftel are publishing comparative performance indicators and price comparison as advice to consumers. The Office of Telecommunications Ombudsman (Otel) funded by operators has also been set up in 2003 to resolve consumer complaints not settled by the operators.

Self-Regulation in Hong Kong

OFTA does not insist that all regulation must be performed by OFTA. OFTA

encourages self-regulation or co-regulation. However, self-regulation or co-regulation must be effective, otherwise there is no point in pursuing it. In Australia, the ACA can enforce the code prepared by the ACIF and registered with the ACA.

To be effective, industry regulation must set the standard of behaviour and there must be some force to encourage compliance.

The force needs not only from sanction imposed by the regulator. It can come from peer pressure, public pressure or market pressure.

We have collaborated with other industry associations and the operators for self-regulation. For example, we have collaborated with the Hong Kong Internet Service Providers Association on the issue of an anti-spam code. Most recently, we have collaborated with the Society of Hong Kong External Telecommunications Service Providers to issue a code of practice on the information to be provided on pre-paid international telephone cards. The mobile operators have issued a code of practice for the prevention of unsolicited inter-network short messages. We shall review the effectiveness of these codes in due course.

In the meantime, we welcome collaboration with ITAHK in self-regulation.

I now suggest several areas of possible collaboration between ITAHK and OFTA in self-regulation. These areas of collaboration are by no means exhaustive.

Codes of Practice

I invite the ITAHK to issue, and encourage compliance with, codes of practices for the operation of public telecommunications services, particularly in the areas of dealing with consumers.

We consider that ITAHK is well placed to issue such industry codes of practice and promote their compliance. I read from one of the main objectives of your organization from your website:

“to apply discipline to the members of the Association to maintain high standard of business and professional ethics and to discourage and suppress

mal-practices that may be harmful to the internet and telecommunications industries as well as to the business, community and public at large”.

(1) Sales Practices

The first code of practice I propose is one to tackle a problem that has been the subject matter of many complaints received by OFTA from members of the public, incorporated owners, building managers and Legislative and District Councillors. In 2003, up to now, we have received 79 complaints. The complaints concerned practices of telecommunications operators in conducting unsolicited doorstep sales activities in residential buildings. These practices included:

- paying unsolicited visits to individual premises of potential customers during late evenings, sometimes even after 11:00 p.m. causing nuisance to the residents on these premises;
- over-aggressive, abusive or deceptive behaviour in attempting to close deals during the visits; and
- using the pretence of visiting a premises, or carrying out repair activities, to gain entry into the building, but in fact the purpose of the entry was to visit every premises in the building for sales activities.

These practices, if substantiated, would be unacceptable to the community and cause harm to the reputation of the telecommunications industry.

OFTA has drafted a code of practice to provide for a reasonable behaviour standard for the conduct of such activities. We are very supportive of the code being issued by an industry association such as the ITAHK instead of OFTA and operators voluntarily pledging their compliance with the code.

(2) Contract Practices

The second code of practice is a code on contract practices. OFTA had dealt with many consumer complaints about the content of contracts. The consumers had an understanding of what the contract was, but the operators had a different understanding.

How could this happen? The contract terms were not clearly explained to the consumers prior to contract. Sometimes there was even no written record of the contract.

Contract is supposed to be a meeting of minds. Therefore a fundamental requirement for a contract to be formed is to make sure that contracting parties know exactly what they have agreed. Thus for mobile service contracts we have already issued a code of practice providing for some very fundamental requirements to be observed prior to and during the entry into the contracts.

The salient contract terms should be explained to the potential customers in plain language, should be printed in both Chinese and English, with legible characters of sufficient size printed with reasonable contrast against the background. You would agree that these are not onerous requirements at all and should be complied with in any case.

We are asking the industry to extend this code to contracts for other types of public telecommunications services. There is no reason why the good practice specified in the existing code should just be applicable to mobile services.

(3) *Handling of Consumer Complaints*

The third code is related to customer service.

How complaints from customers are handled by the operators often lead to whether the customers are satisfied and whether further complaints would be lodged with the Consumer Council or OFTA.

OFTA is already developing the code with the operators in a group convened by OFTA. The end product could also be issued by the industry or an industry association like ITAHK.

You would ask why do we need the codes for the telecommunications sector.

- For sales practices, why can't the people affected resort to trespass law?

- For contract practices why can't general contract law be relied upon?
- For consumer complaints, let the poor handling of consumer complaints drive customers away.

My answer to that is that you cannot expect the consumers to resort to legal actions in most of the cases. The law may also be too general and cannot provide specific guidance on behaviour appropriate to the business of the telecommunications operators. If you look at the list of codes published by ACIF, you will find that they include codes for protection of customer information, handling churns, customer transfer, complaint handling, customer information on prices, terms and conditions, etc. and etc - a very comprehensive list.

You would appreciate that for the codes to be effective and meaningful, the codes should be transparent and members of the public should be able to supervise the compliance. Responsible operators should also have no problem with pledging to OFTA and the public that they voluntarily comply with the code. Therefore the code, and the names of the operators complying with the code, should be published by the ITAHK and OFTA.

Other Areas of Collaboration

There are many other areas of potential collaboration between ITAHK and OFTA in regulation. I shall mention a few.

(1) Quality of Service

The first one is the quality of service.

I read from your position paper on "Maintaining Hong Kong's Leading Telecommunications Role" issued in December 2002

"There is a need for OFTA to develop an industry standard for service quality. The lack of standards for service quality in turn affects the service quality of secondary operators to end customers. The lack of industry standards also

generates endless disputes among operators and this has been repercussion on secondary operators as well as end users of telecommunications services. ITAHK members believe that it is important for OFTA to establish an industry standard on the grade of service that network operators have to maintain. Examples quoted were the lack of a standard measurement on general inter-network traffic and ICFS traffic at the point of interconnect.”

This passage is concerning quality of service between operators. OFTA is doing that initially on quality of service to end customers because we feel that the end customers are less placed to protect their own interest. We intend to define performance indicators and measurement methods and how the measurement results are to be published. Again if the ITAHK is to assist in or even take over these functions and encourage participation by operators, this is an area for collaboration between ITAHK and OFTA.

(2) *Technical Standards*

The second potential area of collaboration is technical standards.

The Telecommunications Authority has the formal power to make standards for the industry. ITAHK has been contributing in the Telecommunications Standards Advisory Committee set up by OFTA to advise the TA in the formulation of technical standards. However operators know their systems best. There is scope for self-regulation or co-regulation in the area of interconnection or interoperability standards. If the operators can agree among themselves these standards, the formal standard setting powers of the TA need not be used.

(3) *Consumer Information*

The third area is in consumer information. To protect consumer interest and to enable market forces to work properly, the consumers must be provided with timely and clear information so that they can make informed choices in the market. Your members are dealing with the consumers direct. You are well placed to inform the consumers. To day I just wish to raise the question of labelling of consumer equipment.

I know that many of the ITAHK members are manufacturers, dealers, distribution

agents and importers of consumer equipment.

OFTA will be promoting a label to give consumer guidance on the purchase of certain types of consumer equipment.



The first type will be cordless telephones. OFTA has exempted from licensing cordless telephones in a number of frequency bands. However, cordless telephones which operate in the 900 MHz band are not exempted and can cause interference to cellular services.

The second type will be the personal walkie-talkies. The types which have been exempted from licensing are working in the 409 MHz band, but there are similar types of personal walkie-talkies working in the 462 MHz band. Unauthorized use of the 462 MHz equipment can generate interference to other legitimate radio users in this band and is illegal.

We have done surveys in the market. Not every legal ones are identified with the label. This would cause consumer confusion.

Therefore shortly we are going to launch a consumer education campaign to promulgate this message, or something to this effect:

“Buy the personal walkie-talkies and cordless telephones with the label otherwise you may risk buying illegal equipment and be liable for prosecution.”

We also intend to extend the education to mobile phones to identify those which have been type approved against the new specifications with the Specific Absorption Rate limits.

I would like to ask the ITAHK to encourage their members to affix the label on the authorized cordless telephones, personal walkie-talkies and mobile phones with SAR complying with OFTA specifications. The labelling schemes will be extended to other types of products where we consider labelling would cause less consumer confusion. We would not burden the industry where no such confusion can arise.

Conclusion

Ladies and gentlemen, we need a responsible industry. There are plenty of opportunities for the industry to participate in regulating themselves.

I believe that industry self-regulation by way of industry codes and the quality of service scheme are the two major areas OFTA must work with ITAHK and operators. We should announce our initiatives shortly and publicly to demonstrate our commitment to quality service.

OFTA looks forward to the opportunities of developing the ideas further with you and bringing them to realities.

Thank you.
