

Introductory paper on the Botswana Telecommunications Service Providers Code of Conduct

Rationale

The Code of Conduct has been developed to govern the relationship between telecommunications service providers and consumers in Botswana. The purpose of this code is to provide guiding principles for all operators to observe in the provision of services to consumers. The Code creates a framework through which the Botswana Telecommunications Authority (BTA) can monitor service providers' adverts and promotions to mention two aspects. The Code further contributes to raising of consumer understanding of their rights to quality of telecommunication services. Quality of service is of critical importance to the consumer. A key element of that is the means by which the consumer can raise issues on service quality with the service provider and the nature and standard of the response they can expect.

The BTA recognises that some operators have made considerable strides in ensuring delivery of quality of services and adequate customer care. However, the BTA has in the light of the continued evaluation of performance reports of service providers, complaints received and international best practice, considered that there is a need for setting minimum standards to ensure that customers are not only handled properly but are also provided among other things, with sufficient information to understand the range of services and options available to them as customers vis a vis the operators.

The Code of Conduct is therefore primarily aimed at providing consumers with a clear statement of the range of policies, support activities, acceptable service standards and practices offered by individual telecommunications service providers. It is intended that the Code of Conduct should be readily accessible and understandable to all.

Comparative Assessment of Selected Jurisdictions with Codes of Conduct

The Code is based on lessons learnt from other countries. Some regulators develop codes through which they prescribe the complete set of standards for industry performance and conduct. Some codes are prepared by operators and all stakeholders have to accept or ratify the draft code by signature in order for it to come into force. In most instances codes are voluntary in nature but operators are expected to fully comply with them. Industry compliance with codes should enhance the quality of the consumer experience of telecommunications services.

A synopsis of approaches to the development and enforcement of the telecommunications code of conduct or code of practice in selected countries follows to guide discussion on the way forward for Botswana.

Australia

The Australian Communications Authority (ACA) has developed a self regulatory regime. Although ACA undertakes enforcement activities where necessary, a better indicator of the success of a self regulatory framework is the absence of the need to do so. One of the ACA responsibilities is to monitor Code compliance and to use its powers where breaches are identified. Codes can be presented by industry bodies to the ACA for registration and where the ACA is satisfied that the Code meets stipulated criteria, it is obliged to include the Code on a register of industry Codes. Once the Code is registered, the ACA can direct any participant in a section of the telecommunication industry which is breaching the Code to comply with it, whether it is a voluntary Code signatory or not.

The Codes are registered and they bind industry participants to agreed processes and behaviors that should lead to improvements in consumer experience with the industry. If a service provider fails to meet the requirements of a registered code, the ACA may direct the provider to comply with the code and may also seek penalties against the service provider. The ACA may request the development of a Code for registration where it sees a need for community safeguards or a way to deal with industry performance or conduct. If a Code is not developed or does not meet the registration criteria, the ACA would develop an industry standard, compliance to which would be mandatory.

The ACA will undertake enforcement activities relating to Codes where it is found that there has been a clear breach of an established Code and where that breach is resulting in consumer detriment. Where this is the case ACA will consult with relevant service providers and give them opportunity to improve their performance against the identified breach. The ACA will liaise with other enforcement bodies to ensure that there is no unnecessary duplication in the work performed by respective agencies and that the action is based on the most efficient and effective tools available.

United Kingdom

The United Kingdom (UK) regulatory authority--Office of Communications (Ofcom) has criteria for assessment of Codes of practice. These criteria have been produced by Ofcom following consultation with the industry and consumer representatives. Ofcom uses these criteria to assess whether the Codes put forward by the industry can be approved. These Codes of practice provide further consumer protection by describing the relationship between providers and consumers.

Ofcom has produced guidelines which each provider can use to produce its own Code of practice. The industry guidelines are intended to help all service providers to develop their own individual Codes within a generally agreed framework. Different sections may be more or less applicable to different providers depending upon their position within overall UK communications marketplace. Codes are intended to inform consumers about individual providers' offerings, procedures and policies and to reflect the diversity of communication services and products available to consumers within UK. Codes are therefore not intended as additional regulation on providers, but rather as an aid to better consumer communication and understanding. As such they should promote consumer rights and aid consumer protection.

It must be noted that the overall principle of the initiative is that providers should as a matter of good practice use their Codes of practice as a means of providing consumers with a level of service and protection above and beyond their statutory rights. Ofcom's position was to encourage the industry to fulfill these expectations in the interest of avoiding potentially costly and intrusive regulation.

Ireland

The Office of the Director of Telecommunications Regulation (ODTR) for Ireland sets out minimum criteria for codes of practice and operators were free to adopt standards in excess of it. The criteria outline comprehensive processes for dealing with consumer complaints through the provision of practical guidelines for their handling and inform consumers as to the level of service they can expect. Licensees are expected to modify their current codes to include at a minimum, the standardized set of criteria. The Code applied to all services. Licensees were given a period of time within which to file copies of their amended codes to the ODTR for it to check if they meet the requirements as set out in the Decision notice.

Hongkong

The Office of Telecommunication Authority (Ofca) of Hongkong has a number of Codes which have been developed at the instance of the service providers or on its own initiative where the need arose to issue one. Where the service providers developed a Code they ought to all ratify it for it to come into force. However the Authority gives guidance to the operators as to what information should be included in the Code. Where the Telecommunication Authority issues a Code it does so in terms of its powers under its enabling Act. The Authority may also issue directions to require a licensee to observe the Codes of Practice.

Most of the Codes of practice in Hong kong are voluntary in nature. Operators however have the responsibility to protect the interests of users of telecommunication services and inform them of the proper and acceptable ways of doing things as laid down in the Code. The Telecommunication Authority considers this as good customer service which is expected of all the operators. The Authority however reserves the right to direct amendment and approve modifications to the Codes as and when necessary. This however is done in consultation with operators.

Malaysia

The Malaysia General Consumer Code of Practice for the Communications and Multimedia Industry was developed by the service providers and consumer representatives who worked

together in a forum specifically set up by the industry. The self regulatory Code provides and sets standards for the overall improvement of services by the service providers to consumers. The Code provides a high level of consumer confidence in service delivery from the industry through guidelines on pricing, billing and complaints set for service providers. The Code also sets out the requirements for compensation (monetary or non-monetary) in cases of breach of the code by service providers. Even though the Code was registered as a voluntary industry self regulatory mechanism it is binding on all operators, whether they are members of the Industry Forum or not. Service providers were given a period within which to adopt and comply with the provisions of the code.

South Africa

The Independent Communications Authority of South Africa (ICASA) in consultation with operators drafted a Code of good practice to be put in practice by operators. The Authority convened a consultative meeting of all stakeholders in the telecommunications industry to develop ways and means to fully cater for consumers. After the first draft the Code was circulated to the various stakeholders to gather comments. Following this another stakeholders' meeting was convened to gather consensus on the content of the Code of practice and to determine the legal route to implement the Code. It was agreed that the Code would be implemented by the licensees on the principle of self regulation in the industry until a clear legal framework was put in place.

The Code provides guidelines on the approaches that should be adopted by licensees in providing services to people. The Authority has through its various policy documents, and in line with its enabling legislation, indicated that public interest goals as envisaged in the telecommunications environment will be achieved across the spectrum as a whole, when licensees play complementary roles. It therefore follows that, while public service obligation expectations vary, all telecommunication service providers are expected to contribute towards achieving the Authority's public mandate. Since the Code was framed around good corporate governance, it was mainly meant to highlight the needs of consumer's vis-à-vis telecommunication service licensee's business operations. ICASA therefore sets broad

principles and objectives to guide the various telecommunication licensees.

During the stakeholder meetings it was agreed that ICASA would among other things ensure that the code is signed, and that it would further conduct public hearings and do whatever is necessary to ensure that the needs of consumers are catered for. The licensees were on the basis of self regulation and monitoring required to implement the Code where reasonable and annually report to ICASA on processes they have put in place to ensure full provision of services as set out in the code. The Code was to cease operation once regulations were promulgated. The Code was signed by service providers and the Authority for it to become effective. Thus the approach of South Africa has been to move from voluntary regulation to regulation by legislative prescription (regulations) as a way of developing and ensuring industry stakeholders have ownership of the processes.

Conclusion

The general trend is to come up with Codes with binding effect at the initial stages of the telecommunications market development, and gradually have the regulator withdraw its greater role in overseeing the code and hand over the responsibility of ensuring compliance with the Code to the industry. The regulator would then use information dissemination to induce compliance. The issue to consider is whether the Code of conduct for Botswana should have a binding statutory basis or it should be voluntary in nature.

Unlike in other countries where telecommunications providers develop their Codes within the framework of given criteria, the BTA suggests the adoption of one Code of Conduct initially agreed to as a minimum base, because of the small number of service providers and size of the telecommunication market of Botswana. The Botswana Code should ideally be voluntary in nature and service providers should be expected to police themselves regarding compliance with the Code. The Authority would mainly monitor the industry's response to the Code. Where the Code and the associated self-monitoring mechanisms are ineffective, the Authority would explore other options, including establishing stakeholder forum to promote enforcement of the Code, inserting certain special conditions in licenses granted to telecommunication

service providers or enacting new legislation to regulate the business practices of the telecom providers.

As the industry develops, the BTA anticipates that operators will initiate sector and practice specific codes to address special needs peculiar to them.