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Hong Kong Telecommunications Users Group Response to CITB's Consultation on Communications Authority

In response to the CITB's consultation on the establishment of the Communications Authority ("CA"), Hong Kong Telecommunications Users Group ("HKTUG") is pleased to provide our comments.

Introduction

- The HKTUG welcome the proposed establishment of the CA to meet the regulatory needs of the changing landscape of telecommunications and broadcasting market. With the increasing convergence of communications and media technologies, it makes sense to have a single set of regulations and regulator to enforce them.
- Whilst the term "consumer" is used throughout the consultation document, HKTUG focuses in the business market and represents the voice of corporate and SME users of telecommunications services.
- HKTUG highly appreciates the exemplary work that OFTA provides. As the consultation document rightly points out, OFTA has been instrumental and successful in deregulating and liberalizing the Hong Kong telecommunications market. Hong Kong is a world leader in regulatory fairness, openness, thriving competition and low prices, the benchmark for most other markets to follow. Any changes to the current regulatory regime should lean towards preserving the successful model established with OFTA. In particular, the current balance of OFTA's technical knowledge and market interests should be maintained in any new CA.

Staged approach to setup CA

- The first stage of a straight amalgamation of the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA") suits the

urgency for a need to have unified regulator to handle the fast changing and converging telecommunications and broadcasting world. The availability of the OFTA trading fund and its operational success model makes such process a quick and easy method without the need to inject any capital.

- Due to the discrepancies in the Telecommunications & Broadcasting Ordinances, the Government should explain the principles as to how the regulatory process will be coordinated and consolidated by the CA during the transition period until the Communications Ordinance come to effect.
- The successful model of promoting competition in the telecom industry should be applied in full force to the broadcasting industry and to the whole electronic communications sector. We agree that the CA will need to understand the converging markets in order to effectively decide on competition issues and ensure that they do not inhibit technical and economic progress. The difficulty will lie in determining what amounts to the new converged electronic communications market as a "market" usually combines products or services and geographical indicators. Will the market for a standalone fixed-line telecom provider be the same as a VOIP provider? And should they be subject to the same competition constraints? (paragraph 33 of the Consultation Paper).
- HKTUG also supports the recommendation for the converged appeal panel, which should ensure a consistency in decision making (paragraph 34 of the Consultation Paper).

The Public Mission, Core Values & Regulatory Approach of CA

- HKTUG is concerned that the consumer protection and user choice that is highly safeguarded by TA does not appear in the CITB's mission statement for the CA. While there are separate paragraphs on consumer protection and abuse of dominance under the competitive provisions, the user choice is not specifically highlighted. Competition does not necessarily lead to consumer protection and increased user choice, as the example of mobile operators joining together to raise tariffs a few years ago illustrates. Hence the HKTUG would like to see consumer protection and increased user choice being incorporated into the CITB's mission statement.
- Another example of consumer protection and abuse of dominance is the recent PCCW price increase of Datapak pricing by 8% due to lack of

competition. While the Datapak prices have always been high by per mile standard, PCCW chose to increase the tariff because no other FTNS operator invests in that market. HKTUG would like to emphasize that the predatory pricing is considered an abuse of a dominant position and should be continued to be governed under the existing TA competitive provisions.

- HKTUG is in full agreement of the open and transparent, fair and consistent statements in paragraph 39 of the Consultation Paper. However, the Core Value of transparency should be more specifically defined. For example, OFTA could improve upon its lack of transparency in certain licensing and evaluation processes.
- HKTUG is in support of the core values and regulatory approach outlined in the Consultation Paper.

Office of the Communications Authority ("OFCA")

- HKTUG supports the CITB's reasoning for introducing minimal changes to the government departments for the telecommunications and broadcasting sectors (i.e. OFTA and the Broadcasting Division of TELA) (paragraph 54 of the Consultation Paper) as this will be the least disruptive. OFTA already operates effectively. Merging OFTA and the Broadcasting Division of TELA whilst also changing the structure and accountability of the merged authority will hinder the merging process. Hence we concur to keep the civil-service structure initially and then look at a non-civil service organization after consolidation of the CA is complete and has been proven effective for some time.

Lastly, the work of OFTA has helped Hong Kong to become a successful telecommunications hub in Asia and HKTUG hopes that this convergence initiative will further push our electronic communications industry to new heights. We wish to see the establishment of the CA and OFCA implemented as soon as possible and for there to be a definite roadmap and timetable for real regulatory convergence.

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