

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 46 – GENERAL EXPENSES OF THE CIVIL SERVICE Subhead 081 Recoverable salaries and allowances (Office of the Telecommunications Authority Trading Fund)

Members are invited to recommend to Finance
Committee –

- (a) the creation of a new rank and permanent post of –

Director-General of Telecommunications
(D6) (\$162,650)

to be offset by the deletion of the existing rank and
post of –

Director-General of Telecommunications
(D5) (\$154,150)

- (b) the creation of a new rank and permanent post of –

Deputy Director-General of Telecommunications
(D3) (\$127,900 - \$135,550)

to be offset by the deletion of the existing rank and
post of –

Senior Assistant Director of Telecommunications
(D3) (\$127,900-\$135,550); and

- (c) the creation of the following permanent post of –

1 Assistant Director of Telecommunications
(D2) (\$116,650 - \$123,850).

/PROBLEM

PROBLEM

The directorate structure of the Office of the Telecommunications Authority (OFTA) is no longer appropriate to cope with its expanded responsibilities and increased complexity of work. It needs to be enhanced to ensure OFTA can effectively and competently fulfil its statutory role in overseeing the regulation of the telecommunications sector in Hong Kong.

PROPOSAL

2. We propose to enhance OFTA's directorate structure by upgrading the rank and post of Director-General of Telecommunications (DG-Tel) from D5 to D6, changing the rank and post of Senior Assistant Director of Telecommunications (SAD-Tel) to Deputy Director-General of Telecommunications (DDG-Tel), and creating a new post of Assistant Director of Telecommunications (AD-Tel) (D2).

JUSTIFICATION

3. OFTA oversees the regulation of the telecommunications sector in Hong Kong. The present organisation of OFTA is shown in the organisation chart at Enclosure 1. The continuous liberalisation of the telecommunications market has brought about an increase in level, scope and complexity of responsibilities borne by the department. Moreover, as a result of the enactment of the Telecommunications (Amendment) Ordinance 2000, the department undertakes more responsibilities, especially in enforcing the fair competition regime extended to the entire telecommunications sector under the primary legislation. It is therefore considered that the staffing structure at the directorate level should be enhanced. The proposed organisation chart of the department is at Enclosure 2. Justifications are detailed below.

Recent Developments

4. When OFTA was established in 1993, its main function was to regulate telecommunications sector which was relatively simple at the time. In recent years, the telecommunications industry has become more vibrant and competitive, attracting substantial investment in the telecommunications infrastructure. The telecommunications industry has also become strategically more important, underpinning all other business and commercial services.

(a) Further Liberalisation in the Telecommunications Market

5. With our pro-competition policy and the advent of new technology, the telecommunications market has been progressively liberalised in recent years.

/When

When the former Hong Kong Telephone Company Limited's monopoly ended in 1995, OFTA issued three more wireline-based Fixed Telecommunications Network Services (FTNS) licences. In line with the policy decision to progressive liberalisation, it issued six more local FTNS licences in early 2000. Following the termination of Hong Kong Telecom International Limited's exclusive licence for external telecommunications services and facilities in March 1998, we have introduced further competition in various telecommunications sectors. The increased complexity and volume of work is well indicated by the soaring number of licences issued as compared against the early 1995 figures as follows -

	No. of Licences Issued	
	<u>In early 1995</u>	<u>In early 2001</u>
• Local FTNS licences	1	10
• External FTNS licences	1	18
• Public mobile service licences	5	11
• Public Non-exclusive Telecommunications Service (PNETS) licences	101	548

6. The thriving competition in the market has brought about tremendous benefits to both the economy and consumers. It has led to greater capital investment and employment opportunities, and wider choice of services and at lower prices. For example, the weighted average of IDD prices in the twelve months ending December 1999 dropped 30%, which saved consumers \$4.2 billion in IDD expenditure.

7. The liberalisation of local telecommunications market has however greatly increased OFTA's workload. To ensure a level playing field amongst the licensees, OFTA needs to establish an effective regime for interconnection and pro-competition measures. The increase in workload can be reflected in the rising number of formal instruments and licences issued. In the past three years, OFTA issued 149 pieces of formal documents, including guidelines, policy statements, determinations, consultation papers, reports and directions. These documents are important to the telecommunications industry as they set out the detailed regulatory framework, as well as decisions taken by the Telecommunications Authority (TA) in exercise of his regulatory powers. The number of such documents is more than double that for the entire period from 1994 to 1997. We anticipate an even greater number of formal documents will be issued in the coming years in response to changing market demand and as a result of enforcement of existing regulations. As regards the number of public service licences issued, OFTA recorded 542 last year, which was more than four times the number of 128 when the department was established in 1993.

8. More importantly, the work of OFTA has increased in complexity. This is due to a number of factors. The industry structure of the telecommunications sector has become more complex as a result of the rapid pace of the market and technological developments. OFTA needs to tackle new issues using fresh approaches and concepts. Examples of complex tasks handled by OFTA in the past year include the development of regulatory frameworks for broadband interconnection and third-generation mobile services. In both cases, extensive industry consultation had to be conducted and the regulatory frameworks were formulated only after careful consideration, responding to the divergent views expressed by the public and the industry. In discharging its responsibilities, OFTA has to break new ground in many cases, as regulators in other jurisdictions are also grappling with similar issues.

(b) The Telecommunication (Amendment) Ordinance 2000

9. With the enactment of the Telecommunication (Amendment) Ordinance 2000 in June 2000, the TA has been empowered in enforcing the fair competition regime, which previously took the form of licence conditions. The penalty that TA may now levy for breaches of the statutory provisions has been increased ten-fold and the maximum fine is now \$1 million. As a result of the enhancement of the fair competition provisions in the primary legislation, OFTA, being the executive arm of TA, supports the TA to enforce the fair competition regime for the telecommunications industry. In cases of appeal against the decisions of TA, OFTA also represents the position of TA before an Appeal Board or in court. The level of responsibility of OFTA's work is reflected by the significance of the TA's decisions in this area which will have considerable impact on the development of fair and effective competition in the telecommunications market.

(c) The new Broadcasting Ordinance 2000

10. Technology development has blurred the boundary between broadcasting and telecommunications. Broadcasting services may now be delivered over what had been regarded as telecommunications networks (e.g. video-on-demand service over fixed telecommunications networks) while telecommunications services may also be delivered over broadcasting networks (e.g. cable modem service over cable TV network). The Broadcasting Ordinance newly enacted in June 2000 has separated the regulation of transmission facilities and service provision. Since then OFTA has taken over from Television and Entertainment Licensing Authority (TELA) the responsibility of regulating transmission facilities while TELA will focus on regulating the service provisions. As the conveyance of broadcasting signals will now be regulated under separate licences issued by the TA under the Telecommunication Ordinance, this will require OFTA to administer additional carrier licences. Besides, the Broadcasting

Ordinance has also brought in fair competition provisions. The Broadcasting Authority also intends to engage the services of OFTA to support the Authority in the enforcement of the competition provisions in the Broadcasting Ordinance. All this will increase the complexity and quantity of OFTA's workload.

Need to strengthen the directorate structure in OFTA

11. Since its establishment in 1993, OFTA has undergone a series of organisational changes to position itself to meet the rapidly changing telecommunications market. It has recruited professionals in areas of law, business administration, accounting, and economics in order to strengthen its competence to discharge the added responsibilities. Nevertheless, except for an additional AD post created in 1997 to oversee the Economic Regulation Division, no other directorate post has been created over the past eight years. In view of the recent developments explained in paragraphs 3 to 10 above, OFTA needs to strengthen its directorate structure to take on new roles and increased complexity of work.

(a) Upgrading the Director-General of Telecommunications (DG-Tel) post from D5 to D6

12. DG-Tel assists the policy bureau in the formulation of telecommunications and broadcasting policies. He has been taking on a wider range of new and challenging duties arising from the rapid growth of the telecommunications sector as set out below.

13. Global telecommunications service is now a strategic growth sector. OFTA in Hong Kong plays an increasingly influential role as a leading telecommunications regulator in the global context. The DG-Tel is called upon to advise extensively on the application of the relevant international conventions and agreement to Hong Kong, in particular the compliance with the World Trade Organisation agreements, and to represent Hong Kong at high-level international conferences, such as in International Telecommunications Union (ITU) which is the most important international organisation dealing with telecommunications under the auspices of the United Nations. DG-Tel represented Hong Kong at high-level international meetings and conferences in 2000. For example, on the invitation of the Secretary General of ITU, he chairs the ITU Workshop on Internet Protocol Telephony, the ITU Expert Group Meeting and the ITU World Telecommunications Policy Forum, and serves as vice-chair of the Focus Group on the Reform of the Accounting Rate System under the auspices of ITU Study Group as well as member of the Steering Committee of the ITU Centre of Excellence for Asia.

14. DG-Tel's role has become increasingly important due to the fast-changing local telecommunications sector, e.g. the licensing of third generation mobile services, the consideration of acquisition and merger activities in the telecommunications industry and the handling of complaints on anti-competition practices. In discharging the role of the TA, DG-Tel plays a crucial role in ensuring the integrity of the regulatory and competition regime of the telecommunications sector. Besides, DG-Tel determines conditions of individual licences. The decisions DG-Tel makes are vital to the development of the local telecommunications industry, which in turn has a bearing on Hong Kong's continued attractiveness as a business, financial and information centre.

15. OFTA requires strong directorate leadership. It is essential for DG-Tel to be a person of high calibre, with the necessary status and experience in telecommunications to win the confidence and respect of the telecommunications industry locally and overseas. Being the key person to administer the strategic and fast-growing telecommunications sector, the DG-Tel should also be innovative and visionary to respond to future challenges. We consider that the present D5 rank of the DG-Tel post does not reflect adequately its level of responsibility. We propose to create a new permanent post at D6 level to replace the present post at D5 level. A job description of the DG-Tel's post at the new D6 level is at Enclosure 3.

Encl. 3

(b) Changing the Senior Assistant Director of Telecommunications (SAD-Tel) post to Deputy Director General of Telecommunications (DDG-Tel)

16. With OFTA's enhanced responsibilities, we consider that DG-Tel should be provided with adequate senior directorate support. A deputy director would assist DG-Tel to take forward the work involved and deputise him for on-going duties, such as managing staff relations, liaison with industry operators and top executives of international organisations, formulating departmental development strategies, as well as explaining policies to legislators, professional bodies, concern groups, the media and members of the public.

17. At present, there is a SAD-Tel post ranked at D3 which heads the Regulatory Affairs Branch (RAB), one of the three Branches in OFTA. We propose to create a new DDG-Tel post by offsetting the SAD-Tel post, with the rank maintaining at D3 level. The RAB will be re-organised and some of its functions will spin off to form a new Competition Affairs Branch to be headed by a proposed new post of AD(Competition) (see paragraphs 18 to 20). This allows for deletion of the SAD-Tel post and makes room for the proposed DDG-Tel to deliver supervisory duties at a higher level. The new DDG-Tel post will deputise DG-Tel in managing the department, carrying out the statutory functions of TA and overseeing all the four new branches in OFTA. A proposed job description of DDG-Tel is at Enclosure 4.

Encl. 4

(c) Creation of an Assistant Director of Telecommunications (AD-Tel) (D2) post

18. The work of the Regulatory Affairs Branch has grown very substantially because of the regulatory work required arising from a progressively liberalising and fast-developing telecommunications industry. Apart from the Economic Regulation Division and Technical Regulation Division, OFTA created in October 1998 a third division called the Competition Policy Division under the Regulatory Affairs Branch. It is justifiable to spin off the work related to competition to a new branch, the Competition Affairs Branch, and substantially augment the resources for this increasingly complex area of work.

19. The new Competition Affairs Branch will be responsible for the enforcement of fair competition, which will include the monitoring of the telecommunications market, investigation of complaints on anti-competition practices, preparation of guidelines on the interpretation and enforcement of fair competition provisions. To ensure that the responsibilities of the new Competition Affairs Branch will be discharged effectively, we propose to create a new post at AD level, to be titled AD (Competition), to head the new branch. The post-holder is required to possess sound experience and expertise in competition law and economics, and to appreciate the development of the industry. He is expected to steer the work of the Competition Affairs Branch, to contribute in the formulation of competition related regulation and strategies, and to enforce the strengthened pro-competition regime under the Telecommunications Ordinance and Broadcasting Ordinance. The head of the Competition Affairs Branch has therefore to be at sufficiently senior level. As practice of competition law/economics is new in Hong Kong and the required expertise is not readily available within OFTA, it is also proposed that the post may be filled initially by an appointee on non-civil service terms which allow a wider choice of candidates locally and overseas. If a non-civil servant is to be recruited to the post, the appointee will be subject to the condition that the total remuneration package should be broadly comparable to that of a civil servant at the D2 level. A proposed

Encl. 5 job description of the new AD (Competition) is at Enclosure 5.

20. After the proposed restructuring, the Regulatory Affairs Branch will focus on providing legal and financial advice on telecommunications regulation and monitor the performance of public telecommunications operators. A revised job description of AD (Regulatory) is at Enclosure 6. The existing and proposed organisation charts of the Regulatory Affairs Branch and the proposed organisation chart of the new Competition Affairs Branch are at Enclosures 7, 8 and 9 respectively.

Encl. 6

Encls.7-9

FINANCIAL IMPLICATIONS

21. The additional notional annual salary cost at mid-point of this proposal is \$1,545,000 –

/Permanent

	\$	No. of Post
Permanent AD-Tel post	1,443,000	1
Permanent DDG-Tel post	1,580,400	1
Permanent DG-Tel post	1,951,800	1
Less: Permanent SAD-Tel post	1,580,400	1
Permanent DG-Tel post	1,849,800	1
Additional cost	1,545,000	1

22. The additional full annual average staff cost of the proposal, including salaries and staff on-cost, is \$2,768,000. There is sufficient provision under 2001-02 Corporate and Business Plan of the OFTA Trading Fund to meet the cost of this proposal.

BACKGROUND INFORMATION

23. The OFTA was established as a government department on 1 July 1993. The regulation of telecommunications is the statutory responsibility of the TA who has specific powers under the Telecommunications Ordinance (Cap. 106) to oversee the regulation of the telecommunications sector in Hong Kong. Under the Ordinance, DG-Tel takes the role of the TA and for OFTA to serve as the executive arm of the TA. On 10 May 1995, the Legislative Council passed a Resolution to establish the OFTA Trading Fund with effect from 1 June 1995 under the Trading Funds Ordinance (Cap. 430).

24. At present, OFTA is headed by DG-Tel at the rank of D5 and has an establishment of 320 staff. Under the existing organisation structure, OFTA is built on three branches, namely –

- (a) Regulatory Affairs Branch which is headed by a SAD at D3 level. This Branch comprises the Technical Regulation Division, the Economic Regulation Division and the Competition Policies Division. It is responsible for the regulatory and licensing matters relating to public telecommunications services.
- (b) Support Branch which is headed by an AD at D2 level. This branch comprises the Development Division, the Corporate Affairs Division, the Finance Division and the Administrative Services Division. It is responsible for satellite services, telecommunications standards, external relations, corporate affairs, financial planning and management and departmental administration.

/(c)

- (c) Operations Branch which is headed by an AD at D2 level. This branch comprises the Spectrum Management Division and the Advisory and Planning Division. It is responsible for managing the radio frequency spectrum and providing advisory and planning services to the Government and other public sector bodies.

CIVIL SERVICE BUREAU COMMENTS

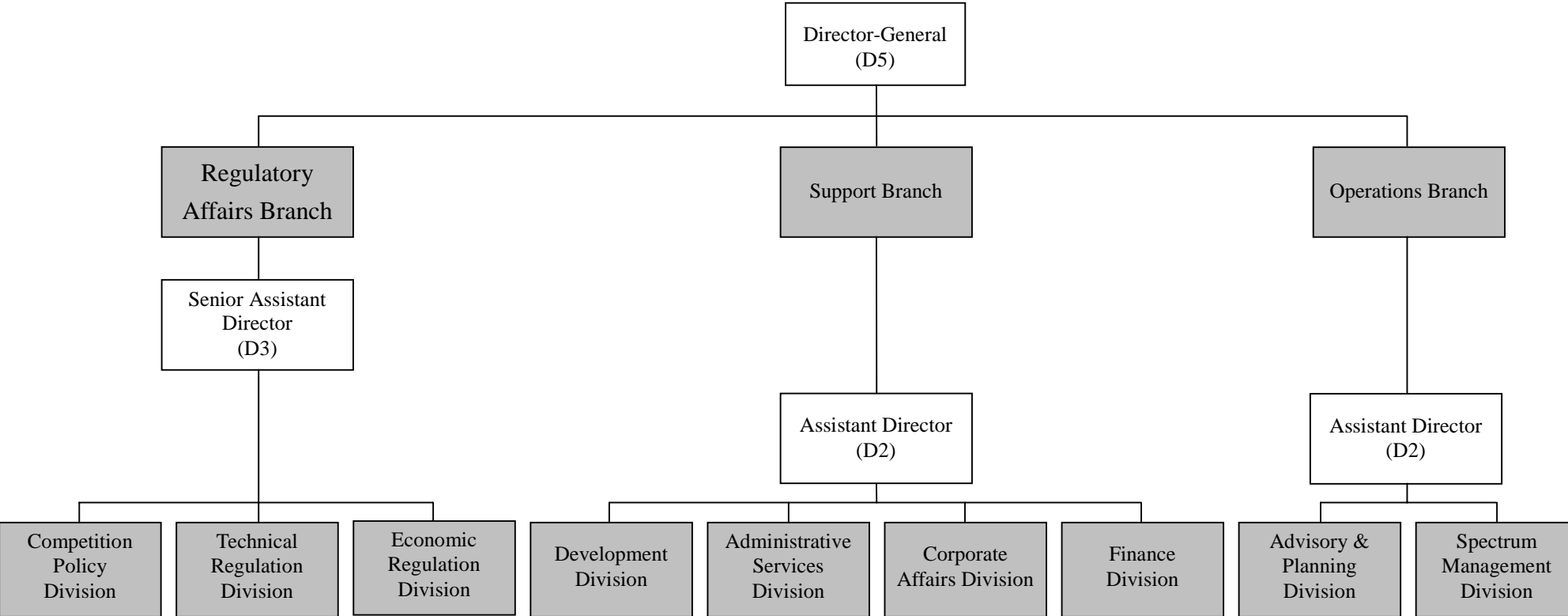
25. The Information Technology and Broadcasting Bureau has considered carefully the required directorate support for OFTA and considers this proposal the most appropriate way to proceed. Civil Service Bureau agrees that the existing directorate support in OFTA is inadequate to cope with the expanded functions of OFTA and the increasing responsibilities placed on DG-Tel. Having regard to the reasons set out in this paper, Civil Service Bureau considers that the proposed strengthening of the directorate structure of OFTA is a reasonable way forward, and is justified. The grading and ranking proposals are supported.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

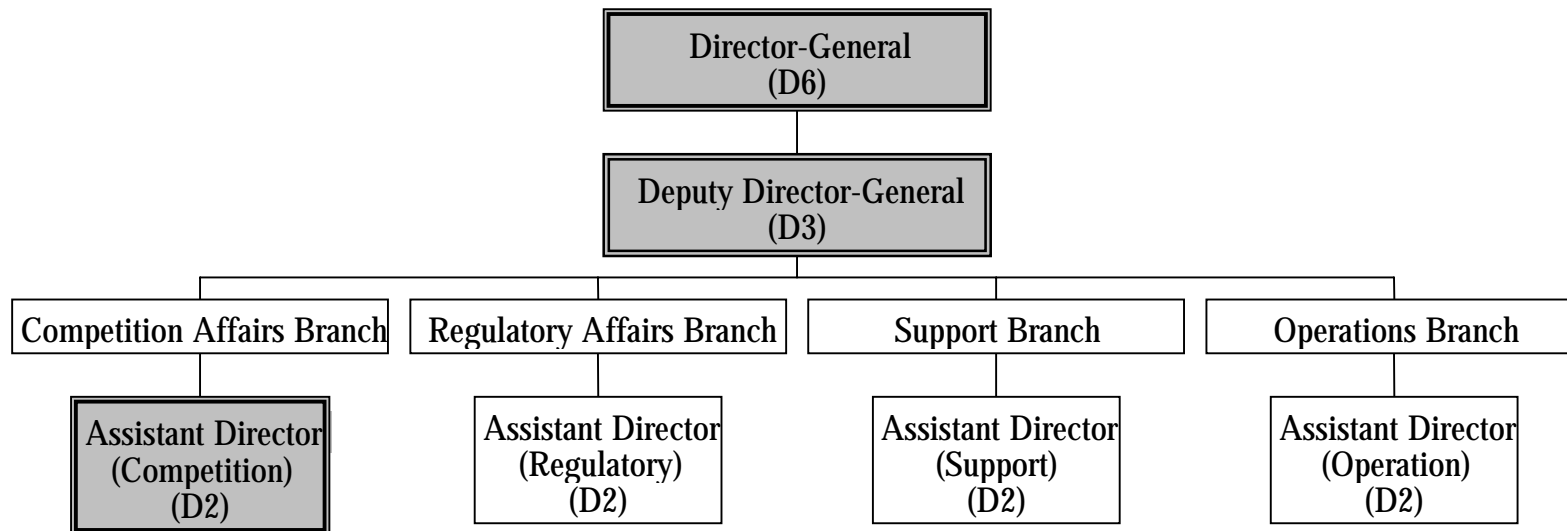
26. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the permanent posts would be appropriate if the posts were to be created.

Information Technology and Broadcasting Bureau
April 2001

Existing Organisation Chart of OFTA



Proposed Organisation Chart of OFTA



 New posts

**Proposed Job Description for
Director-General of Telecommunications**

Rank : Director-General of Telecommunications (D6)

Main Duties and Responsibilities -

Responsible to the Secretary for Information Technology and Broadcasting (SITB) for the following main duties –

- (1) to promote fair and effective competition in the telecommunications sector;
- (2) to ensure continued provision of a high quality telecommunications service on an efficient and equitable basis;
- (3) to protect telecommunication consumer interests, through the handling and investigation of consumer complaints, the administration of price and service regulation, the monitoring of anti-competitive behavior by telecommunications licensees and the establishment of consultative mechanisms to reflect consumer views;
- (4) to liaise and co-ordinate with overseas regulatory agencies, to represent Hong Kong in the International Telecommunication Union and other international telecommunications fora, and to ensure compliance with relevant international agreements;
- (5) to provide advice as required to SITB on telecommunications issues and on technical aspects of broadcasting;
- (6) to provide advice as required to the Commissioner for Television and Entertainment Licensing and SITB on competition related aspects of broadcasting;
- (7) to consider and issue licences to telecommunications service providers;
- (8) to set price control arrangements for the dominant telecommunications carriers in Hong Kong and monitoring these arrangement;
- (9) to serve on the Broadcasting Authority as an ex-officio member;
- (10) to manage the Office of Telecommunications Authority Trading Fund; and
- (11) to report annually to the Legislative Council on the work of OFTA.

**Proposed Job Description for
Deputy Director-General of Telecommunications**

Rank : Deputy Director-General of Telecommunications (D3)

Main Duties and Responsibilities -

Responsible to the Director-General of Telecommunications for the following main duties –

- (1) to assist the Director-General in direction setting and policy and strategy formulation of the Department;
- (2) to manage and co-ordinate the work of the four branches, viz. the Regulatory Affairs Branch, the Operations branch, the Support Branch, Competition Affairs Branch;
- (3) to monitor the performance and the programme of activities of the Department against targets and objectives and to oversee the implementation of proposals for improvement;
- (4) to represent the Director-General on departmental boards and committees as directed;
- (5) to assist the Director-General in carrying statutory functions as the Telecommunications Authority in ensuring the effective, efficient and impartial administration of the Telecommunications Ordinance;
- (6) to deputise the Director-General;
- (7) to take responsibility for the management of the major regulatory projects within OFTA;
- (8) to represent OFTA on advisory panels set up to advise on regulatory issues; and
- (9) to liaise with overseas regulatory bodies.

**Proposed Job Description for
Assistant Director of Telecommunications (Competition)**

Rank : Assistant Director of Telecommunications (D2)

Main Duties and Responsibilities -

Responsible to the Deputy Director-General of Telecommunications for the following main duties –

- (1) to supervise and coordinate the work in the promotion and protection of fair competition in the operation of public telecommunications services;
- (2) to monitor market behaviors, identify anti-competitive practices, initiate investigations either proactively or in response to complaints, and to take actions against anti-competitive practices;
- (3) to provide support in the mediation of inter-operator disputes and in determinations on matters of interconnection and sharing facilities in relation to competitive issues;
- (4) to review regulatory frameworks, conduct industry or public consultation where appropriate, and to issue guidelines for the enforcement of the competition provisions in the legislation and licence conditions;
- (5) to provide advice, support and recommendations in the review of telecommunications policy and legislation, particularly in the areas of fair competition;
- (6) to provide support on competition issues in the Broadcasting sector as and when required; and
- (7) to support the Telecommunications Authority (TA) in handling and defending cases of appeals against the decisions of the TA concerning fair competition provisions.

**Proposed Job Description for
Assistant Director of Telecommunications (Regulatory)**

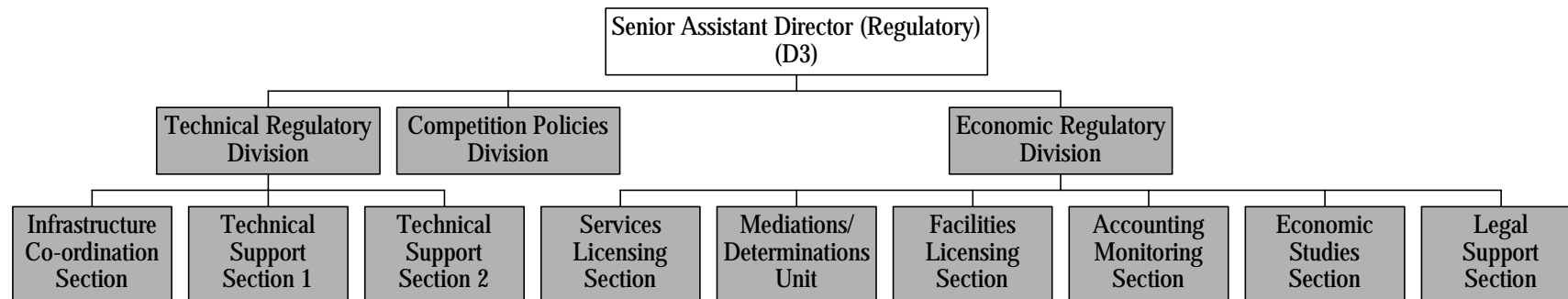
Rank : Assistant Director of Telecommunications (D2)

Main Duties and Responsibilities -

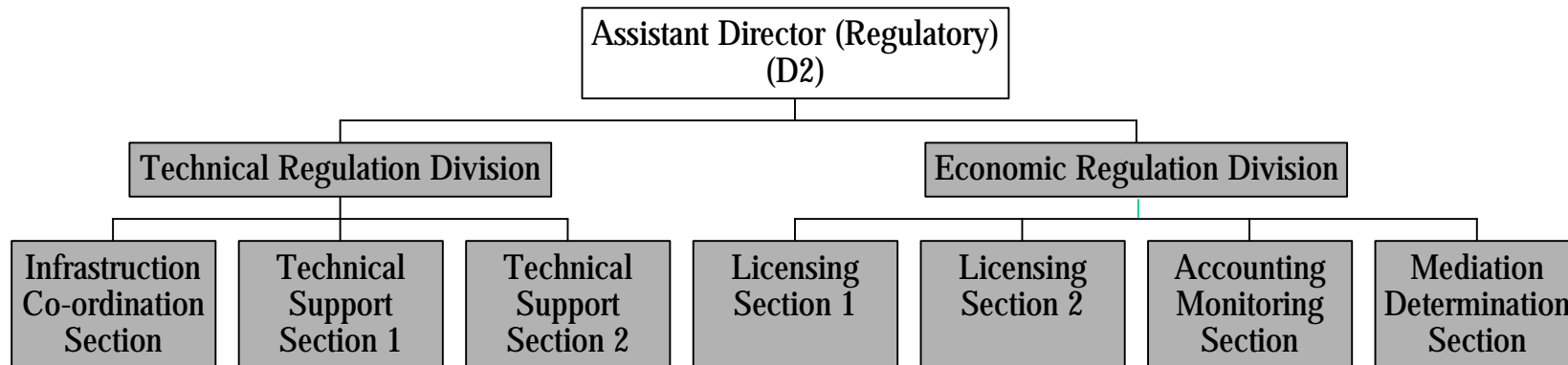
Responsible to the Deputy Director-General of Telecommunications for the following main duties –

- (1) to supervise and coordinate the work of the Regulatory Affairs Branch which will provide detailed legal and financial advice on telecommunications regulation to the Telecommunications Authority;
- (2) to monitor the performance of public telecommunications operators and to prepare reports on quality of service issues;
- (3) to supervise consultancies on legal, economic and accounting matters related to public telecommunications;
- (4) to supervise investigations on complaints regarding public telecommunications services;
- (5) to provide support to OFTA's interventions and determinations on disputes among networks operators on interconnection and other issues;
- (6) to chair and oversee the running of OFTA's Advisory Committees on regulatory issues; and
- (7) to supervise the evaluation of licence and service applications on public telecommunications services.

Existing Organisation Chart of the Regulatory Affairs Branch



Proposed Organisation Chart of the Regulatory Affairs Branch



Proposed Organisation Chart of Competition Affairs Branch

