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**Commerce, Industry and Technology Bureau
Communications and Technology Branch**
2/F, Murray Building
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Dear Sir,

**Commerce, Industry and Technology Bureau Public Consultation on
the Establishment of the Communications Authority**

The Commerce, Industry and Technology Bureau (“CITB”) published a public consultation paper “*the Establishment of the Communications Authority*” (the “*Consultation Paper*”) on March 3, 2006. In the *Consultation Paper*, the CITB proposes to establish the Communications Authority (“CA”) as a unified regulator for the electronic communications sector in Hong Kong. The move is considered to be both necessary and opportune in view of the rapid pace of convergence that has increasingly blurring the boundary between telecommunications, broadcasting and information technology in Hong Kong. Following consolidation at the policy level in 1998 when three respective bureaus for the three sectors merged into a single policy bureau, it is only logical to also bring about corresponding restructuring at the regulatory level.

Specifically, the CITB proposes to adopt a staged approach in rationalizing the regulatory regime.¹ In the first stage, the CA would be set up by a simple amalgamation of the existing regulatory agencies for the telecommunications and broadcasting industries, namely the Telecommunications Authority (“TA”) and the Broadcasting Authority (“BA”). In the next stage, when the new unified regulator is in place, it would participate in reviewing and rationalizing the hitherto two different pieces of legislation for telecommunications and broadcasting with the Administration. According to the CITB, the staged approach would enable the unified regulator be set up urgently to meet the challenge of convergence.

The *Consultation Paper* also includes other proposals on other aspects of CA such as its composition, regulatory approach, and public mission and core values to be adopted; consolidation of competition provisions; the creation of an executive arm and its budgetary and financial arrangements.

AT&T Inc. and its subsidiary AT&T Global Network Services Hong Kong Ltd. (collectively “AT&T”) commend the CITB for its initiative to bring about such important

¹ *Consultation Paper* at ¶30



and necessary change in the regulation of the Hong Kong electronic communications sector. Hong Kong is in the forefront of the current global wave of convergence at both the technology and market levels. Hong Kong leads in the development of the so-called “triple-play” services on a single platform supporting telephony, broadcasting as well as Internet access services. Field-straddling services have been provided by both telecommunications and broadcasting operators into each other’s territories as early as 1998. Today, one of the local telecommunications incumbents even takes the lead in the development and provision of IPTV services.

As pointed out in the *Consultation Paper*, consolidation at the policy level took place in 1998 when the then three bureaus responsible for telecommunications, broadcasting and information technology were placed under the same roof of the Information Technology and Broadcasting Bureau (the forerunner of the CITB). AT&T submits that it is high time that a unified regulator was to be established. In fact, Hong Kong already lags behind other countries in this regard. While the Info-communications Development Authority of Singapore was inaugurated as early as in 1999, the Office of Communications (“Ofcom”) of the U.K. in late 2003, and the Australian Communications and Media Authority (“ACMC”) was formed in July 2005 by merging the Australian Communications Authority and the Australian Broadcasting Authority. More recently in February this year, the National Communications Commission of Taiwan became operational, effectively replacing the previous two respective regulatory agencies for telecommunications and broadcasting.

AT&T is also pleased that the CITB is mindful of the risk of stifling innovation and investment by premature regulatory intervention and the risk of regulatory creep if the regulatory ambit of the unified regulator were to be continuously extended.² Accordingly, the CITB proposes for regulatory tolerance to take precedence over regulatory intervention so long as public interest is not in danger of being compromised when dealing with innovative services enabled by emerging technologies.³ On this premises, Hong Kong’s lead in convergence and its influence as a leading regulatory authority in the region will be maintained. This in turn will ensure Hong Kong consumers will continue to enjoy well developed communications services to be brought about by emerging technologies at affordable prices.

While AT&T is generally agreeable to the many proposals of the *Consultation Paper*, AT&T would also like to point out a few pitfalls to be avoided in the regulation of the electronic communications sector. Our comments are set out below.

² *Consultation Paper* at ¶42

³ *Consultation Paper* at ¶43



Staged Approach

The CITB proposes to start with a straightforward exercise of amalgamating the BA and TA, leaving the review and rationalization of the existing two pieces of sector-specific legislations to the CA. Based on the tentative timetable for the transitional arrangements appended in the Paper, legislation to set up the CA will be introduced in November 2006 with the CA becoming operational from the 4th month after passage of the legislation.⁴ The CA will then be tasked with review and consolidation of the existing legislations. This means the CA will not have the benefit of a consolidated piece of legislation based on which the converging industries can be effectively regulated. This in turn carries the risk of the CA not being able to effectively discharge its duties as well as the creation of confusion among the operators and consumers.

The approach proposed by the CITB seems to be out of step with that thus far adopted by the international communities. In this regard, when Ofcom and the ACMC were inaugurated, consolidated legislations were already in place to guide the unified regulator in discharging their duties. On this premises, AT&T submits that the task of reviewing and rationalizing the Telecommunications Ordinance and the Broadcasting Ordinance should commence without delay.

Exemption of Anti-competitive Conducts

There is presently a difference in the competition regime for the telecommunications and broadcasting industries. Whereas the broadcasting legislation currently empowers the BA to exempt anti-competitive conducts of broadcasters, no equivalent power currently vest with the TA for similar conducts in the telecommunications legislation. The CITB is of the view that the existing arrangements of two dissimilar competition regimes may become untenable when cross-sectoral anti-competitive practices emerge. In this regard, the CITB proposes for the two competition regimes to be consolidated by (i) the creation of a general provision that the CA may exempt anti-competitive conduct by subsidiary legislation; (ii) harmonizing provisions on prohibition of dominance abuse in the 2 Ordinances; (iii) creation of a consumer protection provision prohibiting misleading and deceptive conduct modeled upon the Telecommunications Ordinance; and (iv) standardizing competitive effect tests for statutory analysis and investigation.⁵

While AT&T is generally supportive of the proposed approach in harmonizing the competitive regimes, we would caution against reflectively extending the current power of the BA in exempting anti-competitive conducts of broadcasters to cover also similar practices of telecommunications operators. AT&T asserts that any such power to be vested in the CA should be subject to stringent control and the circumstances under which the CA may

⁴ *Consultation Paper* at ¶62

⁵ *Consultation Paper* at ¶33



exercise such power should be clearly delineated. As a further safeguard, an effective mechanism should be established allowing appeal to an independent body by parties aggrieved by any of the CA's decisions.

Maintenance of the Right Focus

The Office of the Telecommunications Authority ("OFTA"), the executive arm of the TA, is a leading regional regulatory agency, whose decisions are regarded highly by fellow regulators. The main challenge of OFTA has been the striking of a right balance between industry and consumer interests. The previous Director General, Mr. Anthony Wong, was a firm believer in industry deregulation and competition. The reigning Director General, Mr. Au Man-ho, continues the open-market policies and maintains OFTA's consultative approach by engaging both public and industry views on important telecommunications issues.

Another factor contributing toward the success of OFTA is its ability in staying focused on relevant issues only. Specifically, the principle of technology neutrality adopted and upheld by OFTA allows it to concentrate on regulations of services performing similar functions, irrespective of the underlying technologies. OFTA is therefore able to shape a regulatory environment conducive of infrastructure investment based on which sufficiently differentiated services may be developed. This in turn enables delivery of maximum economic benefits to the Hong Kong community.

AT&T submits that it is important for the CA to stay focused on relevant issues as has been so well demonstrated by OFTA. To this end, the continued adoption of the technology neutrality principle would help. Further, despite the quickening pace of convergence, AT&T believes the telecommunications sector would remain the larger sector of the economy than broadcasting for a number of years to come. It is therefore important that telecommunications should continue to be given the focus that it deserves. Accordingly, proportionate allocation of the CA's time and effort should be made to the two different sectors. In this regard, the CA should guard against allocating a disproportionate amount of resources to "sexier" areas such as content and TV regulation.

Maintenance of Existing Good Practices

The CITB has set a good example in living out a cost-based telecommunications license fee regime. In this regard, the CITB took the initiatives of reducing successively the annual license fee of Fixed Carriers engaging in external services provision only and the annual mobile station charge for mobile operators, reflecting lower costs of administering the two licensing regimes. AT&T is of the view that the cost-oriented license fee structure should be preserved and the CA should continue to pass on cost savings to the industry and ultimately to Hong Kong consumers.



The CA should also continue the good OFTA practice of advance publication of its annual major tasks and projects as well as performance pledges, to be followed by reports of the performance pledge results shortly after the financial year end. The CITB should also consider requiring the executive arm of the CA to publish the status of its financial affairs each year, similar to the Annual Trading Fund Report released by OFTA.

Budget and Finance

Ofcom was able to achieve substantial cost efficiencies compared with that achieved by the five legacy regulators that it replaced. Specifically, three months after its formal launch, the headcount of Ofcom was already some 25% smaller than the total headcount of the five organizations. In addition, Ofcom's second year budget was 5% lower like-for-like.⁶ More importantly, Ofcom has also made a public commitment to staying as a "Retail Price Index-Minus Cost Regulator" which in turn led to a reduction in the level of fees for network and service providers by some 8% in its 3rd year of operation as a result of cost savings achieved.⁷

AT&T believes both the industry and the general public will have similar expectations from the proposed rationalization of the Hong Kong regulatory authorities, with any initial arising cost savings and subsequent ones attained through a continuous strive in achieving efficiency gains flowing through to market players in the form of lower license fees which will ultimately benefit the Hong Kong economy as a whole.

To sum up, AT&T is supportive of the proposal to merge the two existing regulatory agencies. However, AT&T believes review and rationalization of the existing industry-specific legislations should commence without delay, particularly the existing differences in the competition regimes should be harmonized without vesting in the CA unrestrained powers of exempting anti-competitive conducts. A good independent appeal mechanism against decisions of the CA should serve as a remedy to aggrieved parties. In addition, the CA should not lose sight of the continued importance of telecommunications related matters. It is also important and desirable to preserve many of the good practices of existing authorities, notably the adoption of a cost-oriented license fee mechanism. Last but not least, industry and public expectation would demand for any cost savings arising from an amalgamated regulatory structure to be passed on to the industry and the general public.

⁶ Ofcom Annual Report 2003/04, Page 12,
http://www.ofcom.org.uk/about/accoun/reports_plans/annrep20034/annrepinpdf/secb.pdf

⁷ Ofcom's Tariff Table, sections 1.1 – 1.8, March 31, 2005
http://www.ofcom.org.uk/consult/condocs/socp/tariff/tariff_2005_06.pdf



Should you have any question or require clarification regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent Ma".

[Vincent Ma]
for AT&T Global Network Services Hong Kong Ltd