



**Hong Kong CSL Limited and New World PCS Limited's
submission in response to the consultation paper released on 3
March 2006 by the Communications and Technology Branch of
the Commerce, Industry and Technology Bureau on:
“Establishment of the Communications Authority”**

1 Introduction

- 1.1 Hong Kong CSL Limited and New World PCS Limited (collectively “**the CSL New World Mobility Group**”) are pleased to provide comments in response to the consultation paper released on 3 March 2006 by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau (“**CITB**”) entitled “Establishment of the Communications Authority” (“**Consultation Paper**”).

2 Summary

- 2.1 The CSL New World Mobility Group summarises its submissions to the Consultation Paper as follows:
- 2.1.1 the CSL New World Mobility Group supports the proposal to merge the Office of the Telecommunications Authority (“**TA**”) and the Broadcasting Authority (“**BA**”) (“**the Proposal**”);

- 2.1.2 notwithstanding the CSL New World Mobility Group would like to see the provision by the CITB of more information regarding the Proposal in order to assist the CITB by providing in-depth submissions;
- 2.1.3 the CSL New World Mobility Group believes that the committee composition should allow for an executive chairman and the ‘board’s’ composition should be mostly independent;
- 2.1.4 the Communications Authority (“CA”) must oversee a change in competition law which is competition based as opposed to rule-based; and
- 2.1.5 the government must take care that the Trading Fund of the CA is used equitable.

3 Is there a need for the Communications Authority?

- 3.1 In reviewing the Consultation Paper, the CSL New World Mobility Group is of the view there is , *prima facie*, merit in the proposal to merge the Office of the TA and the BA.
- 3.2 Notwithstanding the view of the CSL New World Mobility Group espoused in 3.1 above, if the Proposal is to be successful, what is required is an open and transparent dialogue between the CITB and industry stakeholders. It is for this reason that the CSL New World Mobility Group whilst supporting the initiative, has set out below the manner in which it believes that the Proposal can, based on our experience, be fine tuned to the benefit of all stakeholders.
- 3.3 As part of our desire for an open dialogue, what the CSL New World Mobility Group would like to see is further information being provided by the CITB which would allow us to properly assess the Proposal. This is particularly important given the effort and expenditure necessary to undertake the amalgamation and the potential impact the creation of the CA will have on the industry.
- 3.4 The argument offered by the CITB in support of the Proposal is that:

- 3.4.1 *convergence at the technological and market levels has led to integration at the regulatory level;*¹ and
- 3.4.2 *The UK and Australia have recently merged telecommunications and broadcasting regulator into a unified regulatory body*² (“**the Proposal**”);
- 3.5 Whilst the observations quoted at 3.4.1 and 3.4.2 above might be compelling if supported by analysis as to why this is the right decision for Hong Kong, to make these statements without evidence consigns them to mere conjecture; making it difficult for industry stakeholders assess the Proposal.
- 3.6 Accordingly, to allow industry stakeholders the opportunity to submit meaningful suggestions and comments to the CITB, the CSL New World Mobility Group respectfully requests that it provide details of:
- 3.3.1 any costs savings and additional synergistic benefits that would be achieved through implementation of the Proposal, particularly given that it has been foreshadowed that there would not be a reduction in staff numbers;
- 3.3.2 how the proposed management structure and the establishment of the management committee will better serve the CA than the existing structures serve the TA and the BA;
- 3.3.3 the evidence that lead the CITB to propose the theory that technological convergence is synonymous with regulatory convergence;
- 3.3.4 how the Proposal seeks to safeguard the belief that ‘*there will be better assurance of consistency in regulatory approach and practice in a converged environment*’³; and
- 3.3.5 the areas in which the TA and the BA have failed to perform their statutory obligations and examples of their respective or mutual inability to regulate in a ‘converged’ environment that have caused the CITB to formulate the Proposal.

4 Committee Composition

- 4.1 The CITB proposes to create a ‘board of directors’ (“**the Board**”) which will be composed of ‘*...a non-official Chairman, four non-official members, one official*

¹ Consultation Paper, p. i.

² Consultation Paper, p. i.

³ Consultation Paper, p. 11

member appointed by the Chief Executive of HKSAR and the Director-General of the executive department as the ex-officio member.’⁴

- 4.2 Whilst seven members can be considered a ‘lean structure’, as over 86% of the Board is to be part-time, this is, in the CSL New World Mobility Group’s opinion, not an appropriate structure for the CA.
- 4.3 Firstly, CSL New World Mobility Group believes that the Board should be composed of:
 - 4.3.1 an Executive Chairman who is also the Director General of the executive department⁵ (a full time employee of the CA);
 - 4.3.2 two executive ‘directors’ (also both full time CA employees); and
 - 4.3.3 four independent non-executive directors (who receive nominal remuneration).
- 4.4 In relation to the position of Chair, in summary the CSL New World Mobility Group believes that:
 - 4.4.1 the Chairman of the CA must be a strong and effective leader who has extensive regional telecommunications industry experience and knowledge;
 - 4.4.2 a part-time Chairman will not be sufficiently versed in the increasingly complex issues facing the industry; and
 - 4.4.3 the creation of the position as part-time risks a titular appointment being made.
- 4.5 Following these recommendations would allow for a Chairman who is focused on the initiatives, problems and issues facing the industry⁶ and by virtue of fulfilling these criteria would have the confidence and respect of the industry.
- 4.6 In relation to the executive nature of the role of Chairman, this allows the Chairman to be involved fully in operational issues of the CA and to become conversant with its operational affairs. To make the public face of the CA ‘part time’ and in any way removed from the day to day affairs (and more importantly enforcement and regulatory action) of that organisation is to risk that person being seen purely as a figurehead appointment or spokesperson.

⁴ Consultation Paper, p. 19.

⁵ Analogous to a Chief Executive Officer.

⁶ Similar to the Chief Executive Officer of the Infocomm Development Authority of Singapore

- 4.7 The model of having an executive chairman has worked very successfully in other jurisdictions. In Australia, where the regulator has a very successful track record (albeit a brief one), the Chairman of the Australian Communications and Media Authority⁷ is a much respected regulator. The ACMA Chairman is an executive but is also a very public figure who features prominently in Australian business life. It is also well known that the Chairman of the ACMA is very capable of putting into effect any public statement that he may make regarding regulatory activity.
- 4.8 A non-executive chairman, not being involved on a full time basis in the complex operational affairs of the CA, could not hope to adequately represent the CA to the industry and public. Such a deficiency if exposed, would decrease the respect for the CA and hence its ability to perform its stated aims.
- 4.9 An executive chairman is less likely to be a political appointment as it would be difficult for such an appointee to properly perform this demanding role if he or she is not properly qualified. By making the chairman an executive it would effectively mandate the selection of a properly qualified candidate which of course could only serve to enhance the effectiveness of the CA.
- 4.10 In addition to being a full-time executive, the chairman should also be properly remunerated in accordance with normal market principles. In order to ensure proper independence and integrity the chairman must also be made to:
- 4.9.1 disclose all of his or her financial interests;
 - 4.9.2 resign from all other public and private offices and posts; and
 - 4.9.3 refrain from dealing with CA matters in which he or she might have a real or perceived conflict of interest.⁸
- 4.11 Following on from this concept of independence, the composition of the Board as suggested by the CSL New World Mobility Group is strongly independent as independent non-executive directors outnumber executive directors.
- 4.12 Having a single person as the Chairman of the CA who is also the Director-General will provide for a stronger leadership base (if the correct person is

⁷ Currently Mr. Chris Chapman.

appointed). It will also do away with the need for an added level of bureaucracy that would be necessary if the role was split which of course would make the CA more unruly, cumbersome and less able to react in a decisive and timely manner to industry challenges.

- 4.13 Additionally, the appointed executive chairman must be as independent from government as is possible. This could perhaps be achieved by making the approval of such an appointment and removal of the executive chairman subject to Legislative Council's Panel on Information Technology and Broadcasting approval and recommendation to the Chief Executive.

5 Competition Issues

- 5.1 Mr. John C. Tsang stated:

Secondly, we want a regulator that is lean and skilled. By that, I am not just confining these characteristics to the physical size and the expertise of the regulator. I am referring more to a new regulatory philosophy, one that has been manifested in an international paradigm shift from detailed rule-making to competition-based regulation of the communications sector.⁹

- 5.2 The CSL New World Mobility Group agrees in principle with the approach advocated by Mr. Tsang in that a move from rule-making regulation to competition-based regulatory framework is favourable, however, it is important that any such move adopted by a merged regulator must be a 'light handed' one.

- 5.3 A heavy handed 'competition-based' regulatory approach risks the creation of a framework that restricts technological innovation and stifles rather than promotes competition. This arises from the fact that the industry is fast paced and dynamic.

⁸ It is for this reason that consideration must also be given to creating the role of Deputy Chairman who can assume the responsibilities of the Chairman if he or she must recuse him or herself due to a conflict of interest.

⁹ Speech by John C Tsang, JP Secretary for Commerce, Industry and Technology at the CASBAA Convention 2004 "Tune in to Tomorrow" at the Hong Kong Academy for Performing Arts on Wednesday, 27 October 2004

- 5.4 To create a regulatory ‘anchor’ that restricts industry development, is of course, adverse to the interest of the government’s attempts to promote Hong Kong as a regional hub and leader in broadcasting, information technology and telecommunications, as well as to the interest of the industry itself and its stakeholders.

6 Use of the Trading Fund

- 6.1 For the 2004/2005 financial year the TA reported capital and reserves of \$831,177,000¹⁰ and a pre-tax profit of \$75.8m¹¹. Unlike the TA, the BA is not a ‘government service’ established under the *Trading Funds Ordinance Cap. 430* and is dependent on the public treasury for its operational expenses.
- 6.2 In 2004/2005, 88.7% or \$282,598,200 of the TA’s revenue was derived from licence fees paid by the telecommunications industry (the majority of which are derived from licence fees paid by Mobile Network Operators).
- 6.3 CITB proposes ‘*that the current trading fund model operated by OFTA should be extended to OFCA to enable it to receive and keep all incomes from the administration of telecommunications and broadcasting licences, and that there will be no new upfront capital injection required from the Government.*’¹²
- 6.4 The CSL New World Mobility Group believes that the Proposal might be inherently unfair if one segment of the electronic communications industry, namely the information technology and telecommunications industry, subsidises another, namely the broadcasting industry, through the higher licence fees paid by the former group. This might be inequitable (and anti-competitive in a convergent environment) and needs to be properly addressed by the CITB in the Proposal.
- 6.5 The concern of the CSL New World Mobility Group is that the more sensitive issues of censorship and content control might overshadow the telecommunications work of the CA.

¹⁰ OFTA Financial Results Balance Sheet as at 31 March 2005

¹¹ All monetary amounts in this submission are quoted in Hong Kong dollars.

¹² Consultation Paper, p. 21.

- 6.6 Following on from the concerns raised above the CSL New World Mobility Group respectfully suggests that if established, one of the CA's first priorities must be to overhaul its licencing regime to ensure that its revenue base is derived equitably from all sectors of its constituent industry, not from only one industry segment (which is an anti-convergent concept).

7 Confidentiality

- 7.1 The CSL New World Mobility Group does not regard any part of this submission as confidential and has no objection to it being published or disclosed to third parties.

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