WTT HK LIMITED

Submission in response to 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

6 August 2018

1. Introduction

1.1 WTT HK Limited ("WTT") welcomes the public consultation from Commerce and Economic Development Bureau (Communications and Creative Industries Branch) ("CEBD") and Communications Authority ("CA") on the proposals to reduce the licence fees for various licences, as set out in the consultation paper issued on 8 June 2018 ("Consultation Paper").

1.2 In the Consultation Paper, CEBD and CA propose to reduce the customer connection fee component of the Unified Carrier Licence ("UCL") from $700 per annum for each 100 customer connections to $500 per annum for each 100 customer connections, i.e. a reduction from $7 to $5 per annum for each customer connection, with effect from January 2019. Meanwhile, the other licence fee components of the UCL (e.g. flat fee of $1 million, allocated subscriber number fee of $3 per number, base station fee and radio frequency management fee) however, are to remain unchanged.

1.3 WTT raises the following concerns regarding the Consultation Paper's proposals on the UCL:

(a) timing of consultation and implementation of proposals;
(b) glide path for licence fee reduction;
(c) scrutiny of expenditure;
(d) streamlining measures;
(e) international best practice;
(f) unified regulator synergies;
(g) telecommunications cost accounting separation;
(h) level of number fee;
(i) distributional analysis; and
(j) way forward.

These concerns are explained in further detail below.

2. Timing of consultation and implementation of proposals

2.1 WTT believes this licence fee review is long overdue since the previous review undertaken by CEBD and CA in 2012. Over the past six years, WTT has made numerous submissions to CEBD and OFCA requesting for a review but our requests have been continually rebuffed until now. This review comes at a crucial stage given the consequences of the recent judgment of the Court of Final Appeal which has rendered the current licence fees promulgated following the 2012 review[1], as unlawful.[2]

[1] Telecommunications (Carrier Licences) (Amendment) Regulation 2012 (https://www.gld.gov.hk/egazette/pdf/20121650/es220121650188.pdf), which amended the Telecommunications (Carrier Licences) Regulation with effect from 1 March 2013.

[2] *PCCW-HKT Telephone Ltd and Hong Kong Telecommunications (HKT) Limited v. The Secretary for Commerce and Economic Development and The Communications Authority* [2017] HKCFA 105, 27 December 2017, http://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=112877, paragraph 77.

2.2 The scheduled implementation date of the amending regulation for the proposals is January 2019. We enquire whether it is possible for the implementation date to be set at an earlier date, e.g. the date of the Court of Final Appeal judgment or the date of issue of the Consultation Paper. While we note that it is quite extraordinary for a government or administration to enact retrospective legislation, CEBD and CA would agree that the licence fee issue is highly exceptional due to the overhanging effect of the Court of Final Appeal judgment which declared the current licence fees to be unlawful. If the effect of the amending regulation were to confer a benefit to the affected parties by way of reduced licence fees, then no injustice to the parties would arise from compliance with ex post facto law.

2.3 Until the legal defects of the current licence fee regulation are corrected, the current licence fees are arguably unenforceable which may have a serious impact on the financial stability of the OFCA Trading Fund. In that context, there is overwhelming legal as well as public policy reason for ameliorating the defects of the current licence fee regulation as soon as reasonably practicable.

2.4 Accordingly, we request CEBD and CA to seriously consider an earlier implementation of the licence fee reduction.

2.5 We also request CEBD and CA to advise the industry on how they will recompense the past overpayment by telecommunications licensees of licence fees that were made throughout the past years pursuant to unlawful regulation.

3. Glide path for licence fee reduction

3.1 The Consultation Paper provides financial projections of the OFCA Trading Fund over a 5-year period for two scenarios, one based on the existing level of licence fees and the other after taking into account the proposed licence fees reduction. The proposed licence fee reduction involves depleting the retained earnings and annual budget surpluses over a 5-year time horizon.

3.2 The financial projections suggest that there is no scope for a greater quantum of reduction for licence fee for the 5-year period and that following the end of the 5-year period the proposed licence fee reduction may be unsustainable and may need to be revisited and possibly wound back in order to maintain budgetary balance going forward.

3.3 Given the finite quantum of retained earnings and forecast annual budget surpluses as identified in the financial projections, debate centres on the glide path for returning the excess funds to the licensees, particularly the retained earnings.

3.4 It is unclear why CEBD and CA are proposing for the return of the currently held retained earnings ($98.3 million at the beginning of 2018-19) to take place over a five year period. By CEDB and CA's admission in the Consultation Paper, the $98.3 million in retained earnings brought forward to 2018-19 comprise dividend and provisions for taxation withheld, which are elements ruled by the Court of Final Appeal to be unlawful exactions made by the Government from telecommunications licensees. WTT submits that OFCA should return the retained earnings to licensees immediately. It would be unconscionable for the OFCA Trading Fund to continue to maintain control over such unlawful exactions any longer than necessary, as those unlawful exactions represent the licensees' monies, and the continued retention of those monies by the OFCA Trading Fund exposes OFCA to liability for judgment interest. We request CEBD and CA to prepare a budget for the return of the entire retained earnings to the licensees promptly, and on that basis to identify a sustainable licence fee reduction thereafter, even if it may be less than the proposed reduction of $700 to $500 per 100 customer connections set out in the Consultation Paper.

3.5 We would be perturbed if the 5-year gradualist licence fee reduction proposals in the Consultation Paper pre-suppose that the licence fee would be locked in for the next five years and that there would not be any licence fee review until the end of the five year period. We urge CEBD and CA to undertake review of licence fee levels and provide reports regularly on an annual basis.

3.6 We also ask CEBD and CA to assess what level of Development Reserve (currently HK$690,165,000) is necessary to ensure budget stability as well as consider options to return any identified excess to licensees in due course.

4. Scrutiny of expenditure

4.1 The setting of licence fee, being the predominant form of revenue to the OFCA Trading Fund, is largely influenced by the level of OFCA's budget expenditures.

4.2 OFCA's financial projections have been provided in the Consultation Paper without any supporting materials. Following written request dated 27 June 2018 from WTT and certain other carrier licences for further documentation, OFCA in its letter dated 16 July 2018 ("July Letter") has provided clarifications of some of the assumptions used in the forecasts of revenue and expenditures.

4.3 Unfortunately in our view, OFCA has declined to provide the further documentation as requested. In order to better understand and analyse the financial projections, we urge CEBD and CA to furnish details of:

- Annual Business Plan and Corporate Plan for the forecast period;
- Any efficiency reviews undertaken in recent years; and
- Past financial projections so that we may compare them to the actual financial results achieved by OFCA through the years as set out in the OFCA Trading Fund reports, in order to gauge the reliability of OFCA's budget forecasting.

4.4 We remind CEDB and CA that under the Trading Fund Ordinance ("TFO"), the manager of the OFCA Trading Fund is required to manage the trading fund with the objective of "*providing an efficient and effective operation*".[3]

4.5 We query whether due consideration has been given by OFCA to maintain efficient and effective operation in terms of key expenditure areas such as staffing levels, salaries and office rents.

OFCA's workload

4.6 Over recent years, we should reasonably suppose that OFCA's workload has been diminishing. For example:

[3] Trading Funds Ordinance (Cap 430) (https://www.elegislation.gov.hk/hk/cap430), section 6(6) provides:
"(6) The general manager shall manage a trading fund with the objectives of—
(a) providing an efficient and effective operation that meets an appropriate standard of service;
(b) within a reasonable time, meeting expenses incurred in the provision of the government service and financing liabilities of the trading fund out of the income of the trading fund, taking one year with another; and
(c) achieving a reasonable return, as determined by the Financial Secretary, on the fixed assets employed."

- ***Competition law***: OFCA had already been carrying out its duties in relation to competition matters under the TO (former sections 7K, 7L, 7N and 7P) ever since those sections came into being. The number of cases actually handled by OFCA is quite small. Indeed, since 2008, there has been perhaps just one major competition law case handled by OFTA/OFCA and only one major merger review. It is therefore unlikely that significant additional resource demands will have been placed on OFCA simply due to the introduction of the Competition Ordinance. To date, OFCA has not brought any prosecutorial action on a telecommunications or broadcasting matter before the Competition Tribunal.

- ***Misleading and deceptive conduct***: The 2012 amendments to the Trade Descriptions Ordinance should not require substantially more resources from OFCA to monitor compliance. OFCA had already been carrying out its duties in relation to misleading and deceptive conduct matters under the TO (former section 7M) ever since that section came into being. Also, CCSS implementation is primarily the responsibility of the licensees and CAHK. In practice, OFCA's resource commitment may on an overall basis actually decline, given that the 2012 amendments to the Trade Descriptions Ordinance narrow the scope of infringement to cover only consumer complaints, while excluding business-to-business complaints that would otherwise have been governed by the repealed section 7M.

- ***Interconnection***: The local access charge, fixed-fixed interconnection charge and fixed-mobile interconnection charge are largely deregulated with their levels set by the market under commercial agreements without OFCA's involvement. No disputes have been recorded regarding interconnection in recent years.

4.7 We therefore rightly query why we have not seen any perceptible decrease in OFCA's headcount and expenditure in recent years given the apparent reduced workload.

Office rent

4.8 We note that OFCA's office premises are located in Wanchai which is a prime commercial district where commercial rental rates are invariably high. On the other hand, OFCA's functions would seem to be largely back-office administrative work, with little front-office public consumer exposure. OFCA can be contrasted with the Immigration Department also in Wanchai but which has high volume of public visitors, with long queues and waiting times for over-the-counter services. We opine that if OFCA has no real need to be close to general public access, OFCA should move to a more cost effective location.

4.9 For example, in 2017 the Equal Opportunities Commission ("EOC") relocated its offices in order to save costs. Due to increasing rents for EOC at CityPlaza 3 in Quarry Bay that had increased to $48 per square foot per month, EOC decided to move to Wong Chuk Hang in the Southern District near Aberdeen, where it budgeted for rent at a far lower rate of $22 per square foot per month.[4] Other government bodies have also chosen to locate in non-prime commercial districts, as illustrated in Table 1 below.

[4] Hong Kong Free Press, "Equality watchdog to move offices due to rent hikes and inadequate funding, expects structural deficit", 19 April 2017, https://www.hongkongfp.com/2017/04/19/equality-watchdog-move-offices-due-rent-hikes-inadequate-funding-expects-structural-deficit/.

Table 1: Comparison of office rents with other government bodies

	Commercial premises market rate rental (HK$ / sq ft / month)
Wu Chung House, Wanchai (OFCA)	38
41 Heung Yip Road, Wong Chuk Hang (Equal Opportunities Commission)	24 to 34
KITEC, Kowloon Bay (Hospital Authority (Information Technology and Health Informatics Division) and Registration and Electoral Office branch)	22 to 25
Source: Jones Lang LaSalle website (https://property.jll.com.hk/en) accessed on 24 July 2018	

4.10 We request OFCA to provide justification for maintaining its offices in Wanchai.

5. Streamlining measures

5.1 In our view, there is room for greater cost efficiencies in OFCA through the reform and streamlining of regulatory processes within the control of CEBD and CA. By removing redundant and excessive regulations that needlessly draw upon OFCA's fiscal budget and human resources, OFCA may yield potential cost savings. We point to the following areas as being ripe for reform:

- Tariffs – waiving filing and publication requirements;
- Accounting practices – waiving reporting requirements (except to the extent necessary);
- Interconnection agreements – waiving filing and publication requirements;
- Statistics reporting – reducing and abolishing reporting requirements; and
- Licence conditions in UCL – repealing poor regulation.

Please see the Appendix for an expanded explanation of our suggestions for reform.

5.2 If WTT were to follow our suggested streamlining measures to remove antiquated, burdensome and unnecessary procedures and documentation to achieve operational cost savings, this may open further opportunity for licence fee reductions to be passed to telecommunications licensees.

6. International best practice

6.1 The Communications Authority Ordinance ("CAO") requires that the CA must have regard to "*adoption of best practices*".[5]

6.2 We draw CEBD and CA's attention to the examples of Ofcom in the UK and ComReg in Ireland in setting the standards of international best practice in managing its financial affairs, as summarised in Table 2 below.

[5] Communications Authority Ordinance (Cap 616) (https://www.elegislation.gov.hk/hk/cap616), section 4(4)(c) provides:

"(4) Without limiting any other matters to which the Authority may have regard, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances—

(c) the promotion of competition and adoption of best practices in the communications market for the benefit of the industry and consumers".

Table 2: International practice of regulators in UK and Ireland on financial management

	Ofcom (UK)	ComReg (Ireland)
Work plan	Annual Plan (with public consultation)[6] Strategic Statement (with public consultation)[7]	Annual Action Plan[8] Strategy Statement[9]
Principles for setting of licence fee and cost allocation	Statement of Charging Principles[10]	
Financial projection	Tariff Plan[11]	Annual Financial Forecast[12]
Financial management and audit		Code of Financial Management[13]

6.3 We submit that CEBD and CA can do more to improve the levels of transparency in their decision making when setting and reviewing the level of licence fee, by considering to adopt the standards of overseas regulators. This involves:

- Publishing annual work plan on a rolling basis;
- Setting out the principles for cost allocation between the various functions;
- Publishing rolling annual forecasts of revenues and expenditures;
- Establishing a performance measurement framework which communicates clearly the linkage between outputs and outcomes; and
- Establishing an audit committee which is committed to conducting regular internal audit to ensure value-for-money in its operations.

6.4 We invite CEBD and CA to avail upon the expertise and experience of the Audit Commission in conducting internal audit of OFCA. In the 20 plus years of OFTA/OFCA's existence, it has thus far never been subject to a general "value for money" audit[14] by the Audit Commission[15], being an audit that examines into the economy, efficiency and effectiveness with which a government body has discharged its functions.

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[6] Ofcom, "Ofcom Annual Plan 2018/19", https://www.ofcom.org.uk/__data/assets/pdf_file/0017/112427/Final-Annual-Plan-2018-19.pdf; Ofcom, "Proposed Annual Plan 2018/19", https://www.ofcom.org.uk/__data/assets/pdf_file/0018/108324/Proposed-Annual-Plan-2018.pdf.

[7] Ofcom, "Making communications work for everyone – Initial conclusions from the Strategic Review of Digital Communications", https://www.ofcom.org.uk/__data/assets/pdf_file/0016/50416/dcr-statement.pdf; Ofcom, "Strategic Review of Digital Communications – Discussion document", https://www.ofcom.org.uk/__data/assets/pdf_file/0021/63444/digital-comms-review.pdf.

[8] ComReg, "Action Plan for Year to 30 June 2018", https://www.comreg.ie/media/2016/05/Annual-Action-Plan-Ye-300618-Final_28-07-17.pdf.

[9] ComReg, "Electronic Communications Strategy Statement: 2017-2019", https://www.comreg.ie/publication-download/electronic-communications-strategy-statement-2017-2019.

[10] Ofcom, "Statement of Charging Principles", https://www.ofcom.org.uk/__data/assets/pdf_file/0019/51058/charging_principles.pdf.

[11] Ofcom, "Ofcom Tariff Tables 2018/19", https://www.ofcom.org.uk/__data/assets/pdf_file/0019/112465/Tariff-Tables-2018_19.pdf.

[12] ComReg, "Annual Financial Forecast (by Activity) for year to 30 June 2018", https://www.comreg.ie/media/2016/05/Financial-Forecast-Ye-30-06-18-for-Publication.pdf.

[13] ComReg, "Code of Financial Management for the Commission for Communications Regulation (ComReg)", https://www.comreg.ie/csv/downloads/ComRegCodeFM.pdf

[14] Audit Commission website at: https://www.aud.gov.hk/eng/aboutus/about_valm.htm.

[15] The only previous instance of Audit Commission study of OFTA/OFCA's operations was specific to competition and interconnection policy matters: Audit Commission, "Liberalisation of the local fixed telecommunications market", Report Number 38, Chapter No. 1, March 2002, https://www.aud.gov.hk/pdf_e/e38ch01.pdf.

7. Unified regulator synergies

7.1 When the Government proposed the creation of the CA as a unified regulator, the Government indicated that it expected to achieve synergies and savings, stating:

> *"26. Technical and economic regulation, such as technical standards for broadcasting services, enforcement of anti-competitive practices, compliance of licensing conditions, requires expertise from the engineering, legal, accounting and applied economics professions. In this regard, the BA has to rely to a significant extent on OFTA and external consultants to assist it in handling these matters. 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 these regulatory functions and the requisite experience and expertise in one single organisation.*
>
> *"59. The CA has to cope with a lot of research and administrative work arising from the streamlining of regulatory practices alongside with major reviews of legislative provisions, procedures and guidelines, and enhanced research and knowledge management activities, 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 fees will need to be assessed in the medium term, say, three years after the commencement of operation of the CA".*[16] (emphasis added)

7.2 In the July Letter, OFCA stated that staff cost amounts to over 80% of total expenditure, meaning that staff numbers and staff salaries constitute the dominant expense item of OFCA. However we are unable to fathom why OFCA's staff numbers have significantly risen from 395 (in 2013) to 448 (in 2017)[17], in a time when OFCA is expected to achieve synergies and savings as a result of becoming established as a unified regulator.

7.3 The Government, in advocating for the establishment of OFCA, cited the example of Ofcom in the UK which arose from the merger of several governmental bodies in 2003.[18] Later in the UK, following the creation of Ofcom, the UK National Audit Office [19] and the UK

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[16] Communications and Technology Branch – Commerce, Industry and Technology Bureau, "Consultation on the Establishment of the Communications Authority", March 2006, http://www.cedb.gov.hk/ccib/eng/paper/pdf/CA_consultation_paper.pdf, paragraphs 26 and 59.

[17] OFCA staff levels in 2010 to 2017:

As at	Civil Servants	Contract Staff	Total OFCA Staff
31-Mar-17	118	330	448
31-Mar-16	115	330	445
31-Mar-15	122	309	431
31-Mar-14	100	315	415
31-Mar-13	113	282	395
31-Mar-12	125	202	327
31-Mar-11	121	204	325
31-Mar-10	119	205	324
Source: OFTA/OFCA Trading Fund reports			

[18] *Supra* note 16, paragraph 14.

[19] UK National Audit Office, "The creation of Ofcom: Wider lessons for public sector mergers of regulatory agencies", 2006, https://www.nao.org.uk/wp-content/uploads/2006/07/05061175.pdf; UK National Audit Office,

Parliament[20] published reports and conducted hearings respectively on the issue of whether Ofcom had achieved benefits from the merger and quantified its efficiency savings to be £22.5 million over 5 years, representing savings of some 3 per cent per year on an annualised basis.[21]

7.4 In the six years following the merger of OFTA and the Broadcasting Authority / broadcasting functions of the Television and Entertainment Licensing Authority, we request that CEBD and CA to similarly demonstrate and quantify that OFCA has attained the synergies, efficiencies and savings as might reasonably have been anticipated.

8. Telecommunications cost accounting separation

8.1 Nothing in the Consultation Paper, or the published OFCA Trading Fund annual reports[22], shows any separation of accounts / expenditures between the telecommunications and broadcasting functions of OFCA. OFCA in the July Letter has confirmed that no separate account is maintained for telecommunications functions.

8.2 The telecommunications licensees would be concerned if there were any element of cross-subsidisation of the licence fees paid by telecommunications licensees toward the administration of broadcasting or other non-telecommunications related functions of OFCA. Even though the CAO and the TFO contain no formal or express requirement for the separation of accounts by OFCA in the performance of its respective telecommunications and broadcasting functions, we point out that the imposition of licence fees under the Telecommunications Ordinance[23] ("TO") must be conducted in accordance with the purpose of that ordinance.[24]

8.3 Furthermore, OFCA must pay due regard to the Court of Final Appeal judgment, where the Court stated:

> *"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 authorise the imposition of a fee which in substance is a tax upon the activity to be conducted under cover of the licence. <u>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</u>."*[25] (<u>emphasis</u> added)

"Ofcom: the effectiveness of converged regulation", 2010, https://www.nao.org.uk/wp-content/uploads/2010/11/1011490.pdf

[20] UK Parliament, House of Commons, Committee of Public Accounts, "Ofcom: the effectiveness of converged regulation", https://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubacc/688/688.pdf.

[21] *Supra* note 19, UK National Audit Office, 2010, paragraphs 1.22 to 1.26.

[22] OFCA's website at: https://ofca.gov.hk/en/pub_report/trading_fund/index.html.

[23] Telecommunications Ordinance (Cap 106) (https://www.elegislation.gov.hk/hk/cap106), section 7(2) provides:

"(2) The Secretary may by regulations prescribe—

(a) the general conditions, including the period of validity, for a carrier licence other than an exclusive licence; and

(b) the fees payable including for the grant and renewal of a carrier licence other than an exclusive licence and by way of annual fees."

[24] The long title of the Telecommunications Ordinance (Cap 106), which sets out the purpose of the ordinance, reads: *"To make better provision for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment."*

[25] *Supra* note 2, Gummow NPJ at paragraph 59.

8.4 The Court of Final Appeal makes abundantly clear that telecommunications licence fee may be collected only for the purposes of defraying the expenses for administering the telecommunications licensing scheme. No cross-subsidisation is permitted, for otherwise the fee, to the extent that it exceeds the costs of administering the telecommunications licensing scheme, may be seen to be a tax. And the Court of Final Appeal has declared that the TO does not authorise the imposition of a tax.

8.5 Accordingly, we submit that OFCA must maintain and provide separated accounts for the telecommunications and broadcasting functions in order to demonstrate that the telecommunications licence fee revenues are utilised according to law.

9. Level of Number Fee

9.1 We query whether or not the number fee is set at a level that is reflective of cost.

9.2 In the past, OFTA/OFCA and the Government have said that the purpose of the number fee is to encourage effective utilisation of numbers, stating:[26]

> "*Currently, costs incurred by the Authority in the management of telecommunications numbers have been embedded in the subscriber-based fee components…With the existing consumption rate, the 8-digit numbering plan may be exhausted in seven years if appropriate preventive measures are not taken in time. Migration to a longer-digit plan will have a serious impact on all sectors of the community in terms of cost and convenience, and as such should not be considered lightly…The lifetime of the current 8-digit numbering plan can be extended if the utilization rate can be improved. In this connection, the Authority considers it necessary to introduce a measure to provide the operators with the incentive to efficiently use the numbers already assigned to them… Such a fee incentive should encourage more efficient use of numbers and help prolong the current 8-digit numbering plan.*"

> "*The Secretary notes the concern of the industry about the additional fee component introduced in the UCL but taking the case of SBO licence as reference, the licence fee components should reflect the services provided under the licence and be set at such levels as to recoup the administrative expenses of the Authority in a proportionate manner.*"

> *"The Government making more money?*
> *There is suspicion that the Government intends to increase revenue by imposing a number fee. We would like to make it clear that the purpose of the number fee is to encourage effective utilisation of numbers, not to increase licence fee revenue for OFTA."*

9.3 In OFCA's 2015 consultation paper on "More Efficient Utilisation of the 8-digit Numbering Plan", OFCA stated:

- The life span of the existing 8-digit numbering plan will be extended by around 10 years to September 2028; and

[26] Communications and Technology Branch – CEDB, "Consultation Paper on the Creation of a Unified Carrier Licence under the Telecommunications Ordinance", 21 December 2007, paragraphs 35 to 38, http://www.cedb.gov.hk/ccib/eng/paper/doc/ucl.pdf; OFTA, "Why We Propose to Charge a Fee on Telephone Numbers?", Information Note, March 2008, http://tel_archives.ofca.gov.hk/en/fmc/info20080311.pdf; CEDB and OFTA, "Outcome of the Public Consultations on the Proposed Creation of a Unified Carrier Licence under the Telecommunications Ordinance", CB(1)1456/07-08(06), May 2008, http://tel_archives.ofca.gov.hk/en/report-paper-guide/paper/information/info20080513.pdf, paragraphs 13 to 17.

- According to the analysis of an independent consultant commissioned by OFCA, the total cost in net present value to be borne by the community as a result of migration to a 9-digit or 10-digit numbering plan amounts to about HK$1.098 billion.[27]

9.4 The migration cost of numbering plan is unavoidable. Eventually OFCA will have to move to 9 or 10 digit numbering plan, but this can be deferred.

9.5 The benefit of deferring migration cost is that society enjoys the use of the capital funds, before they eventually need to be spent when the numbering plan is exhausted. What is the value of migration cost deferral? Using HSBC's best lending rate as a benchmark,[28] a saving of interest of 5% per annum on HK$1.098 billion would yield a benefit of around HK$55 million per year.

9.6 Number fees are a cost to society, imposed on telecommunications licensees and passed to consumers. Evidence suggests that the number fee revenue is excessive in relation to the benefits of numbering plan migration cost deferral. There were 37.6 million allocated telephone numbers in 2016 which, at the number fee rate of $3 per number, equates to around $112.8 million each year. Hence the annual number fees would amount to over 10% of the migration cost. This annual number fee cost, in isolation and from a pure economic standpoint, may therefore fully negate the annual benefit of migration cost deferral. This is especially so, as the benefits of deferring migration cost will last only until the end of the 8-digit numbering plan forecasted in 2028, whereas the number fees will continue to be a cost to telecommunications licensees and thus a cost to society indefinitely.

9.7 If the number fee is intended to cover administrative expenses, OFCA has yet to disclose how much those administrative expenses are. We are doubtful that the OFCA administrative expenses in relation to the numbering plan can be as much as $112.8 million per year. In the USA, the North American Numbering Plan Fund costs US$8.032 million per year[29], equivalent to HK$62.1 million per year, which is substantially less than the number fees collected by OFCA in Hong Kong every year.

9.8 We submit that CEBD and CA should review the number fee level to assess whether it is reflective of cost in light of the primary purpose for the number fee.

10. Distributional analysis

10.1 We are concerned that CEBD and CA have not conducted any distributional analysis of the proposed licence fee reduction. Regulatory impact analysis by regulators should not only involve ascertaining an estimate of the expected benefits and costs of the regulatory action (a benefit-cost analysis); such analysis arguably should include a distributional analysis which assesses how various parties are likely to receive those benefits and incur those costs.

10.2 Ofcom in the UK has underlined the importance of distributional analysis, by stating:

> *"The distributional impacts which the different options would have should also be taken into account and, where possible, quantified. A distributional impact is an impact which is transferred rather than being additional e.g. a policy might benefit consumers in urban areas at the expense of consumers in rural areas, while the net*

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[27] OFCA, "More Efficient Utilisation of the 8-digit Numbering Plan", Consultation Paper, 29 October 2015, https://www.coms-auth.hk/filemanager/en/content_711/cp20151029_e.pdf, paragraph S2 and Annex C.

[28] HSBC website at: https://www.business.hsbc.com.hk/en-gb/resource-centre/best-lending-rate.

[29] Federal Communications Commission, "Wireline Competition Bureau announces the proposed North American Numbering Plan Administration Fund size estimate and contribution factor for October 2017 through September 2018", http://nanpfund.com/wp-content/uploads/2017/08/Public-Notice-2017.pdf, paragraph 4.

benefit remains the same. Clearly this would be a relevant consideration even though it would not be revealed by a narrow analysis of the costs and benefits.'"[30]

10.3 We have done a high-level distributional analysis in Table 3 using WTT's information, and we believe other fixed network operators (FNOs) would be in similar situation. Our analysis shows that WTT and other similar FNOs will be substantially discriminated or prejudiced by the customer connection licence fee reduction, compared to the rest of the industry. Whereas the industry will generally enjoy a 14.8% reduction in variable licence fee elements (customer connection fee and number fee), WTT and other similar FNOs would only obtain a 7.9% benefit. This outcome is largely due to the provision by FNOs of IDA and DDI connections to business customers supporting high ratios of telephone numbers, resulting in FNOs having significantly low proportion of customer connections compared to telephone numbers, meaning that the reduction of customer connection licence fee will have diluted beneficial impact for FNOs.

Table 3: Distributional analysis for WTT of the proposed licence fee reduction

	WTT[31]	**Industry aggregate**[32]
Customer connections	**[c-i-c]**	17.3 million
Percentage of industry aggregate customer connections	**[c-i-c]**	100%
Licence fee for allocated telephone numbers	**[c-i-c]**	$121.1 million
Allocated telephone numbers	**[c-i-c]**	37.6 million
Percentage of industry aggregate allocated telephone numbers	**[c-i-c]**	100%
Licence fee for allocated telephone numbers	**[c-i-c]**	$112.8 million
Aggregate licence fee for customer connections and allocated telephone numbers	**[c-i-c]**	$233.9 million
Ratio of customer connections to allocated telephone numbers	0.16	0.46
Ratio of licence fees for customer connections to licence fees for allocated telephone numbers	0.38	1.07
Reduction impact of proposed $2 reduction of customer connection licence fee	**[c-i-c]**	$34.6 million
Reduction impact of proposed $2 reduction of customer connection as a percentage of aggregate licence fees for customer connections and allocated telephone numbers	7.9%	14.8%

30 Ofcom, "Better Policy Making – Ofcom's approach to Impact Assessment", https://www.ofcom.org.uk/__data/assets/pdf_file/0029/45596/condoc.pdf, paragraph 5.34.

31 Based on WTT's audited 2017 licence fees for UCL.

32 Customer connections in 2010-11 to 2017-18 (million):

	2010-11	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**
Customer Connections	13.6	14.5	14.9	n/a	n/a	n/a	n/a	17.3
Source: CEDB/CA's 2012 consultation paper on licence fee reduction (http://www.cedb.gov.hk/ccib/eng/paper/pdf/ucl.pdf) and the Consultation Paper								

Allocated telephone numbers in 2010 to 2016 (million):

	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Allocated Telephone Numbers	32.5	33.9	35.9	36.6	37.0	37.5	37.6
Source: OFCA statements on the level of Universal Service Contribution (https://ofca.gov.hk/en/industry_focus/telecommunications/obligation/level/index.html)							

Annual revenue from variable licence fee elements:

	Quantity	**Licence Rate**	**Annual revenue**
Customer Connections (2017-18)	17.3 million	$7 each	$121.1 million
Allocated Telephone Numbers (2016)	37.6 million	$3 each	$112.8 million
Aggregate annual revenue from variable licence fee elements			**$233.9 million**

10.4 We submit that CEBD and CA should give consideration to a balanced reduction of the variable licence fee rate levels for the UCL. For example, for a given target dollar amount reduction, the customer connection fee and number fee can be reduced in proportion to their respective revenue contribution. This balancing exercise is illustrated in Table 4 below.

Table 4: Sample adjusted distribution of licence fee reduction

		Customer Connection	Allocated Telephone Number
A	Current licence fee rate	$7	$3
B	Units*	17.3 million	37.6 million
C	Total licence fees (A x B)	$121.1 million	$112.8 million
D	Aggregate licence fee for customer connections and allocated telephone numbers (C aggregate)	$233.9 million	
E	Percentage of total licence fees to aggregate (C / D)	51.8%	48.2%
F	CEDB/CA's proposed licence fee rate	$5	$3
G	Total proposed licence fees (F x B)	$86.5 million	$112.8 million
H	Amount of licence fee reduction (C – G)	$34.6 million	Nil
I	Target aggregate licence fee reduction (H aggregate)	$34.6 million	
J	Adjusted distribution of reduction (E x I)	$17.9 million	$16.7 million
K	Adjusted target total licence fee (C – J)	$103.2 million	$96.1 million
L	Adjusted licence fee rate (K / B)	**$5.96**	**$2.56**
Note:	** Customer connections in 2017-18, allocated telephone numbers in 2016*		

10.5 We submit that CEBD and CA should undertake a distributional analysis to assess the impact of its proposed licence fee changes. If CEBD and CA are intending to reduce the licence fees for UCL licensees, the reduction should be distributed to such licensees in a non-discriminatory manner.

11. Way forward

11.1 We are concerned that the Consultation Paper is gravely deficient owing to lack of detail and supporting information in the OFCA Trading Fund's financial projections. As a result, it is difficult for WTT to meaningfully comment on whether or not there is further scope for licence fee reduction beyond the proposals put forward by CEBD and CA.

11.2 We submit that a second round of consultation is needed in order to remedy the flaws in the Consultation Paper. The industry and the public would be better served if CEBD and CA were to provide the additional information as listed in paragraph 4.3 above as a basis for consultation and take into consideration the various issues as raised by WTT in this submission. This would enable interested persons to carry out more rigorous forensic analysis of the financial projections and to discern the budgetary leeway for further licence fee reduction.

Submitted by
WTT HK Limited
6 August 2018

Appendix – Suggested streamlining measures

Issue	Suggested streamlining measures	Potential cost efficiencies for OFCA
Tariffs	Waive the filing and publication requirements for tariffs, as tariffs are unnecessary given the market is competitive enough to restrain telecommunication service prices and monitor prices in general, and tariff-type information is easily accessible online and through other channels from licensees.	Eliminate review and management of unnecessary documentation
Accounting practices	Waive the reporting requirements for financial accounts, as such commercial and financial matters are dealt with in the Companies Ordinance (Cap 32) and administered by other relevant authorities, e.g. Companies Registry, Securities & Futures Commission. Accounting reporting could continue to the extent specifically required (e.g. calculation of royalty-based spectrum utilisation fee payments or the cost of the universal service obligation).	Eliminate review and management of unnecessary documentation
Interconnection Agreements	Waive the filing and publication requirements for interconnection agreements, given that most of the interconnection arrangements today are agreed on a commercial basis without OFCA's intervention and there is no need for any regulatory oversight or close monitoring as there is no market failure.	Eliminate review and management of unnecessary documentation

Statistics reporting	Remove and reduce the reporting of statistics, in the interests of removing unnecessary burden, costs, time and inconvenience.
	
	(a) *Reduce frequency* – Reduce frequency of reports to the extent necessary:
	• Quantity of Subscriber Numbers for USC
	• Monthly Reports on:
	  • Local Leased Lines
	  • Working Lines, Demands and Service Coverage (Exchange Lines, Ported and Indirect Access Lines and Customers, IP Telephony Services, Effective Capacity)
	  • Fixed Traffic Reporting (External Traffic, Internal Traffic)
	• Quarterly Statistics Report of external facilities operated under Fixed Telecommunications Network Services Licence or Fixed Carrier Licence
	
	(b) *Abolish* – Abolish reports that are unnecessary:
	• Yearly Update of the List of Buildings Covered by Self-Built Customer Access Networks (Type II Connections)
	• ISDN Service Statistics for ITU
	• Information on Telephone Service Statistics (Telephone Lines (Exchange Lines, IP Telephony Services))
	
	For full details, refer to WTT's Submission in response to OFCA Circular Letters on Review of Statistics Reporting Requirements dated 4 April 2014 (unpublished).
		Eliminate review and management of unnecessary documentation

Licence Conditions in UCL	*(a)* *Unnecessary* – Repeal licence conditions that do not address any obvious problem: • GC 4 (Compliance generally) • GC 11 (Compliance) • SC 24 (Insurance) • SC 27 (Provision of service to suspected stolen radiocommunications apparatus)	Enhance clarity in regulatory enforcement

(b) *Duplication with existing superior legislative/regulatory instrument* – Repeal licence conditions that duplicate superior legislation or regulation instruments already in place to regulate the same/similar activity/breach by the CA:

- GC 2 (Transfer)
- GC 14.2 (Safety)
- SC 2 (Purchase of assets)
- SC 3 (Requirements for interconnection)
- SC 4 (Numbering plan and number portability)
- SC 5 (Accounting practices)
- SC 6 (Requirement to furnish information to the Authority)
- SC 13 (Records and plans of the network)
- SC 14.2 (Network location)
- SC 22 (Universal service contribution)
- SC 26 (Location services
- SC 29 (Payment of spectrum utilization fee)
- SC 32 (Disposal of assets)
- SC 33.1 & 33.3 (Access to buildings)

(c) *Potential cross-sectorial overlap* – Repeal licence conditions that overlap with same/similar cross-sectorial regulation applicable to the public in general:

- GC 7 (Confidentiality of customer information)
- GC 14.1 (Safety)
- SC 5 (Accounting practices)
- SC 30 (Provision of information to customers)

(d) *Impacted by market developments* – Repeal licence conditions that may be outmoded or obsolete in light of market developments:

- GC 6 (Customer charter)
- SC 7 (Tariffs)
- SC 8 (Notification of discounts)
- SC 10 (Provision of service)

(e) *Uncertain* – Repeal licence conditions which constitute poor regulation because they are overly broad, ambiguous, subjective and/or uncertain:

- GC 5 (Provision of service)

(f) *Clarification / amendment of the status of guidelines and codes of practice* – Amend licence conditions that erroneously purport that a licensee "shall comply" with guidelines and codes of practice issued by the CA.

- SC 1.1 and 1.2 (Compliance with codes of practice);
- SC 16.1 (Requirements for road opening);
- SC 25.1 (Use of public facilities for provision of services);
- SC 28.1 (Backup power supply);
- SC 33.2 (Access to buildings);
- SC 34.7 (Channels within in-building coaxial cable distribution systems); and
- SC 36.1 (Service contracts and dispute resolution).

For full details, refer to WTT's Submission in response to Consultation Paper on Review of Licence Conditions in Carrier Licences Issued under the Telecommunications Ordinance (Cap 106) dated 20 October 2014 (https://www.coms-auth.hk/filemanager/common/policies_regulations/consultations/submissions/20141103/10.pdf).