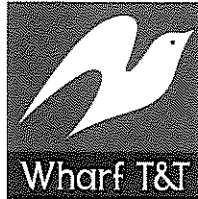


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4 March 2008

Communications and Technology Branch
Commerce and Economic Development Bureau
2/F Murray Building
Garden Road
Hong Kong
Attention: Assistant Secretary (B) 1

By Email (ucl@cedb.gov.hk) & Post

Dear Sir/Madam,

Consultation Paper on the Creation of A Unified Carrier Licence under the Telecommunications Ordinance

This refers to the captioned consultation paper released by the Secretary for Commerce and Economic Development on 21 December 2007.

Please find enclosed our submission with our views and comments on the Consultation Paper. An electronic copy of the submission has also been provided to the specified email address as requested.

Thank you very much.

Yours faithfully,

Jordan Lee
Senior Manager, Regulatory & Carrier Affairs

Confidential

2008-03-submission cover letter (SCED)



Page 1 of 1
& IT services subsidiary



WHARF T&T LIMITED

SUBMISSION IN RESPONSE TO THE CONSULTATION PAPER TITLED “THE CREATION OF A UNIFIED CARRIER LICENCE UNDER THE TELECOMMUNICATIONS ORDINANCE” ISSUED BY THE SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (“SCED”) AND TO THE CONSULTATION PAPER TITLED “LICENSING FRAMEWORK FOR UNIFIED CARRIER LICENCE” ISSUED BY THE TELECOMMUNICATIONS AUTHORITY (“TA”) BOTH DATED 21 DECEMBER 2007

4 MARCH 2008

EXECUTIVE SUMMARY

- 1 Wharf T&T Limited (“WTT”) welcomes the opportunity to respond to the proposals raised in the consultation papers issued by the SCED and the TA. The SCED proposes to create a unified carrier licence (“UCL”) to replace all existing fixed carrier licences (“FCL”), fixed carrier (restricted) licences (“FCRL”), mobile carrier licences (“MCL”) and mobile carrier (restricted) licences (“MCRL”). Under the proposal, the SCED also intends to introduce a new licence fee schedule for the UCL holders that would significantly increase the licence fees for fixed carriers but would reduce licence fees for mobile carriers.
- 2 WTT is very disappointed with the proposals from the SCED and the TA. The proposals represent regulatory inconsistency and over-interference on the working of free markets and are against the Government’s established principle of “*market leads and government facilitates*” as reiterated by the Chief Executive of the Hong Kong SAR. The proposals further contradict the Government’s long established light-handed regulatory approach.
- 3 Against his “*sales pitch*” that UCL is a reactive regulatory measure purporting to facilitate fixed mobile convergence (“FMC”), regrettably the SCED started off his proposals with ill-found premises that UCL is a must for FMC, that FMC is a dominant and irreversible trend driven by the market and that UCL would level the playing field for all licensees. In fact with the UCL proposals the SCED and the TA fundamentally fail to appreciate the intrinsic differences between the fixed and mobile, notably the asymmetric pricing structure and the lack of open network access with the mobile networks, which hinders the development of any true FMC.
- 4 WTT submits that UCL is not a must for FMC; UCL will not level the playing field for all licensees and whether FMC is a dominant and irreversible trend is yet to be seen. Despite the TA claiming that it is not her intention to use regulation to drive FMC, the proposal to create a UCL to replace all existing licences is nothing but a regulatory tool to drive FMC and to force companies to reorganize themselves. Even if the UCL were created to facilitate FMC, WTT submits that telecommunication users in Hong Kong would not be able to enjoy the benefits of true FMC unless the TA is prepared to deal with the difficult issues of the asymmetric pricing structure and the lack of open network access with the mobile networks.

- 5 The proposals from the SCED and the TA are counterproductive to the development of a healthy regulatory environment by unnecessarily eliminating the existing licensing options down to a single licensing framework. Given the widening gap between the subscriber bases of fixed and mobile services, blindly forcing the fixed and mobile carriers onto the same licensing framework would increase the risk of the latter trumping the former. To mitigate that risk, WTT submits that the Government should take a prudent and cautious approach and continue to make FCL, FCRL, MCL and MCRL available to industry players on existing licensing terms and the UCL should only be made “optional” for those who wish to provide fixed and mobile services under a single licence and FMC services.
- 6 WTT has no objection to the SCED’s proposal that the new UCL should have a validity period of 15 years and to the proposed General Conditions for the UCL. WTT has concerns with some of the proposed Special Conditions for the UCL, which represent regulatory over-interference and are unnecessary. Given the decade-long deregulation and the competitive market that we see today, we would not expect the regulator to step up regulatory supervision, rather we would expect the regulator to progressively retract from regulatory supervisions and let the free market takes over.
- 7 WTT strongly objects to the proposed licensing fee schedule. It is unjustified and unfair for the SCED to increase the customer connection fees across the board and to introduce a number fee of \$3 per subscriber number per year. The licence fee proposal unfairly disadvantages the fixed line operators by increasing their operating costs and unfairly benefiting the mobile operators by lowering their operating costs. There is no justification for the increase of licence fee given the healthy Trading Fund of OFTA and the decreasing regulatory supervisions. Looking at the Trading Fund of OFTA and the decreasing regulatory efforts, the licence fee should be reduced significantly so as to benefit the consumers and to encourage further investment in the industry.
- 8 The introduction of the subscriber number fee is an attempt by the TA to shift the responsibility of the TA in managing the number resources onto the operators and assigning OFTA’s own failures in managing the number resources onto the operators by punishing them. WTT submits that instead of introducing the number fee per subscriber number per annum, as the consumers would inevitably end up with higher costs, OFTA should take proactive steps working with the operators to come up with practical solutions to surrender un-used/unallocated numbers and relinquished numbers to OFTA, allocation of single number instead of a block as well as other measures to enhance the efficient use of numbers and extend the life span of the current 8-digit numbers. These measures would produce more practical and desirable result than by simply introducing a fee. The number fee would ultimately be passed on to the users and \$3 per number per year may create any deterrent effect on the users.
- 9 Under the proposed UCL framework, industry members operating within an already very competitive market are forced upon more unnecessary regulatory compliance costs and bureaucratic processes, inter alia, more codes of practices or guidelines, case-by-case approval processes for building access and road-opening. It is perplexing to see that the TA wants more interventions and scrutiny by introducing new regulatory measures without demonstrating how exactly they could benefit the consumers and encourage further investments in the industry.

- 10 In order to safeguard healthy market developments from regulatory irregularities, inconsistencies and over-interference, WTT believes that FMC should be driven by the market and by the market alone. To provide clarity and certainty, we submit that all existing FCL, FCRL, MCL and MCRL licences should be retained and continue to be made available to those carriers wishing to continue to provide services under the current scope of their licences and on existing licensing terms. In the interest of preventing irreversible market distortions the adoption of UCL proposal should be made primarily for carriers wishing to provide fixed and mobile services under one licence, instead of being forced upon all existing FCL, FCRL, MCL and MCRL licensees.

WHARF T&T LIMITED

SUBMISSION IN RESPONSE TO THE CONSULTATION PAPER TITLED “THE CREATION OF A UNIFIED CARRIER LICENCE UNDER THE TELECOMMUNICATIONS ORDINANCE” ISSUED BY THE SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (“SCED”) AND TO THE CONSULTATION PAPER TITLED “LICENSING FRAMEWORK FOR UNIFIED CARRIER LICENCE” ISSUED BY THE TELECOMMUNICATIONS AUTHORITY (“TA”) BOTH DATED 21 DECEMBER 2007

4 MARCH 2008

INTRODUCTION

- 1 Wharf T&T Limited (“WTT”) welcomes the opportunity to submit its views on the consultation papers issued by the SCED and the TA both on 21 December 2007 in relation to the creation of a unified carrier licence (“UCL”) under the Telecommunications Ordinance and the licensing framework for the UCL.
- 2 As stated in the TA’s consultation paper, the TA concluded, following two rounds of consultation respectively in September 2005 and July 2006, via his statement titled “Deregulation for Fixed-Mobile Convergence (“FMC”)” dated 27 April 2007 that he would recommend the creation of the UCL to the SCED.
- 3 In response to the TA’s recommendation, the SCED subsequently on 21 December 2007 released his consultation paper titled “Consultation Paper on the Creation of a UCL under the Telecommunications Ordinance”. The SCED’s consultation paper sets out his proposal on the creation of the UCL, migration to UCL, period of validity of the UCL, General Conditions (“GCs”) of UCL and licence fee for the UCL.
- 4 Concurrent with the SCED’s consultation paper and pursuant to section 7A of the Telecommunications Ordinance, the TA released her own consultation paper, which sets out detailed proposals regarding the licensing framework for granting of UCL. The TA’s consultation paper also sets out her proposal on the rights and obligations of UCL holders, the Special Conditions (“SCs”) of the proposed UCLs, interconnection regime, the general approach for granting a UCL under different scenarios and the migration arrangement of existing licences to UCLs.
- 5 As both consultation papers deal with the same subject matter of UCL albeit on different issues, for ease of reference this submission is prepared in response to both consultation papers.
- 6 This submission has been structured in accordance with the sequence of issues raised in the SCED’s and the TA’s respective consultation papers as follows:
 - Creation of Unified Licensing Framework – Question 1 of SCED’s paper
 - Migration to UCL – Question 2 of SCED’s paper
 - Period of Validity of UCL – Question 3 of SCED’s paper

- General Conditions of UCL – Question 4 of SCED’s paper
- Fee Schedule of UCL – Question 5 of SCED’s paper
- Rights and Obligation
- Special Conditions (SC) of UCL – Questions 1 to 21 of the TA’s paper
- Interconnection Regime – Question 22 of the TA’s paper
- Granting a UCL – Question 23 of the TA’s paper
- Replacement of 4 FTNS issued in 1995 – Question 24 of the TA’s paper
- Conversion of Existing MCL – Question 25 of the TA’s paper

CREATION OF UNIFIED LICENSING FRAMEWORK

– QUESTION 1 OF SCED’S PAPER

Q1. The Secretary invites comments on the proposal of creating the UCL as detailed in paragraphs 9-13.

- 7 The SCED began his consultation paper by stating that, “*with market and technological developments, fixed-mobile convergence (“FMC”) is emerging which blurs the distinction between fixed and mobile networks. To ensure that the regulatory environment remains conducive to the emergence of FMC, the Telecommunications Authority (the “Authority”) conducted two public consultation exercises in 2005 and 2006 respectively. As a conclusion of the regulatory review on FMC, the Authority recommended, among the others, the introduction of the UCL to facilitate the provision of converged telecommunications services.*”
- 8 At the outset, the SCED presented the UCL as a reactive regulatory measure purporting to facilitate the growing market trend of FMC. Nevertheless, a closer review of both consultation papers suggests that some of the key premises of the UCL were founded without demonstrable evidence or market support.
- 9 *Firstly the proposal to create a UCL is founded on a wrong premise that UCL is a must for FMC.* In reality various carriers with service scope ranging across fixed and mobile services have long been in operation in Hong Kong. There is no convincing evidence suggesting that having a UCL is a must for FMC to develop or that a UCL would be more conducive to FMC than the existing FCL/MCL or without a UCL would necessarily lead to the failure of FMC. Even so, the Government should take a prudent and flexible approach, instead of proposing a UCL to replace all existing licences; there is no reason why the UCL could not supplement existing licences.
- 10 *Secondly the proposal to create a UCL is founded on a wrong premise that FMC is a dominant and irreversible market trend.* In reality, FMC itself is still a contestable “vision” as oppose to be a proven phenomenon in the market. Three out of the five major fixed carriers in Hong Kong do not directly provide mobile services, with one of the three just sold off its mobile arm. It does not seem to suggest that FMC is a dominant and irreversible market trend. If FMC were truly a dominant and irreversible market trend, surely the lack of a UCL would not be any deterrent unless there is any direct regulatory prohibition, which is not the case.

- 11 *Thirdly the proposal to create a UCL is founded on a wrong premise that FMC levels the playing field for all licensees, irrespective of provision of fixed and/or mobile services. Unless the TA is prepared to deal with the intrinsic differences between fixed and mobile networks, the mere creation of a UCL with certain rights and obligations being the same would not level the playing field for fixed and mobile licensees. With the widening gap between the subscriber bases of fixed (3,874,674¹) and mobile services (10,550,127²), the risk of the latter trumping the former is clearly present under the UCL proposal.*
- 12 The creation of a UCL itself would not level the playing for all licensees. For a fixed operator to venture into the mobile market, amongst other things, it must have available spectrum, which is a scarce public resources. Availability of spectrum remains the biggest obstacle or challenge for a fixed operator to be able to offer 2G or 3G mobile services or FMC services, this resource constrain is not something that could be resolved with available financial resources. Notwithstanding the decision of the TA to allocate spectrum for broadband wireless access, the technology is not ready yet for 2G or 3G mobile services deployment. Unlike the fixed operators, there would be no constraint for the mobile operators to enter the fixed line markets; all they need is capital and human resources to roll out the physical infrastructure network.
- 13 Notably the current tariff disparity between Internet access via fixed network and mobile network is not conducive to FMC development. A user with broadband Internet access over fixed network pays for a monthly line rental has unlimited access to the Internet, whereas a mobile user with Internet access via his mobile service provider has to pay monthly rental and usage charge for Internet access except for certain designated information access provided by his service provider. In a truly FMC environment, this situation would not be sustainable. A mobile user should be allowed to have the same experience for access to information as he or she would with fixed line service and be free to move from mobile network to fixed network regardless of whether his or her network or service provider operates a fixed or mobile or converged network.
- 14 Regrettably the proposal from the SCED and the TA has not made any attempt to address the intrinsic differences between the fixed and mobile networks and only further widen the gap between them. Unless the SCED and the TA are prepared to take steps to eliminate the differences between the fixed and mobile, users would not truly experience FMC; the mere creation of a UCL would not facilitate such a seamless experience.
- 15 We also strongly object to the proposal, which means that existing licensees would not be able to renew their existing licences. However existing licensees have legitimate expectation that having invested significantly in the territorial wide telecommunication network infrastructure and facilitated the Government in achieving its vision of establishing Hong Kong as a telecommunication hub for the region that the Government would renew their licences on existing terms and conditions. Whilst UCL could allow existing licensees to continue their existing telecommunication businesses, however the Government is proposing to drastically changing their operating landscape and redistributing the licensees' rights and obligations, i.e. lowering the licence fee payable by mobile carriers at the expense of fixed carriers, changing "user pays" to "obligation-

¹Number of Exchange Lines as of 11/2007 as published on OFTA's website

² Number of Public Mobile Radiotelephone Subscriber Units as of 11/2007 as published on OFTA's website

based” facilitation of MNP, implementing FMNP without due compensation, case-by-case approval on building access and road-opening, further regulatory supervisions over market conducts.

- 16 Despite the TA’s claim that it is not her intention to use regulation to drive the development of FMC, the UCL proposal is in all intent and purposes a regulatory attempt to intervene into the market and drive the development of FMC by selectively redefining the rights and obligations of fixed and mobile licensees. The proposal also means that to take benefits of the UCL proposal, existing licensees would have to re-structure themselves by merging separate fixed and mobile business entities into one so as to hold one UCL. This clearly contradicts the “sales pitch” of the SCED and the TA that they are no more than a facilitator to market forces. The proposal to create a UCL by the SCED and the TA also contradicts the Government’s established principle of “*market leads and government facilitates*” as reiterated by the Chief Executive of the Hong Kong SAR.
- 17 We caution such regulatory over-interference and irregularities which could lead to legal challenges and irreversible market distortions, unless the Government has the resources and might to resolve the challenges. Even so it is not in the interests of the Government and the industry to be embroiled in the uncertainty any challenges would bring to the industry and its stakeholders.
- 18 The proposal to create a single UCL framework to replace all existing carrier licences would further generate confusion as it would not be apparent the type of services a UCL holder provides under the licence and the associated licensing conditions, it could be pure fixed, pure mobile, fixed and mobile, primarily fixed or primarily mobile or FMC. Unlike the current licensing regime, it is clear from the licence that an operator holds what it has been licensed to operate and the associated licensing conditions.
- 19 In order to ensure that market development would not be derailed by regulatory irregularities and over-interference, WTT believes the Government should leave the development of FMC by the market alone. The development of FMC is by no means certain. There is further reason that a more prudent and cautious regulatory approach should be taken so as to give the Government’s flexibility and the industry further time to observe the development of FMC.
- 20 The Government may recall the experience with 3G mobile, there was a lot of hype over 3G initially, but subsequent market development shows that it has not delivered what it promised. Taking a more prudent and cautious approach, all existing FCL, FCRL, MCL and MCRL licences would continue to be made available to licensees who wish to provide services under the current scope of their licences on existing terms. And UCL proposal would be made optional for those carriers who wish to provide fixed and mobile services under a single licence or FMC services.

MIGRATION TO UCL – QUESTION 2 OF SCED’S PAPER

Q2. The Secretary invites views on the proposed migration arrangement under paragraphs 15-16.

- 21 Consistent with our views and reasons as expressed earlier we object to the proposal that the TA should no longer issue FCL, FCRL, MCL and MCRL to new entrants or to existing licensees when their existing licences expire.
- 22 We reiterate that whether FMC is or will be the predominant market trend or not remains to be seen. It is unwise for the SCED to limit the Government's flexibilities by eliminating the existing licensing options down to a single licensing framework of UCL. It would only be prudent that all FCL, FCRL, MCL and MCRL should continue to be made available and that the UCL should only be made "optional" for licensees who wish to change the scope of services to provide both fixed and mobile services under one licence or FMC services. In that way we would expect a much simpler migration arrangement or no migration for some.

PERIOD OF VALIDITY OF UCL – QUESTION 3 OF SCED'S PAPER

Q3. The Secretary invites views on the proposed period of validity for UCL under paragraphs 18-19, and the proposed conversion arrangement in paragraph 25.

- 23 WTT has no objection in principle to the SCED's proposal that "*a new UCL issued to an applicant should have a validity period of 15 years for all types of services which may be authorized under the licence*", this validity period is on par with the existing FCL.
- 24 With respect to the SCED's proposed conversion arrangement, while WTT has no objection to the SCED's assertion that "*the conversion should be flexible and simple to administer*", WTT reiterates that UCL should not be made compulsory for existing licensees upon the expiry of their current licences. Given that whether FMC is or will be the predominant market trend or not still remains to be seen, it is counter-productive for the SCED to limit the Government's flexibilities by trimming the existing licensing options down to a single licensing framework of UCL. We submit that UCL should be made "optional" even in cases where licensee wants to change the scope of services to provide both fixed and mobile services.

GENERAL CONDITIONS (GCS) OF UCL – QUESTION 4 OF SCED'S PAPER

Q4. The Secretary invites views on the proposed GCs of UCL as set out in Appendix A.

- 25 In the interest of preserving regulatory consistency and predictability, WTT in principle has no objection to the SCED's assertion that "*licensees under the current licensing regime and those under the unified licensing regime who operate similar kind of network/service should basically have the same rights and obligations*". From there, WTT also has no objection, except for the sections stated below, to the proposed GCs provided that their applications and/or implementations should be consistent with the established pattern known to the existing licensees.
- 26 With respect to GC 7 (Confidentiality of Customer Information), we believe the form of consent for disclosure "*in a form approved by TA*" is unnecessarily cumbersome in implementation and we query if the TA is in a better position to approve the form of consent. Given that there is legislation in Hong Kong governing the collection, use and retention of personal data, which licensees have

to comply with, it is best to leave this issue to be governed by the relevant legislation or otherwise agreed with the customer(s).

FEE SCHEDULE OF UCL – QUESTION 5 OF SCED’S PAPER

Q5. The Secretary invites views on the proposed fee schedule of UCL as set out in Appendix B.

27 The SCED proposes the following fee schedule of UCL:

Fixed fee component	Subscriber-based fee components	Non-subscriber-based fee components
Annual fee (\$1,000,000; or \$100,000 for external fixed service only and/or for radiocommunications services where moving stations are primarily for use in locations other than on land only)	Customer connection fee (\$8 per connection)	Number fee (\$3 per subscriber number) Spectrum management fee (*) Base station / land station fee (*)

(*) *calculated according to formulae as set out in Appendix B*

In comparison with the existing licence fee schedule for fixed line licences, the proposal represents significant increase for fixed line operators, i.e. increase of per customer connection fee from \$7 per connection per annum to \$8 per connection per annum and a new number fee. For the mobile operators, the proposal represents significant savings of licence fees for them. There is no valid justification for unfairly disadvantage the fixed line operators, nor is there any valid justification for granting a significant savings for the mobile operators.

28 We object strongly to the SCED’s proposed fee schedule for UCL if UCL were to replace all existing carrier licences. We submit that the proposal is regrettably premised on the following invalid and unreasonable assumptions:

- The TA faces increasing operational cost and raising licence fee is only a reasonable and conservative counter-measure;
- UCL entails equality between all the licensees and therefore the connection fee under the UCL should be the same across the board; and
- Number misuse is the sole responsibility of the operators and the SCED’s number fee proposal will ensure effective number usage.

29 After its decade-long liberalization, the Hong Kong telecommunications market is witnessed by many, as stated in OFTA’s website, as a market with success and maturity. In that light, one would naturally expect the workload as well as the administrative or operating expenses of the TA to decline proportionally as market forces take over the regulator as the lead. Without much surprise, the Trading Fund Report of OFTA for 2006/07 shows a very healthy financial state of affairs - the pre-tax profit of the Trading Fund has been increased from HK\$74.3 million in 2005/06 to HK\$92.6 million in 2006/07, marking a 24.6% annual increase. In contrast to the assumption above, the expenditure of the Trading Fund managed by the TA has witnessed a 3.1% yearly decline in 2006/07 while the CPI over the same period increased by nearly 2.5%.

- 30 As alarmed by the Honorable Mr. Sin Chung-kai, SBS, JP during the Legislative Council's Panel on Information Technology and Broadcasting dated 14 January 2008, the increasing annual dividends payable to the Government's treasury in recent years is in fact not different from an alternative form of taxation. In consideration of Mr. Sin's view and of PricewaterhouseCoopers's forecast that the Government's final consolidated budget surplus for 2007/08 will be in excess of HK\$105 billion, we submit that not only does the SCED and the TA have no justification for demanding more licence fees, for the reasons of cost recovery, they should in fact lower the licence fees in light of the increasing surpluses shown in the TA's Trading Fund Report and the Government's book and the expected lessening regulatory supervision.
- 31 On the second assumption, insofar, other than the over-interference of the SCED and the TA which seeks to redistribute the existing obligations among current licensees by lowering the licence fees of the mobile operators at the expense of the FTNS/FCL, we have yet to be convinced that the same level of fee for both fixed and mobile services would be conducive to the FMC environment as naively asserted by the SCED and the TA, especially when the current asymmetric pricing systems of the fixed and mobile services (i.e. flat rates vs. usage charges) are dogged by the Government. Even if we assume that the same level of fee for both fixed and mobile services were to be conducive to the FMC development, it is still unfair that the fixed line carriers have to bear the increase of customer connection fee whilst the mobile carriers would enjoy significant saving in licence fees.
- 32 Concerning the third assumption, WTT objects strongly to the allegation that operators have been engaging in hoarding the numbers. When the TA formulated the "New Numbering Plan for Telecommunications Services in Hong Kong" in 1994 with the assistance of Ovum, prepaid SIM card was not a commonly available commercial feature for mobile handsets.
- 33 In November 2007, the TA released the data showing the total number of prepaid SIM cards subscribed in Hong Kong has reached 4,877,746, which is over 110 times the figure for 1997 (42,335) - the first year where the TA started to report such figures. In other words, the subscription of prepaid SIM cards in Hong Kong has experienced a combined annual growth rate ("CAGR") of over 60% since 1997 and accounted for about half of all mobile subscriptions in Hong Kong for the year 2007.
- 34 Taking a closer look behind the 2007 figure, Hong Kong welcomed 15,485,789 arrivals of visitors from Mainland China, which was 13.9% more than in 2006³. Of these, 8,593,141 visitors arrived under the Individual Visit Scheme (IVS), 55.5% of the total and 28.8% more than in 2006. OFTA with all its might and that of its consultant had not anticipated that. Even if the TA's anticipation were wrong, the operators should not shoulder the blame for such mis-anticipation. Looking forward, what is more alarming is the growing demand for more numbers generated by VoIP and MVNO, which are regulatory initiatives of the TA and must be within her anticipation. As the increasing demand is in part driven by regulatory initiatives of the TA, surely the operators should not be expected to shoulder the costs of such regulatory initiatives in the form of increased licence fees.

³ Hong Kong Tourism Board's figures as of January 2008.

- 35 The article written by OFTA's Assistant Director General (Regulatory Affairs) dated 28 January 2008 claimed that owing to the diligent effort of the TA, the current 8-digit system can last until 2015, which was five years longer than originally planned. Conversely, we cannot understand how a responsible regulator could self-claim its credit over the 5-year delay while assigning the blame to the licensees long after the regulator has failed to appreciate the skyrocketing demand for new mobile numbers in the first place.
- 36 The TA has the ultimate responsibility in ensuring effective and efficient management of numbering resources in Hong Kong. Unfortunately, we are yet to see any effort by the TA to ensure efficient use of numbering resources in Hong Kong. Instead and ironically, the TA puts such responsibility squarely on the operators. For instance, instead of allowing assignees with more flexibility by using smaller number blocks, the TA has been using 50,000 numbers a block for allocations. Under the current regime, operators have no way to return isolated numbers even when they want to do so. If the TA were minded to better the number allocation practices, we see no reason why operators could not explore with OFTA on returning numbers once they are not in use or even allocation of single number by OFTA to operators instead of by blocks of 50,000.
- 37 On the consumer front, especially the SMEs, there appears to be a common practice to reserve more numbers than actual use, due to their preference for PBX system. Whether this practice has amounted to insurmountable level remains open to further investigation as it concerns the thousands of SMEs in Hong Kong, the TA could have started a long time ago to encourage efficient utilizations of numbers via consumer education or subsidization of system upgrade to the SMEs. Again, we have not seen any constructive action taken by the TA in that regard.
- 38 Indeed it was after the release of the consultation papers revealing the number fee proposal and in response to numerous discussions on the number fee proposal that OFTA only on 14 February 2008 proposed to establish a working group under the Telecommunications Numbering Advisory Committee (NAC) to deliberate on the relevant issues and to make recommendations to the NAC, which will in turn make recommendations to the TA. The terms of reference for the said working group, as communicated by OFTA on 14 February 2008 are:

“To study and recommend to the NAC the feasible administrative measures to improve number utilization. Among other things, the following two aspects will be looked at in the process:

- (a) how the existing administrative procedures for returning unused telephone numbers to OFTA for re-allocation to other operators/service providers can be improved; and*
- (b) how to make efficient use of the telecommunications numbers already allocated to operators but which are of low demand from the public (i.e. numbers allocated for paging and personal number services.)”*

- 39 WTT welcomes the initiative by the TA to form the working group to look into the number usage issues and we urge the SCED to shelf the number fee proposal for UCL and other facilities-based licensees. In view of the inconvenience to all concerned with the move to 9-digit, operators would very much welcome effort to pro-long the life span of the 8-digit number resources.
- 40 The proposal to increase customer connection fee and introduction of subscriber number fee would significantly increase the costs of licensees and this increase would inevitably be passed on to the consumers and stifle investment in advanced technology, services and infrastructure rollout. Against the Financial Secretary's recent announcement of his intention to moderate the aggravating inflation rate expected in Hong Kong, the SCED's licence fee proposal would fuel local inflation even more. The amount of the fee proposed is also arbitrarily determined without any justifications.
- 41 To summarize, we object to the proposed licence fee and duly submit that it is unjustified for the SCED and the TA to: (a) increase the connection fee with significant surpluses on OFTA's Trading Fund; (b) shift the burden and assign blames to the carriers with regards to the efficient use of numbering resources; and (c) unfairly discriminate the fixed line carriers with increase of licence fees and favours the mobile carriers by reducing their licence fees. The proposed fee schedule is punitive, discriminatory and would further fuel the aggravating inflation rate as well as further widening the gap between the fixed line operators and the mobile operators.

RIGHTS AND OBLIGATIONS

- 42 The TA has proposed that the rights of UCL holders would be subject to types of services authorized as follows:
- There would be no automatic right to spectrum and validity period of spectrum right may be different from validity period of UCL. Further spectrum holder should not have any legitimate expectation of right of renewal or right of first refusal on expiry of licence or spectrum assigned;
 - Licensees would be entitled to apply for allocation of numbers and codes in the Numbering Plan and there would be no special prefix for FMC services;
 - Operators with authorization to provide public wireline-based services would be entitled to road opening right, however approval of road opening would be granted on a case-by-case basis to UCL who are authorized to provide fixed services and demonstrates that it is rolling out a wireline-based infrastructure; and
 - Building access rights would be granted to UCL on a case-by-case basis subject to the technology it uses for an installation in a building, whether the installation is for serving the residents and occupants of that building and whether there are difficulties to obtain building access.
- 43 WTT objects to any purported curtailment of its road opening and building access rights. The case-by-case approval process is administratively cumbersome for operators and for OFTA and is not conducive to speedy rollout of network and services. The proposed case-by-case approval process for building access requires OFTA to process each application by assessing the technology proposed to be deployed, however we do not

believe OFTA should be doing such technical assessment and the proposal further contradicts the Government's technology neutrality principle.

44 We also object to any requirement for co-ordination amongst operators concerning building access, this process simply does not work and will create unnecessary hurdles and provide opportunity for competitors to delay network and service rollout. In reality OFTA would be powerless to do anything.

45 We request the TA to clarify what she meant by case-by-case approval process. As we understood from OFTA, for building access for UCL holders, with case-by-case approval process licensees are expected to negotiate with building owners for access to install their telecommunication facilities and that it is when they encounter obstacle that they may seek section 14 authorisation from the TA. In that case there is no reason for any co-ordination guidelines for access.

46 Further we urge the TA to issue practical guidelines in issuing section 14 authorisation; specifically under what circumstances would the TA issue a section 14 authorisation and what are the service level commitments to the operators on the processing and issuing of such authorization.

SPECIAL CONDITIONS (SCs) OF UCL - Questions 1 to 21 of the TA's paper

47 The TA has highlighted the following SCs for consultation:

- Compliance with Codes of Practice (SC 1)
- Requirement for interconnection: any to any connectivity (SC 3)
- Numbering plan and number portability (SC 4)
- Tariff publication (SC 7)
- Ex post tariff regulation and notification of discount (SC 8)
- Billing and metering accuracy (SC 9)
- Directory information and directory information services (SC 11)
- Emergency call service (SC 12)
- Performance commitments – withdrawal and return of frequencies (SC 21) and rollout of network (SC 31)
- Universal Service contribution (SC 22)
- Insurance (SC 24)
- Use of public facilities for provision of services (SC 25)
- Provision of information to customers (SC 30)
- Disposal of assets (SC 32)
- Building access (SC 33)
- Payment of spectrum utilization fee (SC 34)
- Use of frequencies in IBCCDS (SC 35)
- Service contracts and dispute resolution (SC 36)
- Other special conditions

48 WTT will address the proposed SCs in the following sections. Please note that our comments are without prejudice to our contention as discussed earlier that UCL, if introduced, should only be optional and for operators who wish to provide FMC or fixed and mobile services under a single licence and FMC services. All existing FCLs and

MCLs should remain available to existing operators who wish to provide fixed or mobile services on existing licensing framework upon expiry of their current licences.

Compliance with Codes of Practice (SC 1)

Question 1: Do you agree that the TA may issue practical guidance in the form of guidelines and CoPs for compliance by unified carriers under the proposed SC 1?

- 49 Given that the Hong Kong telecommunications market has long been liberalized and is reputed as a highly competitive market, we are not convinced that this proposal is necessary. As such, we believe the TA should simply let market forces and consumer education take the lead, instead of bombarding the market with further and complex rules and thereby increasing the regulatory compliance costs for operators and increasing the regulator's workload when one would expect it to scale down with the market development to date. In tackling issues related to misleading/deceptive conduct, we submit that the TA should continue to rely on licence condition on provision of satisfactory service and section 7M of the Telecommunications Ordinance. We would not object to the TA issuing clarifications or guidance notes to explain her expectations in relation to compliance with the relevant licence condition on provision of satisfactory service, the same way as was done for section 7M of the Telecommunications Ordinance.

Requirement for interconnection: any to any connectivity (SC 3)

Question 2: Do you agree with the proposed SC 3 and the express statement of the A2A principle in the licence condition?

- 50 WTT agrees that A2A is an important policy objective and without such policy objective consumers' freedom of choice will be at stake. Equally, it is important that A2A should be fully implemented and be universally applied to all the carriers irrespective of their scope of service(s), i.e. irrespective of whether the carrier concerned is primarily fixed or mobile.
- 51 For clarity, the scope of A2A should be explicitly and clearly defined. In view of the universality of A2A, its application should not be discriminatory. We submit that the proposed mandate on A2A should include: (a) the passing of SMS between fixed network and mobile network; and (b) the access to information contents of any fixed networks or mobile networks by any fixed line user or mobile user seamlessly. Regarding SC 3.1, we suggest the deletion of "where directed by the Authority" in the second last line to avoid any uncertainty through reliance on direction by the TA.
- 52 We further submit that the current tariff disparity between Internet access via fixed network and mobile network should be addressed if the TA truly believes in FMC. We point out that a user with broadband Internet access over fixed network pays for a monthly line rental has unlimited access to the Internet, whereas a mobile user with Internet access via his mobile service provider has to pay monthly rental and usage charge for Internet access except for certain designated information access provided by his service provider. In a truly FMC environment, this situation would not be sustainable. A mobile user should be allowed to have the same experience for access to information as he would with fixed line service and be free to move from mobile network to the fixed network regardless of whether his network or service provider operates a fixed or mobile or converged network.

- 53 Further the TA should also spell out clearly when and under what circumstance(s) she would intervene by directing interconnection under A2A. From experience, this often involves protracted delays and great reluctance on the part of OFTA to intervene as it sought to minimize its exposure to legal risks from disputing operators. Ironically, the regulatory uncertainty and/or inaction have in turn imposed significant and unnecessary regulatory and legal costs to the operators and the service providers. The classic case is the open access to Service-based Operators for VOIP traffic.

Numbering plan and number portability (SC 4)

Question 3: Do you have any comments on the SC 4 which specifies the requirements in relation to number portability and numbering plan for compliance by a unified carrier?

- 54 We understand the TA wishes to streamline and/or align the operations of ONP and MNP by making them an obligation to all UCLs. Ironically, there would be no incentive for the operators to do so. The current regime which is guided by the principle of “users pay”, is working reasonably well – both users and service providers, get what they want at a price and a time acceptable to them.
- 55 Replacing the existing market-based “users pay” regime by an obligation-based system would mean a permanent loss of an important source of revenue to some carriers, the regulator would be given more responsibilities when it does not have to, and the users would be exposed to risk of not receiving services at a time and in a way that they want. The rationale being that service providers are reluctant to supply any services for nil return.
- 56 Regarding FMNP, given that the TA is still at the preliminary stage of gathering public opinion, not only we do not see there is any urgency to include this as part of the UCL and we doubt if the UCL is an appropriate “venue” for the TA to expand her powers in the absence of proven demand from the public and the support from the industry. In any event, this should be discussed in further details via a separate consultation paper.

Tariff publication (SC 7)

Question 4: Do you have any concern if the requirement to publish tariffs in the Government Gazette is waived or abolished for unified carriers and that they should only be required to publish tariffs using all of the Methods (2) – (5) in paragraph 31?

- 57 We appreciate the TA’s initiative to simplify the tariff publication process but regrettably this does not go far enough. Aside from creating more paper work for the operators and more filing work for OFTA, we do not see any real value for the publications, given that tariff information is already seamlessly available to customers in this competitive market. We suggest that the requirement for tariff publication be abolished altogether. This should also apply to all existing FCLs.

Ex post tariff regulation and notification of discount (SC 8)

Question 5: Do you agree that there is a need to maintain a notification requirement for tariff discounts offered by a unified carrier?

- 58 We query the real benefit of this requirement; it does not appear to serve any useful purposes other than creating administrative works for all concerned. Since the introduction of this requirement on PCCW-HKT with the FCL granted to it in 2005, we

assume PCCW-HKT has been notifying the TA of its tariff discounts, yet we are not aware of an occasion where the TA acted upon such discount by informing the public of same. In any case we have no objection to the continuation of this requirement provided it is only imposed on PCCW-HKT, we object to such requirement being imposed on other licensees, after all none of them has had to comply with such requirement in the past and why should it start now?

Billing and Metering Accuracy (SC 9)

Question 6: Do you agree that there is a need to maintain an obligation to ensure billing and metering accuracy by a unified carrier?

- 59 In view of the competitive market and the abundance of choice of service providers available to the consumers we believe this requirement could be dismissed. We also query the basis for extending this to the billing systems of licensees.

Directory information and directory information services (SC 11)

Question 7: Do you have any comments on the proposed SC 11 on directory services?

Question 8: Are there any pertinent issues other than those which are already identified to be addressed in a future review of directory services?

- 60 For the time being, despite both mobile and fixed licensees are facing similar requirements for publishing printed directory and operating directory information service, the former is not obliged to perform such requirements whereas the latter is expected by default to deliver as required in the licence. We are aware that some people might support the status quo on the ground that, in contrast to fixed line telephone numbers, which include many business numbers, mobile users tend to use their mobile phone numbers as their personal contact and therefore there is insufficient demand for a printed mobile phone numbers directory.

- 61 More importantly, in light of the increasing operating cost and more demanding and sophisticated user requirements, we submit that the current obligation-based system should be replaced by the “users pay” system, as the latter is obviously more conducive to the development of advanced services. This should also apply to all existing FCLs.

Emergency call service (SC 12)

Question 9: Do you agree that SC 12 should be maintained for all licensees of unified carriers? What are your views on HKPF’s proposals in paragraph 43?

- 62 We have no objection to the TA’s proposal. Concerning the HKPF’s proposal, this should be subject to further discussion between HKPF and operators. At the outset, we believe any proposal, if implemented, should be premised on a cost recovery basis.

Performance commitments – withdrawal and return of frequencies (SC 21) and rollout of network (SC 31)

Question 10: Do you have any further comments on the proposed SC 21 and 31 requiring the efficient use of frequency and compliance with network rollout plan by the unified carrier licensee?

- 63 We understand the TA wishes to encourage efficient use of spectrum but this proposal of giving the TA the power to withdraw any frequency spectrum previously assigned to the unified licensee at the TA’s discretion seems to be problematic. Pertinent questions

remain as to what amounts to efficient use and what is not; whether the TA is best qualified to define the criteria; whether the licensees should be given some discretion as to the speed of their rollout and spectrum use as they have paid for the spectrum right, especially in consideration of changing market/investment conditions.

Universal Service Contribution (SC 22)

Question (11): Do you have any comments on the latest form of the proposed SC 22 on USC?

64 As stated in WTT's response to the TA's 28 December 2006 consultation, we reiterate that the USC arrangement should be cancelled, as the costs for maintaining it simply do not justify its continuation. In any case if universal service arrangement were maintained, it would only be fair if PCCW-HKT bears the full cost of the universal service obligation given the various intrinsic values already and continuously accrue to PCCW-HKT and its affiliates.

65 With universal service obligation and the contributions over the years from the industry, PCCW-HKT has already built out a territorial-wide network which enables it and its affiliates to ride on that network to provide other non-basic services such as broadband services, pay TV and Wi-Fi hotspots at the public payphone kiosks, particularly in the non-urban areas. These have resulted in PCCW-HKT and its affiliates enjoying a de facto monopoly status in the broadband and pay TV services market in these areas. Under the USC regime, all contributors have no choice but to continue to subsidize the rollout, operating and maintenance of PCCW-HKT's network. In light of the above, we submit that SC22 should not be introduced.

Insurance (SC 24)

Question 12: Do you agree that the proposed SC 24 on the maintenance of a valid insurance policy is a reasonable requirement for a unified carrier?

66 WTT objects to this proposal, in our view the TA has embarked on an alarming direction of over-interference with the business practices of licensees.

Use of public facilities for provision of services (SC 25)

Question 13: Do you have any comment on the proposed SC 31 which shall be complied by a unified carrier making use of public facilities to provide services under its licence?

67 We have no comment on this proposal.

Provision of information to customers (SC 30)

Question 14: Do you agree that the proposed SC 30 on the provision of information to customers is a reasonable requirement for a unified carrier licensee?

68 WTT objects to this proposal as the TA has over-intervened into commercial practices by prescribing exactly how carriers should deal with their customers without demonstrable justification. We would support this requirement to protect consumers when they are dealing with service-based operators who could exit the market easily due to the relatively less costly and easy set up of these operators, indeed this was introduced in the first place to protect the consumers against fly by night service-based operators, but to introduce the same requirement to carriers is really unnecessary.

Disposal of assets (SC 32)

Question 15: Do you have any comments on the applicability criteria and triggering threshold for the prior consent under the proposed SC 24 on disposal of assets?

69 We have no comment on this proposal.

Building access (SC 33)

Question 16: Do you agree that building access requirements should be specified under the UCL similar to the licence conditions of some existing FC licensees?

70 We object to the proposal requiring licensees to comply with guidelines or codes of practice issued by the TA to facilitate and coordinate fair, non-discriminatory and orderly access to buildings. Such proposal is impractical and would only create administrative and operation burden for all concerned and delay network and service rollout.

71 We doubt that the TA would be able to enforce the provision in SC 33.1 in practice and we question how the TA would go about determining if there were an agreement or arrangement or understanding complained of and if such agreement or arrangement or understanding complained of has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access.

Payment of spectrum utilization fee (SC 34)

Question 17: Do you have any comments on a standard obligation under the UCL to pay SUF as required under the Ordinance?

72 We have no comment on this proposal.

Use of frequencies in IBCCDS (SC 35)

Question 18: Do you agree that a standard obligation should be added under the UCL to ensure the efficient use of frequencies in IBCCDS?

73 We have no comment on this proposal.

Service contracts and dispute resolution (SC 36)

Question 19: Do you agree that the TA should introduce a licence condition in the UCL to enable the issue of codes of practice in respect of customer contracts and dispute resolution issues? If yes, what is the appropriate scope of the licence condition?

74 We understand that the complaint statistics released by the TA may have led to increasing public attention, especially from the members of the Legislative Council. On the other hand, we are deeply concern with the TA's intention to intervene in private contracts. Further, given that the TA has already established various guidelines and code of practices and that the media alongside the Consumer Council are already heavily involved in monitoring the market, it does not appear to us that there is any need for more scrutiny from the TA. In response to fast-changing market conditions and consumer demand, service providers have every incentive to react quickly to any complaints in order to avoid any bad publicity, which could seriously tarnish its reputation and affecting its business. From this angle, it is difficult to see how more and more guidelines

and codes of practice would be constructive to the continuous development of the industry as a whole.

- 75 In regard to an independent adjudicator for resolving disputes between the public and the licensees, we have yet to see the result of the TA's pilot scheme in light of her initial proposal. On that note, it seems premature to conclude whether there is a need for extending the scheme beyond pilot terms. Even if there were evidence supporting the scheme, its complex nature would warrant more discussions amongst the stakeholders.

Question 20: Do you consider that the licence condition should be applicable to all types of carrier licences in general or only to the UCL?

- 76 This question begs clarification. However consistent with our argument that UCL should only be introduced for operators who wish to provide fixed and mobile services under one licence and that existing licences including FCL, MCL should remain available, we submit the proposed licence conditions should only be applicable to UCL.

Other special conditions

Question 21: Do you have comments on any other SCs that should be applied for unified carriers?

- 77 We submit the following comments regarding other SCs:

- *SC 5 (Accounting Practices)*: we object to this proposal, as it should apply solely to an operator with USO or being dominant;
- *SC 10 (Provision of Service)*: we object to this proposal, these provisions are not necessary given the competitive state of affair and multiple service providers. These provisions would only be necessary if there were only one service provider;
- *SC 13.2 and 13.3 (Records and Plans of the Network) and SC 15 (Changes to the Network)*: we object to them, as we believe they are difficult to implement in practice; and
- *SC 29 (Publication of Accounting Rates and Settlement Rates)*: identity of the operator concerned should not be disclosed.

Interconnection regime

Question 22: Do you have any comments on the interconnection regime for a unified carrier, including the arrangement during the transition period before the withdrawal of existing regulatory guidance on FMIC?

- 78 There is already a great deal of uncertainty and confusion during transition period for the phasing out of FMIC in April 2009 and we expect the situation to worsen closer to the expiration of the transition period in the absence of any regulatory guidance and a longer transition period. To allow for only 2 years transition period for FMIC, which has been in place for over a decade and then expect operators to conclude interconnection agreements amongst themselves within a 2-year period and for the traffic to be passed in the absence of an interconnection agreement is very unrealistic.
- 79 The TA proposed that for FMC services under UCL, TA would decide on a case-by-case basis whether a FMC service is primarily a fixed or a mobile service if she considers necessary to intervene. This proposal is simply not practical. We wonder under what

circumstances the TA would intervene, how long it would take for any determination to be issued and how she would go about deciding whether a service is primarily fixed or primarily mobile. This could lead to endless arguments, inconsistency and uncertainty.

- 80 The suggestion that for FMC service provided under the UCL, the TA would decide on a case-by-case basis whether a FMC service is primarily a fixed or a mobile service should the TA considers it necessary to intervene in interconnection matters between a UCL and service provider, again is simply not practical. Given the competitive market at the wholesale level, there is no reason for the TA to intervene in any interconnection disputes between a carrier and a service provider. In any case we wonder under what circumstances the TA would intervene, how long it would take for any determination to be issued and how she would go about deciding whether a service is primarily fixed or primarily mobile. Again the lack of any guidance would only lead to endless arguments, inconsistency and uncertainty.

Granting a UCL

Question 23: Do you have any comments on the general approach of granting UCLs under different scenarios as depicted in paragraphs 69 – 81?

- 81 We object to these proposals stated in paragraphs 69 – 81 of the TA's consultation paper. We reiterate that all existing FCL, FCRL, MCL and MCRL licences should remain available to those carriers who wish to continue to provide services under the current scope of their licences and on existing terms. Existing licensees should not be compelled to convert to UCL when their current licences expire. UCL should only be created primarily for carriers who wish to provide fixed and mobile services and FMC services.
- 82 With our suggested approach, the Government would retain flexibility and the different licensing framework would provide clarity to the industry and the general public on the types of services that a licensee provides easily. Further with our approach the conversion if any would be a lot more straightforward for the regulator and the licensees.

Replacement of 4 FTNS issued in 1995

Question 24: Do you have any comments on the proposed arrangement of replacement of the four FCLs issued in 1995, in particular on the preservation of existing rights and obligations under the new UCLs proposed to be granted for replacement of the licences?

- 83 Again we object to the proposal that the TA would not renew existing FTNS licences under the fixed carrier licensing regime on expiry and the forceful replacement of the existing FTNS/FCL with the UCL for reasons we discussed above.
- 84 We also object to the proposal that seeks to replace the blanket authorization of building access under section 14(1) by a case-by-case approval process. The case-by-case approval process will significantly increase the workload for both licensees and the regulator. The TA's proposal would also unduly delay the network and service rollout of licensees and increases their regulatory compliance costs. Further, we query if OFTA, given its current capacity, has sufficient manpower to handle the numerous applications and subsequent amendments from the licensees pertaining to section 14(1) applications and licensees should not be subject to increase licence fee due to unnecessary increase of administrative burden of OFTA.

- 85 We also object to the proposal on imposition of obligation to facilitate ONP and MNP at our own expenses under the new UCL.

Conversion of existing MCL

Question 25: Do you have any comments on the proposed arrangement of conversion of the existing MCLs, in particular on the transplanting of legacy rights and obligations to the new UCLs proposed to be granted for conversion of the licences?

- 86 We have no comment.

CONCLUSIONS

- 87 We are disappointed with the SCED and the TA proposals on the UCL; we believe their proposals go against the fundamentals of a free market and the Government's long-held light-handed regulatory approach.
- 88 The proposal to create a single UCL to replace all existing FCLs, MCLs, FCRLs, MCRLs restricts the licensing options available to the operators and the flexibility of the Government. Given the widening gap between the subscriber bases of fixed and mobile services, the risk of the latter trumping the former is inevitable under the UCL proposal. We urge the Government to take a prudent and cautious approach and maintain the availability of all FCL, FCRL, MCL and MCRL and that UCL should only be created as an addition to the Government's licensing framework and "optional" for licensees who wish to provide both fixed and mobile services under one licence and for FMC services.
- 89 We object to the proposed licensing fee schedule and submit that it is unjustified for the SCED and the TA to increase the customer connection fee and introduce a subscriber number fee. There is no justification for the increase of customer connection fee or the introduction of subscriber number fee. The increase would put enormous burden on the fixed line carriers and unfairly advantage the mobile carriers. Any increase would eventually find its way to the consumers. With over a decade of liberalization in the telecommunications market in Hong Kong and the complete open up of the industry as well as the Government's long-help light-handed regulatory approach, the role of the regulator should be significantly diminished and therefore their operating costs. Given the situation one would expect that the licence fees should be significantly reduced to benefit the consumers and the industry. Reduction of licence fees would no doubt fuel further investment and innovations in the industry thereby benefiting the consumers.
- 90 The proposals (i.e. more guidelines and code of practices for operators to comply) unjustifiably impose further regulatory compliance on the operators when they are already operating in a very competitive market. Further regulatory compliances would only increase their regulatory compliance costs and slow down their response to markets, ultimately the industry and the consumers will suffer.
- 91 On the whole, we fail to see that the SCED and the TA are working consistently with the Government's established principle of "*market leads and government facilitates*" as reiterated by the Chief Executive of the Hong Kong SAR and that the TA's proposal delivers her own mandate of "*providing a fair regulatory environment conducive to business investment*".

92 In order to safeguard healthy market developments from regulatory irregularities, inconsistencies and over-interference, WTT believes that FMC should be driven by the market and by the market alone. Given current market circumstances, we submit that all existing FCL, FCRL, MCL and MCRL licences should be retained and be made available to those carriers who wish to continue to provide services under the current scope of their licences and on existing terms. In the interest of minimizing irreversible market distortions, UCL should only be made optional and primarily for carriers who wish to provide fixed and mobile services under one licence and for FMC services. UCL should not be made compulsory for all other carriers.

Submitted by Wharf T&T Limited
4 March 2008