

Submission by Hutchison Global Communications Limited and Hutchison Telephone Company Limited in response to the Consultation Paper on “the Establishment of the Communications Authority” dated 3 March 2006 issued by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau

Hutchison Global Communications Limited and Hutchison Telephone Company Limited are pleased to submit the following views on the above Consultation Paper.

We are in support of the establishment of a unified regulatory authority to regulate the telecommunications and broadcasting industry. We acclaim the Government heeding the global trend of convergence of the telecommunications and broadcasting industries in its Digital 21 Strategy and now initiating this consultation with the view to formulate the set-up of this important unified regulatory agency for the future growth and development of this business sector in Hong Kong.

The Government, the industries and the consumers no doubt share the common goal to set up a quality regulatory agency that will lead this business sector to another height of development. We set out below our views and some possible alternatives to achieve this common goal. We sincerely hope that our following comments and suggestions would contribute to the successful set-up of this important regulatory agency.

“Staged Approach”

Given the telecommunications and broadcasting industries are already in the course of converging in their respective value chains (from the use of spectrum resources to the development of contents), the Government should implement the amalgamation of the two existing regulatory agencies as soon as possible. The Government proposed the “staged approach” of setting up an unified regulator (which is to be called the Communications Authority (“CA”)) in the first place and let the changes to the existing licensing and regulatory frameworks for telecommunications and broadcasting be reviewed and dealt with by the CA after it has been set up.

We however believe that it is important that the set up of the unified regulator and the exercise of merging the relevant provisions under the Telecommunications Ordinance and the Broadcasting Ordinance should be undertaken in parallel. Otherwise, the architecture of this new regulatory agency would be designed without the benefits of a clear perception of the actual regulatory framework or the relevant powers and authority that the agency itself is to exercise.

The other undesirable consequence would be the prolonging of the period of asymmetry in the regulatory treatment of telecommunications and broadcasting licensees, given the date of establishment of the CA would be at least one or two years later. The retention of different legislative provisions for telecommunications and broadcasting sectors would expose the respective licensees to unnecessary regulatory uncertainties. Similar to the case for establishing a unified regulatory agency, maintaining the status quo of two different sets of legislative provisions may

not serve the long-term interests of the two industries and would undermine the development of a converged telecom and broadcasting environment. The industries and the consumers in general would continue to suffer as a result of the delay in the legislation reforms.

For the purpose of future functioning of the CA, maintaining such status quo would also undermine its consistency in its decision-making process. Owing to the different legislative parameters applicable to the two industries, the CA may not be able to put forward in full force and effect its policy objectives because its decisions affecting one industry on a similar set of issues may not be applicable to the other. As the Government has rightly pointed out in the Consultation Paper as an example, the different competition regimes may become untenable if cross-sectoral anti-competitive practices arise as a result of further convergence in the telecommunications and broadcasting market.

For the purpose of designing the power and authority of the CA, the sooner the relevant legislative provisions are identified and aligned, the easier would the relevant power be designed and bestowed on this future unified regulator.

In order that the review work can commence and reform proposals can be made pending the set up of the CA, we would suggest that the review and proposal exercise can be undertaken by the Law Reform Commission in parallel with the set-up of the unified agency.

Mission, Core Value and Regulatory Approach

As mentioned, the common goal and vision is to build a quality regulatory structure with the appropriate and fitting mission, core value and regulatory approach.

The duty of the unified regulatory agency is to promote the interests of consumers, ensure fair competition in the market, and facilitate innovation and investment across the electronic communications industry. However, it is of paramount importance that the future industry regulator should ensure a proper balance between the interest of the consumers and the industry and does not lose focus on achieving a vibrant electronic communications industry in the long term, that being the ultimate objective of the regulations. We believe that the interests of the industry and consumers are not opposed to each other, particularly in the electronic communications industry where overall industry success relies on long-term investments in network infrastructure and technical innovations. A stable and predictable regulatory environment will generate investors' confidence and that is also where long-term consumer interests lie.

We fully endorse the Government aspiration in the Consultation Paper that this future unified regulatory agency would discharge its function in an open and transparent, fair and consistent, and engaging and supportive manner. Its regulatory approach should be proactive but light. We hope the future unified regulator would continue to use unbiased regulatory tools, such as independent market analysis and participative approach of involving the industry and the public on major policy decisions.

Structure of the CA Board

The CA would have to be structured to function effectively to cope with the industry developments and is required to make quality decision on major policies promptly. The proposed structure in the Consultation Paper that the decision making board would comprise mainly of non-official members may not be able to achieve such goal, as the other engagements of non-full time members may distract them from discharging their roles effectively. We suggest that both the chairman and a majority number of the board members should be full-time executives.

The proposed administrative agency, the office of the communications authority (OFCA), would be the executive arm of this unified regulatory body. OFCA would discharge executive and administrative duties and carry out investigatory functions. To enhance the independence and impartiality of the decision making process at the CA Board, we would propose that the Director-General of OFCA not be a member of the CA Board. There are examples overseas where the chief executive of the executive arm of the regulatory body is not part of its decision-making body. For example in Canada, the decision-making body of the Canadian Radio-television and Telecommunications Commission (“CRTC”) is its board of commissioners and the executive director of broadcasting and telecommunications at CRTC is not a commissioner himself.

For the efficient discharge of some ancillary powers and functions that are to serve the operational demands of the industries, the CA Board may delegate to OFCA the relevant authority to exercise such power and functions. The scope of such delegation should be subject to further industry consultation.

Appeal Mechanism

Regarding the appeal mechanism in respect of the decisions of this future unified regulator, the existing separate appellate bodies over the broadcasting and telecommunications matters should also be unified. In this respect, we would support expanding the role of the Telecommunications (Competition Provisions) Appeal Board to be the single appellate body for the whole electronic communications sector. We further propose to empower the new Appeal Board to become a general appeal body to deal with both competition related as well as non-competition related issues in the entire electronic communications sector.

Further Industry Consultation

The reforming of the two existing regulatory authorities is a complex process involving multifaceted issues to be discussed and resolved. The Government would have to consolidate the feedbacks obtained in the current consultation and conduct further industry consultations before deciding on the implementation strategy and its details. We look forward to continuing our participation in this important process.

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