



CONSULTATION PAPER ON LICENCE FEES REDUCTION FOR FIVE TYPES OF LICENCES ISSUED UNDER THE TELECOMMUNICATIONS ORDINANCE (CAP. 106) AND INTRODUCTION OF A NEW FEE COMPONENT UNDER UNIFIED CARRIER LICENCES (“UCLS”)

SUBMISSIONS BY HONG KONG TELECOMMUNICATIONS (HKT) LIMITED (“HKT”)

1. On 8 June 2018, the Secretary for Commerce and Economic Development (“**SCED**”) and the Communications Authority (“**CA**”) jointly issued a consultation paper on *Licence Fees Reduction for Five Types of Licences Issued under the Telecommunications Ordinance (Cap. 106) and Introduction of a New Fee Component under Unified Carrier Licences* (“**Consultation Paper**”).
2. The Consultation Paper put forward proposals to reduce certain licence fees and introduce a new licence fee component for UCLs as summarized below:

Proposed Licence Fees Reduction	UCLs <ul style="list-style-type: none">• Reduction of customer connection fee from \$700 to \$500 for each 100 customer connections
	Public Radiocommunications Services (“PRS”) & Services-Based Operator (“SBO”) Licences <ul style="list-style-type: none">• Reduction of mobile station fee from \$700 to \$500 for each 100 mobile stations
	Mobile Radio System Mobile Station (“MRS”) & Private Mobile Radio System (“PMRS”) Licences <ul style="list-style-type: none">• Reduction of fee for each mobile station from \$270 to \$220
Introduction of a New Fee Component under UCL for the Provision of Wireless Internet of Things (“WIoT”) Services	Introduction of a new fee of \$200 for each 100 WIoT devices used by customers of WIoT services under the UCL

3. The Consultation Paper had been much anticipated by the industry since the Court of Final Appeal (“**CFA**”) handed down its judgment in FACV No.11 of 2017 on 27 December 2017 (“**Judgment**”) against the Government. The Judgment set an expectation that the SCED/CA would carry out a thorough and transparent review of the past (flawed) methodology for setting licence fees and put forward a new basis that would recognize and fully take into account

the CFA Judgment, and that the Consultation Paper would contain sufficient detail on this new methodology to allow meaningful input from the industry.

4. Yet after nearly six months of almost total silence the SCED/CA issued a so-called “Consultation Paper” which, despite its enormous significance, is a mere six pages long¹ and in which the explanation for the proposed licence fee reduction for UCLs (by way of example) is contained in a mere sixteen lines. Unbelievably, not a single reference was made to the CFA Judgment.

5. HKT was extremely shocked and appalled by the woefully inadequate information and explanations provided by the SCED/CA in the Consultation Paper. It was as if the Government were completely ignoring the Court and acting above the rule of law.

6. This was made more appalling by the fact that HKT had, since the CFA Judgment was handed down on 27 December 2017, made repeated attempts to engage the Government in discussion but all to no avail.

7. Upon release of the Consultation Paper on 8 June 2018, however, it was particularly noteworthy that although the Judgment expressly ruled that no account should be taken of notional tax and dividends when prescribing the level of licence fees, it was not immediately obvious to HKT, from the limited explanations contained in the Consultation Paper, whether the SCED/CA had taken heed of this since no mention at all was made of the Judgment in the Consultation Paper.

8. By failing to provide full explanations and the necessary information/documentation which would enable the industry to respond constructively, the Consultation Paper made a mockery of the consultation process and insulted the industry by expecting the licensees to simply accept any reduction in licence fees offered without questioning the manner in which the reduction had been derived or the adequacy of the reduction.

9. Accordingly, HKT, together with a group of other operators, jointly wrote a letter to the SCED/CA on 27 June 2018 asking for more information to enable them to provide meaningful comments on the Consultation Paper (“**Letter**”). While some limited further details and explanations were provided by the

¹ Excluding the three Appendices, one of which was simply a reproduction of the relevant extract from the Telecommunications (Carrier Licences) Regulation describing the existing licence fees payable for UCLs.

SCED/CA on 16 July 2018 (“**Additional Paper**”)², it is still woefully inadequate and HKT continues to have fundamental questions regarding the basis of the proposed licence fee reduction.

10. In particular, HKT has the following very fundamental concerns about the current consultation:

- (i) Despite the limited additional information provided in the Additional Paper, it remains entirely unclear what methodology and actual figures have been used to calculate the licence fee reduction. There is simply not enough information available for HKT to make any kind of constructive and considered comments on the proposals in the Consultation Paper;
- (ii) To the extent that HKT is able to make any sense of the proposals contained in the Consultation Paper, it appears that the SCED/CA are planning to use the retained earnings to reduce future licence fees. However, this approach makes no sense whatsoever. Retained earnings are, by definition, spoils from excessive licence fees paid by licensees in the past and are based on an unknown (to the licensees) method of calculation which may well be disputed by the licensees if they understood what it was. Retained earnings belong to the licensees who have overpaid in the past and it follows that they must, necessarily, be dealt with prior to and separately from any calculations regarding the level of future licence fees. The Government’s proposal to refund to the licensees the retained earnings via a licence fee reduction spread out over five years risks unfairly penalizing licensees who have paid excessive and illegal licence fees in the past (by not refunding them the full amount to which they are entitled) while unfairly benefitting others (for example, new licensees) who have not overpaid in the past but who will receive the benefit of the reduced licence fee going forward;
- (iii) The Government’s approach is completely back to front. The Government should first agree a methodology for calculating the amount of past excessive payments and the amounts which must be repaid to licensees. This methodology must be agreed with the affected licensees and the excessive payments must be returned to them with

² HKT also notes that most (though not all) of the information in the Additional Paper was published on OFCA’s website on the same day.

interest. Only then, with a clean slate and an agreed methodology in place, can the Government begin to assess the appropriate reduction in licence fees going forward. HKT is astonished that now, more than seven months after the Judgment, the Government has made so little progress with these complicated issues and exhibits such complete indifference to engaging properly with the industry on a matter of such fundamental importance; and

- (iv) As to the methodology, cost recovery accounting requires that one start by identifying the costs to be covered and the permitted return and then examine how this amount should be funded by licence fees (and any other income). However, the Consultation Paper puts the methodology entirely the wrong way round and ignores fundamental aspects of the required approach.

11. Without prejudice to its primary position outlined above, HKT has the following specific comments on the proposals in the Consultation Paper and on the Additional Paper. HKT is primarily concerned with the following two proposals put forward in the Consultation Paper which affect the future licence fees payable for UCLs:

- (i) The proposed licence fee reduction³ of \$200 (from \$700 to \$500) for each 100 customer connections, i.e. a reduction of \$2 per customer connection; and
- (ii) The introduction of a new fee component of \$200 for each 100 WIoT devices under the UCL.

HKT's comments below are therefore focused on these two specific proposals.

Proposed Licence Fees Reduction

12. The only explanation provided by the SCED in the Consultation Paper to support the licence fee reduction is contained in paragraph 6 as follows:

According to the records of the Office of the Communications Authority ("OFCA"), the number of customer connections for UCLs has increased by

³ References to the licence fee reduction proposal in the Consultation Paper hereon specifically refer to the reduction in the customer connection fee from \$700 to \$500 for each 100 customer connections pertaining to UCLs.

16.1%, from 14.9 million in 2012-13 to 17.3 million in 2017-18, and it is anticipated that the number of customer connections for UCLs will continue to grow in the coming years. Taking into account the projected growth rate, the SCED proposes to reduce the customer connection fee under UCLs from \$700 to \$500 for each 100 customer connections.

13. The Consultation Paper also states, in paragraph 12, that:

If all the above proposals are implemented, the projected retained earnings of OFCATF are expected to drop from \$166.2 million to \$0.3 million at the end of the five-year period (i.e. 31 March 2023).

Though the significance of this statement is not immediately clear.

14. In response to questions raised in the Letter, the Additional Paper adds that, since the financial projections in Appendix C of the Consultation Paper show all of the retained earnings being used up by the end of the OFCATF's fifth financial year as a result of applying the new licence fee, the proposed licence fee reductions must be in compliance with the Judgment. In addition, the Additional Paper states that as neither notional profits tax nor dividends have been included in setting the licence fee the proposed licence fee reduction has therefore given effect to the Judgment.

15. In the Additional Paper, the SCED/CA also: (i) provide further details regarding the basis on which the financial projections for certain items have been made as requested in the Letter; (ii) state that OFCA's Annual Business Plans and Corporate Plans requested in the Letter will not be furnished; and (iii) confirm that the total revenue of the OFCATF has been used to meet the overall expenses for carrying out work in relation to both the telecommunications and broadcasting sector and that no separate account is maintained for telecommunications functions (also in response to a specific question raised in the Letter).

16. However, to the extent that it is able to understand anything meaningful from the Consultation Paper and the Additional Paper, HKT does not agree with the manner in which the SCED/CA appear to be seeking to implement the Judgment. HKT still considers that the information/explanations provided by the SCED/CA are insufficient and highly unsatisfactory. Based on the limited information available to it, HKT has the following specific comments.

Financial projections adopted in the Consultation Paper 2018-19 to 2022-23

17. HKT understands that the retained earnings brought forward (of \$98.3 million shown for 2018-19 in Appendix C of the Consultation Paper) represent excess licence fees charged by OFCA for the two years, 2016-17 and 2017-18, and are proposed to be refunded via future licence fee reductions to the licensees. Any retained earnings for each subsequent year starting from 2018-19 will also be refunded in this way. This give rise to several issues:

- While the SCED/CA state in the Additional Paper that they have not included any notional profits tax or dividends in the financial projections from 2018-19 to 2022-23 in compliance with the Judgment, it is unclear whether this also applies to the retained earnings brought forward of \$98.3 million in 2018-19. A footnote to the financial projections in Appendix C states:

The retained earnings brought forward to 2018-19 (i.e. \$98.3M) represents the surplus (including dividend and provisions for taxation withheld and interest income) retained by OFCATF from 2016-17 to 2017-18.

Is the \$98.3 million stated after deduction of notional profits tax and dividends? If that is the case, the amount to be refunded to the licensees (by any method) will be too low.

- As the retained earnings brought forward of \$98.3 million relate to licence fee over-payments which have occurred prior to 2018-19, this full amount should be refunded as soon as possible in cash to the operators in one go along with any associated interest. Spreading the refund over five years via future licence fee reductions simply delays the return of monies which were charged and collected *ultra vires* and which rightfully belong to the licensees from whom they were illegally extracted. Any licence fee reductions which are to be applied from 2018-19 onwards will therefore need to be separately calculated as this exercise must be divorced from the refund of the \$98.3 million. In fact, any licence fee reductions to be implemented should be backdated to take effect from 1 January 2018 (which immediately follows the handing down of the Judgment) and not 1 January 2019 as proposed in the Consultation Paper.
- In addition, in the Additional Paper, OFCA states that:

[S]taff cost amounts to over 80% of the total expenditure. Increase in expenditure over the five-year forecast period is mainly due to inflationary adjustment of staff cost at a standard projection rate applicable to all Government departments.

However, this does not seem to be borne out by the figures shown in the financial projections contained in Appendix C of the Consultation Paper. The annual % increase in expenditure for the 5 years shown in the financial projections is not constant and there appears to be a significant jump in the final year between 2021-22 and 2022-23, which seems to make it doubtful that a “standard projection rate” has been used:

Financial Year	% Increase in Expenditure over previous year
2019-20	2.36%
2020-21	2.50%
2021-22	2.35%
2022-23	3.16%

In view of the jump in expenditure that has been projected, it is even more important that the Annual Business Plan and Corporate Plan should be shared with the industry to facilitate a better understanding of OFCA’s work plans which justify the increase in expenditure.

- OFCA also explains in the Additional Paper that the target return is calculated such that the annual operating surplus (excluding interest income) is 5.5% of Average Net Fixed Assets (“**ANFA**”)⁴. While the target rate of return has been progressively reduced over the years⁵, this belies the fact that the *actual* return earned by OFCA has for many years far exceeded its *required* target return. The amount of excess profits earned by OFCA (or OFTA prior to 2012) for the past 10 years is shown in the **Appendix**. For instance, for the financial year 2011-12, OFTA earned a return of 48.8% when its target return was only meant to be 8.5%,

⁴ HKT would contend that interest income should be included as part of the operating surplus used to compute the return for the year as this is income which has been generated by the OFCATF. The CA/OFCA have no legal basis to ignore or expropriate income in the OFCATF, whether interest on investment of previously levied licence fees or otherwise.

⁵ The target rate of return for the first OFTA Trading Fund (“**OFTATF**”) (10 months ended 31 March 1996) was 16%.

representing excess profits made by OFTA to the tune of some **\$67 million** in that year alone! Most, if not all, of this excess profit will have been generated from over-charging for licence fees. On this basis, the \$98.3 million retained earnings which OFCA so generously intends to refund to the licensees over a period of five years is clearly woefully inadequate.

In any case, since figures for the ANFA have not been disclosed (despite having been requested), HKT is not able to verify the validity of the amounts projected each year from 2018-19 to 2022-23 for the target return.

- The proposed licence fee reductions still leave the enormous Development Reserve of around \$690 million⁶ untouched. The Development Reserve, just like retained earnings, has been built up over the years from excessive profits earned by OFCA through over-charging licence fees, and has been sitting idle for years. OFCA has simply failed to cash manage and the reserves are obviously excessive since they have never been drawn on throughout the life of the OFCATF. The significant balance sitting in the Development Reserve should therefore also be taken into account when deciding whether or not it is necessary to levy further licence fees or when computing the level of the licence fee reduction.
- The proposal put forward in the Consultation Paper results in the OFCATF making a loss (after deduction of the target return required by the Government) in each of the financial years from 2019-20 to 2022-23. HKT would be concerned if the SCED/CA were to suggest that the licence fee will need to be increased from 2023-24 onwards in order for OFCA to generate sufficient income to meet its target return. HKT would wish to see any licence fee reductions set so as to be sustainable in the long term rather than having to deal with a level of licence fee which fluctuates over time. It is therefore important that the SCED/CA take this into account and explain their thinking in this regard to the industry when finalizing the level of the licence fee reduction. This is yet another reason why the methodology needs to be clearly discussed, understood

⁶ Per the OFCATF Report for 2016-17, a total of around \$690 million has been accumulated in the Development Reserve.

and agreed up front and why the issue of past overpayments needs to be dealt with separately and prior to the issue of future licence fees.

Customer connection fee

18. Paragraph 6 of the Consultation Paper attempts to justify a reduction in the customer connection fee (for UCLs) on the basis that the number of customer connections has increased in the past and is anticipated to continue growing in the future. However, the rationale for reducing the customer connection fee and not any other licence fee component is not explained. For example, the other fee components such as the flat fee of \$1 million, the spectrum administration fee and the number fee have all been left untouched.

19. This appears to be yet another way in which the proposed reduction may distort the benefits accruing to licensees by not fairly allocating the reduction in fees among licensees, particularly considering the fact that the customer connection fee component of some licensees may not be as significant as the amounts paid for their other fee components, such as the number fee. The SCED/CA do not appear to have considered at all whether or not there is room for reduction in these other licence fee components which, if implemented, may result in a fairer distribution of the benefit of the reduced licence fee.

20. This also highlights again the importance of first agreeing a methodology for calculating the licence fee refunds before proceeding to review how to calculate future licence fees.

21. Furthermore the focus on different elements in different licences is unclear, inconsistent, unexplained and seems unfair. For example, there seems to be an inconsistency in the logic used to justify a reduction in the customer connection fee and that used to explain the proposed reduction of the mobile station fee for MRS and PMRS Licences. While the number of customer connections is expected to *increase* in the future (at a rate of 2% per the Additional Paper), the number of mobile stations for MRS and PMRS Licences is expected to remain *fairly static* (at 0% growth per the Additional Paper). However, reductions are being proposed for both customer connection and mobile station fees.

Efficient operations

22. According to the provisions of the Trading Funds Ordinance (Cap 430)

(“TFO”) and as confirmed by the CFA in the Judgment, the level of the licence fee must be computed on the basis of generating sufficient revenue to enable OFCA to cover its costs⁷. However this provides little assurance to the industry that OFCA’s operations are being run efficiently such that licensees are not being required to pay excessive licence fees to cover unnecessary costs.

23. In this regard, it is relevant to note that under Section 6(6)(a) of the Trading Funds Ordinance, the general manager of the OFCATF is required to manage the trading fund with the objective of:

[...] providing an efficient and effective operation that meets an appropriate standard of service

24. What assurances can be provided by OFCA that its operations are being run efficiently such that the licence fees being levied on the operators to cover OFCA’s operating costs are not excessive?

25. HKT notes that when the Broadcasting Authority merged with the Telecommunications Authority in 2012 to form the CA, efficiency gains were promised:

*A unified regulator will benefit both the regulator and the industry. In the first place, the single regulator will be a one-stop-shop for resolving regulatory issues in a converging environment. There will also be better assurance of consistency in regulatory approach and practice in a converged environment. Such an arrangement will also be helpful to the industry as it would reduce administrative work and enhance working efficiency. On the other hand, the regulator can pool different kinds of expertise together to tackle a communications issue.*⁸

[...] Since technical and economic regulation of the broadcasting and telecommunications sectors requires largely the same expertise, there is great potential to achieve operational synergy and efficiency by putting

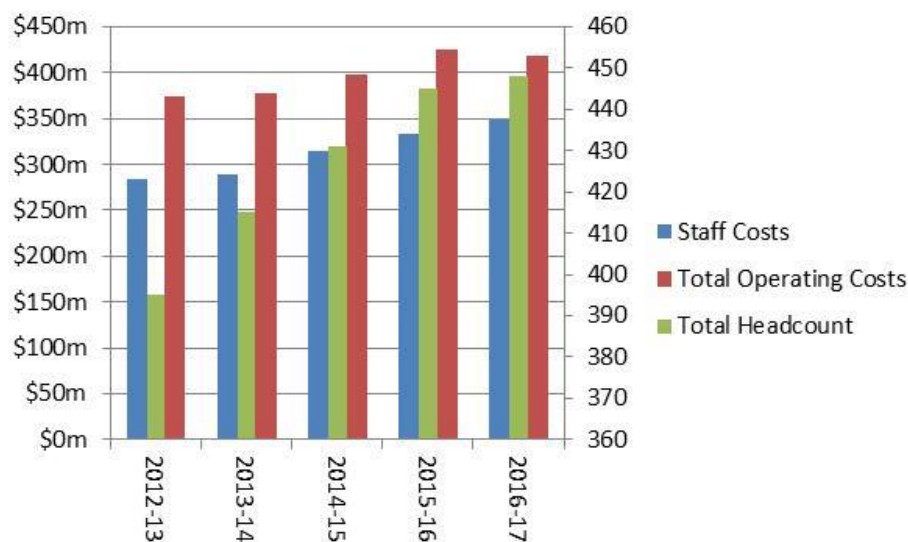
⁷ See for example section 3(1) and 6(6) TFO.

⁸ Paragraph 24 of paper on *Consultation on the Establishment of the Communications Authority* (March 2006) issued by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau.

these regulatory functions and the requisite experience and expertise in one single organisation.⁹

[...] we envisage that there will be increase in the operating expenses of the new unified regulator at least for the first few years since its inception. In addition, the administrative work for supporting a collective decision-making system for regulatory matters in the entire communications sector should not be underestimated. However, we envisage streamlined practices, operational synergy, and deregulatory measures will eventually result in savings. Any staff savings will be redeployed elsewhere and there is no question of forced redundancy. The net cost effect and its impact on the licence fee will need to be assessed in the medium term, say, three years after the commencement of operation of the CA.¹⁰

26. Yet, per the OFCATF Reports, staff numbers, for example, have been increasing every year since the merger and staff/operating costs continue to rise:



Source: OFCATF Reports 2012-13 to 2016-17

27. HKT does not understand why the headcount is rising. The obvious problem with cost recovery pricing, namely ensuring that costs are not increased by sloppy work or less innovative management, is addressed in the TFO by sections 6(3) and 6(6)(a). Under section 6(3), the OFCATF's services are

⁹ Ibid., paragraph 26.

¹⁰ Ibid., paragraph 59.

not to be varied other than in accordance with the Legislative Council Resolution. Hence, apart from changes in costs attributable to the 2012 amendment to the Resolution, there should be no change in costs after adjustment for inflation. Further, section 6(6)(a) sets an objective of providing an efficient and effective operation. Under these two subsections, there should ordinarily be no creation of additional posts. We fear a reversion to Parkinson's Law which you will know holds that work expands so as to fill the time available for its completion, thus explaining the growth of bureaucracy if left unchecked.¹¹ This would undermine, rather than promote, the purposes of the TFO and it would be unlawful.

28. The fact that the OFCATF is audited on an annual basis provides little assurance in this regard – the Audit Commission is simply required to express its opinion that the financial statements give “a true and fair view of the state of affairs of the OFCATF” as at a certain date, but passes no judgment on how *efficiently* OFCA's operations are being run.

29. HKT would therefore suggest that the Audit Commission conduct a Value for Money Audit for OFCA, which specifically examines the economy, efficiency and effectiveness with which an audited body has discharged its functions. HKT would welcome any suggestions for rationalisation of OFCA operations put forward by the Audit Commission or indeed from the industry in this consultation exercise in order to reduce costs.

30. As the SCED/CA have highlighted in the Additional Paper, staff costs account for over 80% of the total expenditure in the OFCATF and, per the 2016-17 OFCATF Report, the number of staff stood at 448, so a Value for Money Audit could potentially identify areas for rationalization, which would ultimately allow for further licence fee reductions.

31. In view of the number of years in the past in which the OFCATF has been consistently exceeding its target return by a large margin, the need for a Value for Money Audit seems even more pressing.

Annual review of licence fees

32. A regular comparison between the forecasts/budgets made by OFCA and the subsequent financial results, say on a yearly basis, would provide an indication as to whether the licence fees have been set at an appropriate level

¹¹ See Parkinson, Cyril (1955). Parkinson's Law, The Economist, 19 November 1955.

for that year. Forecast/budgeted surpluses consistently exceeding actual surpluses would be a clear sign that licence fees need to be reduced.

Annual Business Plan and Corporate Plan

33. In the Additional Paper, OFCA states that the Annual Business Plan and the Corporate Plan are prepared for the purpose of the Government's internal control and management of the OFCATF. This is not correct. They are prepared for presentation and explanation to the CA, which is supposed to be independent of the Government. It is these documents which will be relied upon to justify the level of reduction recommended by OFCA to the CA.

34. OFCA also states that:

[...] not all information/materials therein are related to the current consultation.

However, irrelevant information could be redacted provided that this does not destroy the sense of the report. This does not justify refusal to disclose the plans. These are plans for the expenditure of public money and HKT considers there to be no good reason for such excessive secrecy.

35. In *PCCW-HKT Telephone Ltd v Commerce Secretary*, HCAL 51/2013, 14 July 2014, at [79] to [80], having heard arguments by leading counsel for both sides, Ng J noted Ivanhoe Chang's evidence for the Respondents that the Annual Business Plan and Corporate Plan were prepared by OFCA every year for:

[...] the purpose of financial management and planning.

36. The judge said:

If so, it is difficult to see how the Respondents can argue that the plans prepared for the [relevant years] are irrelevant to the Decision or their production is unnecessary.

37. The judge accordingly ordered production. Similarly, the Annual Business Plan and Corporate Plan were referred to and relied upon by the Respondents at various other points and disclosure was ordered on these grounds also: see [87], [90]-[91], and [105].

38. On this basis, HKT fails to see any reason why the Annual Business Plan

and Corporate Plan covering the period for which the licence fee reduction is proposed (2018-19 to 2022-23) should be withheld by OFCA.

Cross-subsidization of the cost of broadcasting activities by telecommunications licence fees

39. In the Additional Paper, the SCED/CA state that the scope of services to be provided by the OFCATF (prior to 2012, the OFTATF) has, since 2012, expanded to cover not only services under the Telecommunications Ordinance, but also those under the Broadcasting Ordinance, and that the total revenues collected in the OFCATF (i.e. including the licence fees which are the subject of the Judgment and of the Consultation Paper) have been used to meet the overall expenses for carrying out work in relation to both the telecommunications and broadcasting sectors. This means that the licence fees collected from the telecommunications licensees are not only being used to fund the cost of activities carried out by OFCA in respect of the telecommunications sector, but also the broadcasting sector.

40. This cross subsidization is not permitted per the Judgment paragraph 59 which expressly states that a “fee”, i.e. the licence fee in this case, should only relate to the payment for the administration of a legislatively based licensing scheme to control particular activities by licensees.

In general, where used in public law a “fee” identifies a payment for or in respect of services rendered or for the administration of a legislatively based licensing scheme to control particular activities by licensees, whereas a tax is rather a means of obtaining revenue for governmental purposes. When the power to license is an element in a regulatory scheme, the power does not extend to authorize the imposition of a fee which in substance is a tax upon the activity to be conducted under cover of the licence. If the licensee as a practical matter has no choice in the conduct of its affairs as to whether it acquires the licence and there is an insufficient relationship between the “fee” for the licence and the administration of the scheme, then, at least to the extent of the excess, the “fee” may properly be seen as a tax.

41. The telecommunications licence fees should therefore only be set at a level to cover the cost of the activities conducted by OFCA in respect of telecommunications licences and not broadcasting licences, whose licence fees are separate. On this basis, it is clear that OFCA is not allowed to use the

telecommunications licence fees to cross-subsidize the costs of the broadcasting sector. If there is any element of such cross-subsidization this would mean the telecommunications licence fees have been set illegally too high and must be further reduced. Furthermore, this would need to be taken into account when calculating the refund due to licensees for past excessive fees.

Introduction of a New Fee Component under UCL for the Provision of WIoT Services

42. The SCED explains, in the Consultation Paper, that the new fee component in respect of WIoT devices is being introduced in order to align with the charge currently imposed for the same type of service provided under the WIoT Licence created on 1 December 2017. At the same time, the SCED states that the existing customer connection fee will not be applicable to WIoT devices which are connected to the network of a UCL holder.

43. In this connection, HKT notes that that it had previously written to OFCA regarding the new WIoT Licence urging OFCA to:

- Set the level of the WIoT device fee under UCLs at the same level as the fee being charged for WIoT devices used by customers of WIoT services provided under the new WIoT Licence; and
- Where the payment of a WIoT device fee applies under a UCL, the same devices should be exempt from the payment of the customer connection fee currently being applied.

44. HKT is therefore pleased to see that its views have been considered and that both of these matters are now proposed to be implemented by the SCED per the Consultation Paper. Accordingly, HKT concurs with the SCED's proposals in this regard.

45. HKT also notes however that, as pointed out in its previous communications with OFCA on this topic, there are disparities between the licence conditions under the existing UCL and those under the new WIoT Licence. These include the conditions regarding Number Portability, Accounting Practices, Universal Service Contribution etc. HKT considers that changes should be made to the current UCL conditions to align these with the conditions of the new WIoT Licence where the provision of WIoT services is concerned.

Conclusion

46. This long over-due review of the licence fees was much anticipated by the industry. While HKT welcomes any proposal for a reduction in licence fees, for the reasons outlined in this submission, HKT is extremely disappointed and concerned about the lack of supporting information and explanations provided by the SCED/CA which mean that HKT is unable to comment meaningfully on the appropriateness of the proposals set out in the Consultation Paper.

47. To the extent that HKT is able to comment at all, HKT is extremely concerned that the Government is approaching the very complex issue of implementing the Judgment completely the wrong way round. The methodology used to calculate the amount of the refund due to licensees, who have paid excessive and illegal licence fees in the past, must be agreed first as this will have a direct bearing on how future licence fees for 2018-19 onwards are calculated. Then this money (including the retained earnings) must be returned, with interest, to the licensees who have overpaid. Only then can the future licence fees be calculated.

48. HKT is disappointed that more than seven months after the Judgment, the Government appears to have made barely any progress in addressing the important issues raised in the Judgment. HKT is also frustrated by the Government's manifest unwillingness to engage in any form of open and transparent discussions with the industry. More than seven months after the Judgment, HKT would simply like to understand clearly and fully what the Government's plans for implementing the Judgment are. This piecemeal and insubstantial approach to implementing a CFA Judgment is not acceptable.

49. This submission is made by HKT without prejudice to the legal proceedings it has commenced against the Government under HCA 97/2015 and HCA 1129/2018 and its position that this consultation is unlawful in view of the inadequacy of the information that has been provided and for the other reasons more fully set out in the Letter dated 27 June 2018. HKT expressly reserves all of its rights and remedies, including under the relevant ordinances at law or otherwise.

Submitted by
Hong Kong Telecommunications (HKT) Limited
6 August 2018

Appendix

Excess Profits earned by OFCA 2006-07 to 2016-17

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	Total
Target Return %	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	6.7%	6.7%	6.7%	6.7%	6.7%	
Target Profit	\$17m	\$17m	\$16m	\$16m	\$15m	\$14m	\$11m	\$12m	\$11m	\$11m	\$10m	
Actual Profit	\$50m	\$51m	\$31m	\$59m	\$77m	\$81m	\$54m	\$45m	\$40m	\$26m	\$34m	
Actual Return %	24.3%	25.4%	15.9%	32.2%	44.7%	48.8%	31.4%	26.0%	24.2%	16.3%	22.3%	
Excess Profit	\$33m	\$34m	\$15m	\$43m	\$62m	\$67m	\$43m	\$33m	\$29m	\$15m	\$24m	\$398m

Note: Calculation of "Profit" follows the definition in the OFCATF Reports for "Total Comprehensive Income"

Total Excess Profits:
\$398,000,000