



**NEW WORLD TELECOMMUNICATIONS LIMITED**

**SUBMISSION TO CONSULTATION PAPER**

**Establishment of the Communications Authority**

**15 June 2006**

## Submission on the Establishment of the Communications Authority

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### **1. Introduction (Part A of the Consultation Paper)**

- 1.1 New World Telecommunications Limited (“NWT”) welcomes the opportunity to respond to the consultation paper on the Establishment of the Communications Authority (“Consultation Paper”) by providing the following comments.
- 1.2 NWT supports the Government proposals in setting up a unified regulator.
- 1.3 We wish to outline three key elements which the Government should consider in ensuring the success of the unified regulator:
  - (i) the proposed unified regulator should be independent of the Government;
  - (ii) the Broadcasting and Telecommunications Ordinances should be aligned with respect to the competition regimes and appeal procedures; and
  - (iii) the Government should provide more details and conduct further consultation on the staffing and operation of the proposed unified regulator.
- 1.4 For the purpose of this submission, “Merger” means the merger between the Office of Telecommunications Authority (“OFTA”) and the Broadcasting Division of the Television and Entertainment Licensing Authority (“TELA”).

### **2. Unified Regulator (Part B of the Consultation Paper)**

- 2.1 NWT agrees that there should be a single unified regulator, the Communications Authority (“CA”), to regulate telecommunications and broadcasting matters. Our comments on the composition of the CA are detailed in Clause 5 below. We further agree that the Office of Communications Authority (“OFCA”) should be the executive and administrative arm of CA.
- 2.2 NWT believes that the CA should adopt a technology neutral, transparent, simple and flexible regulatory approach to act in response to the fast-changing telecommunications and broadcasting markets.

### **3. Unified Competition Regime and Staged Approach**

- 3.1 Unified Competition Regime
  - (i) NWT believes that the Government should conduct a separate consultation on the review of Telecommunications Ordinance (Cap. 106), Broadcasting Ordinance (Cap. 562) and Broadcasting Authority Ordinance (Cap. 391) as soon as possible. The consultation should aim to unify the two existing competition regimes under the Telecommunications Ordinance and the Broadcasting Ordinance.
  - (ii) Currently, there are separate and distinct competition provisions under the Telecommunications Ordinance and Broadcasting Ordinance. The convergence of telecommunications and broadcasting services means that a service provider may operate both telecommunications and broadcasting services. If there is no unified competition provisions, it is possible that the

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CA will need to apply different competition regimes to the same matter and thereby arriving different conclusions.

- (iii) Moreover, the appeal procedures and mechanisms for contesting decisions of the respective regulators under the two existing legislations are also different. NWT believes that the different appeal procedures and mechanisms will create confusion, unnecessary delays and unnecessary costs to the parties concerned.
- (iv) As a result, NWT urges the Government to introduce unified competition regime, unified appeal procedures and unified appeal mechanisms at the time of or as soon as possible after the establishment of the CA.

### 3.2 Staged Approach

- (i) NWT agrees in principle that there should be a staged approach but we feel that during stage one the Government should be able to specify and implement a unified competition regime, unified appeal procedures and unified appeal mechanisms in the Communications Authority Bill.
- (ii) The unified regulator should not be burdened with having to make inconsistent or incoherent decisions due to legacy legislations. If after the CA is established there remain two different legacy competition regimes for broadcasting and telecommunications matters, this may lead to uncertain regulatory decisions.

## 4. Core Values and Regulatory Approach (Part C of the Consultation Paper, para. 39-43)

- 4.1 NWT believes that it will be beneficial to the CA and the existing licensees to set up advisory committees consisting of industry representatives to advise CA on matters concerning telecommunications and broadcasting matters.

## 5. Structure of the CA (Part C of the Consultation Paper, para 44-57)

### 5.1 Composition of CA

NWT believes the CA should consist of a board of minimum 7 members. We agree that the Director General of OFCA should be a member of the board but he should not be made the Chairman. The CA should make policy decisions after consulting the industry and all interested parties.

### 5.2 Full Time and Part Time Members

NWT believes there should be 4 full time members and 3 part-time members. We feel that if the board mainly consists of part-time members it may not be able to understand or cope with the daily operations of the OFCA and also respond quickly to the increasingly complex issues facing the industry.

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Full-time members are hence needed to ensure that the CA comprises persons who are totally focused and informed on the CA's objectives and functions and who can serve as a functional point of regulatory and policy ideas, research and development. The full-time members should also have their own direct staff and be able to draw on the resources of OFCA. To ensure quality of members, we believe that all members should receive remunerations.

### 5.3 Chairman

NWT believes that the Chairman should be a full time executive member. To ensure the Chairman's impartiality, he should be nominated by the Chief Executive and approved by the Legislative Council.

### 5.4 Director General of OFCA ("DG")

NWT believes that the DG should not be the Chairman at the same time. Our reason is that the DG being the head of OFCA, the executive and administrative arm of the CA, will be able to exert too much influence on the CA. It is best that the CA should function as a collegiate body with diverse perspectives that engages in rigorous discussion, rather than as a rubber stamp for the executive and administrative arm. As a result, we believe that the DG should be a non-voting member of the CA.

### 5.5 Monitoring

- (i) NWT believes that the CA should be impartial and independent of the Government. As a result, we believe that the CA should be monitored by an experienced, well established and well represented organisation.
- (ii) Currently, the Legislative Council takes up the role in monitoring the work of the Government. Moreover, its Panel for Information Technology Broadcasting also takes up the role in monitoring and examining Government policies and issues of public concern relating to telecommunications and broadcasting services.
- (iii) Hence, we believe the Legislative Council shall take up the role in monitoring the CA so that it can continue its existing role in monitoring and examining policies and issues of public concern relating to telecommunications and broadcasting services.

## 6. Budget, Finance and Trading Funds (Part C of the Consultation Paper, para. 58 –59)

- 6.1 OFTA is currently under a trading fund regime established under the Trading Funds Ordinance (Cap. 430). NWT believes that it is vital that the CA and OFCA remain an independent body of the Government and hence we believe that it is best if OFCA has its own funding arrangements.

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- 6.2 NWT queries what will happen to the OFTA trading fund after the TA is abolished. If the OFTA trading funds are to be transferred to OFCA, then we believe that this should only be used for telecommunications related regulations as they are derived from telecommunications licence fees.
- 6.3 NWT believes that the Government needs to review the source of funding for the CA carefully. We note that under the current telecommunications regulatory arrangement, OFTA is funded by telecommunications licence fees but it is carrying out many public services. It is arguable that funding for the CA should be sourced partially from the general revenue of the Government, as the CA will perform many governmental functions in social and economic policies in the interests of Hong Kong.
- 7. Licence**
- 7.1 NWT believes that the CA should issue and regulate all telecommunications and broadcasting licences.
- 7.2 Currently, certain broadcasting licences and exclusive telecommunications licences are granted by the Chief Executive (“CE”).
- 7.3 NWT believes that the existing practice is unnecessary. It is costly to maintain and creates administration inefficiency. We submit that it is best if the Government will include in the stage one legislation that gives power and authority to the CA to grant and regulate all telecommunications and broadcasting licences.

New World Telecommunications Limited  
15 June 2006