

Consultation on the Establishment of the Communications Authority
Response by the Hong Kong General Chamber of Commerce
June 2006

1. The Hong Kong General Chamber of Commerce ('the Chamber') welcomes the opportunity to comment on the Government's proposed establishment of a Communications Authority.
2. The Chamber agrees with the policy of establishing a Communications Authority ("Office of the Communications Authority", or "OFCA") that incorporates the functions of the Telecommunications Authority (TA) and Broadcasting Authority (BA), as a timely recognition of the challenges posed by the convergence of the media and telecommunications sectors and the continued blurring of regulatory lines, limits and horizons faced by the two authorities.
3. The Chamber also appreciates that the merger of the BA and TA is in line with the objectives of the Government's information technology strategy:

To enhance Hong Kong as a place for investment in telecommunications, to encourage competition and innovation under an open, fair and predictable regulatory framework, and to maintain Hong Kong's position as the pre-eminent telecommunications centre in Asia.¹

4. The Chamber broadly supports the "key arrangements" proposed by the Government, as summarized in the Executive Summary of the Consultation Paper. Specifically, we support objectives (a), (b) and (e) with regard to legislation to establish the CA, maintaining existing regulatory or licensing arrangements; and the public mission of the CA. With regard to the formation of OFCA and the composition of the CA, we would like to put forward additional views for Government's consideration.
5. However, we wish to first outline three critical areas which we believe will be crucial to the success of the new entity: firstly, that the new entity have separate

¹ *Digital 21: Hong Kong Special Administrative Region Information Technology Strategy*, Hong Kong Information Technology and Broadcasting Bureau, November 1998, p 12.

administrative and executive functions (and be supported by non-civil service staff); secondly, that the Broadcasting and Telecommunications Ordinances now be aligned to the maximum extent possible; and thirdly, that the Government present substantially more details to the public and industry on the staffing and operation of the CA.

Structure and composition of the Communications Authority

6. The Chamber believes that the current model of the CA as proposed by the Government needs to be further refined.
7. To promulgate the CA's work, help it make effective regulatory decisions, enhance transparency and ensure best practice, we support the establishment of a governing body for the unified regulator as proposed by the Government. We also agree that the CA, like the TA and BA (one a statutory authority and the other a public officer), requires the assistance of a significant bureaucracy. However, we believe such a secretariat should be a non-civil service body, as opposed to a government department as proposed in the Consultation Paper.
8. A non-civil service secretariat answering to the CA itself would best separate the CA from the Government and emphasize its role as an independent agency.
 - The current TA & BA structures are very bureaucratic, process driven and hierarchical, and the proposed merger of the two organisations will only entrench this legacy.
 - The new model must promote collegiate decision-making. To that end it is important that the CA and government officials are organisationally and functionally separated so that the CA does not become a rubber stamp for bureaucratic decisions.
9. The need for the CA to be disengaged from policy and bureaucracy is recognized in many jurisdictions. This is more so in Hong Kong where there is sector-specific competition regulation, without the over-arching protection for the broadcasting and telecommunications industries, from anti-competitive conduct in related markets. Adoption of an appropriate independent governing regulatory authority, effectively, transparently and objectively separate from Government would also enable the CA to make world best-practice competition decisions

(including in relation to mergers) without the suggestion of vested interests or political interference.

10. The functional separation from the government can also be ensured through the governance structure. Hence the Chamber proposes that the Government seriously consider appointing CA members on a full-time basis, (“commissioners”) responsible for day to day decision-making such as establishment of sub-committees.
11. Members should be drawn from the public, industry, Government and/or abroad and be recruited purely on the basis of merit and experience that they bring to the task. Members should be informally tasked by the Chairman to be responsible for particular areas of responsibility, to maximise the benefit they bring to the organisation. Independent full-time members also bring a sensible level of checks and balances to the advice provided by support staff. Multi-member decision making is subject to innate checks and balances as the members with their different backgrounds and expertise bring their considered views to the joint decision.
12. Another structural safeguard would be to ensure that the head of the secretariat, other than being a non-civil servant, should have *no* voting rights on the Authority.

Staged Approach

13. The Chamber considers that in establishing a unified regulator, extensive changes will need to be made and therefore a staged approach is appropriate, and any inconsistencies in the administration of the legislation must be removed prior to the formation of the CA.
14. In practice, the tasks of the TA and BA will have to continue even as the merger takes place. Some concurrent changes will be needed to align the functions of the two authorities and provide industry with the requisite safeguards to meet the Government’s stated goal of encouraging investment by delivering certainty of governance. Substantial alignment of the statutes could therefore occur in stage 1, as a necessary pre-cursor in promulgating the CA. For instance, the competition law provisions in each ordinance are largely the same but their different wording may give rise to different decisions, hence anomalies must be clarified before

OFCA is established. Issues such as this should be fully identified and substantially resolved well before the integration progresses to the Second Stage.

15. In this regard we call on the Government to disclose as much details as soon as possible. The proposal now before the public is quite sparse in details. We consider this to be less than satisfactory and would request the Government to provide additional details on the structure of the CA, its powers, delegations, workings, roles, member criteria and selection, etc.