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**By Email (competition@edlb.gov.hk)**

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**Economic Development Branch (Division A)**  
**Economic Development and Labor Bureau**  
2/F, Main Wing, Central Government Offices  
Lower Albert Road  
Hong Kong

Dear Sir,

**Economic Development and Labor Bureau Public Consultation on  
Promoting Competition - Maintaining Our Economic Drive**

AT&T Global Network Services Hong Kong Limited, a [wholly-owned] subsidiary of AT&T Inc., is pleased to submit comments on the public consultation paper "*Promoting Competition – Maintaining Our Economic Drive*" (the "*Consultation Paper*") published by the Economic Development and Labor Bureau ("EDLB") on November 6, 2006. The Hong Kong Special Administrative Region Government (the "SAR Government") appointed the Competition Policy Review Committee ("CPRC") in June 2005 to review the existing policy and to make recommendations on the future direction. The CPRC subsequently recommended the introduction of a new, cross-sector competition law for Hong Kong, as well as the setting up of a regulatory body to enforce such a law.

In the *Competition Paper*, the EDLB seeks views from the general public on many of the CPRC recommendations, including (i) whether Hong Kong should have a new competition law; (ii) whether such a law should apply to all sectors of the economy; and (iii) whether a new regulatory body should be established to enforce such a law.

AT&T is firmly committed to competition. We believe that markets should operate freely, and in the ideal state, without distortion, either from private or public actions that interfere with the proper works of a truly competitive marketplace. Regulation of competition requires a careful balance. On the one hand, consumers are best protected by strong, enforceable laws that deter anti-competitive conduct. On the other hand, consumer interests are disserved by excessive regulatory restrictions that interfere with the proper working of effective market forces.

Competition in Hong Kong's telecommunications industry benefits users of telecommunications services in Hong Kong through increased choices, innovation, lower prices and superior products and services, and also stimulates broader growth in the Hong



Kong economy<sup>1</sup>. As a competitive provider of telecommunications services to business users in Hong Kong, AT&T commends the EDLB for this initiative to examine the ways in which the competitive business environment in Hong Kong can be maintained and improved.

Currently, the SAR Government regulates competition only in certain strategic industries such as telecommunications and broadcasting. AT&T submits that the adoption of a cross-sector competition law will benefit the future development of the Hong Kong economy as a whole. Consumers are best served by general competition laws that protect competition in all sectors of the economy without regard to classifications assigned to particular firms.

An effective competition policy will promote greater innovation and economic growth by limiting or removing restraints on open markets and competition. An economy that does not effectively regulate anti-competitive practices is likely to have higher prices, more limited choices and inferior quality of service to the detriment of consumers and business end-users, and is also likely to be less successful in international markets.

The potential advantages of a cross-sectoral approach in Hong Kong also are demonstrated by the Banyan Garden Estate case in 2004 in which the Telecommunications Authority ("TA") found that it was not empowered to effectively deal with an attempt by a property management company (not a telecom licensee) to bundle telecom service with property management service because the TA only has authority to regulate telecom licensees. Sector-specific competition laws can produce highly anti-competitive outcomes, particularly when the result of those laws is asymmetric burdening of some disfavored firms – that is, the firms whose competition freedom are limited while they compete with rivals who are free of those burdens. Rather than promoting competition, these sector-specific competition laws create distorting incentives to structure businesses in a sub-optimal manner to escape regulation and, in addition, to encourage the regulatory agencies to impose burdensome regulation that could hobble regulated rivals. Generally applicable competition laws are less likely to generate these kinds of distortions.

On the question of whether a new regulatory body should be established to enforce the new competition law, AT&T supports the establishment of an independent competition law *enforcement* agency. Competition law enforcement can promote the proper functioning of competitive markets. However, the new agency should focus on enforcement of competition law and assessment of remedies, and not on establishment of new regulations. Increased regulation can displace competition in favor of social and political objectives that

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<sup>1</sup> See e.g., Hong Kong: The Facts, Telecommunications, Hong Kong Special Administrative Region Government, <http://www.info.gov.hk/hkfacts/telecom.pdf> (Hong Kong's telecommunications market, in which all sectors have been fully liberalized with no ownership restrictions, "was estimated to be directly responsible for 3.3 percent of GDP in 2004" and "has been an important factor in Hong Kong's development as a leading business and financial center").



are not always related to the proper functioning of markets. AT&T believes, therefore, that the Authority should make a clear distinction between enforcing laws that protect competition, and establishing policies that supplant and override market forces that drive efficiency and consumer welfare in truly competitive market economies.

It will also be important to ensure that telecommunications is treated consistently under the new competition law to avoid the possibility of conflicting interpretations and rulings that would give rise to business uncertainty and hamper investment and growth in this critical sector. To the extent that the telecommunications industry remains regulated to promote policies that competitive markets might not otherwise achieve, there should be no confusion as to the respective roles of the TA and the competition enforcement agencies that protect competitive markets from anti-competitive distortions.

We believe, therefore, that there should be a clear demarcation between industry-specific telecommunications regulatory issues, which will continue to require the expertise of the TA, and the economy-wide competition law matters that would be addressed by the new enforcement body described above.

To sum up, AT&T supports the proposed enactment of a cross-sector competition law in Hong Kong and the establishment of an independent agency responsible for the crucial task of enforcing the competition laws.

Should you have any question or require clarification regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

[Vincent Ma]  
for AT&T Global Network Services Hong Kong Ltd