

NEW T&T HONG KONG LIMITED
SUBMISSION TO LEGCO PANEL ON INFORMATION TECHNOLOGY
AND BROADCASTING
ON INTERCONNECTION ISSUES WITH PCCW-HKT LIMITED

1 Introduction

- 1.1 New T&T has invested over HK\$3 Billion in rolling out its network infrastructure and services and has completed its further commitments to the Government.
- 1.2 New T&T brings genuine choice of fixed lines service providers and a full range of services at very competitive prices to the market. Over the last 5.5 years New T&T has successfully captured 8% of the business fixed lines market and has about 50% share of the non-captive narrowband Internet traffic in Hong Kong. The strategic market segments being targeted at initially are business and wholesale market naturally in order to gain revenue to fund further network and service rollout. New T&T has also achieved outstanding performance in the residential market where it has network coverage. For instance it has successfully captured at least 20% of the market share at Kornhill, Kornhill Garden and Yiu Tung Estate.
- 1.3 The achievement of New T&T is notable and the scale of New T&T's investment is comparable to the investment of a PCS operator, if not greater. Yet we have less number of customers, less exchange lines and revenues compared to a PCS operator. Why?
- 1.4 The lack of effective competition in the local fixed lines market in Hong Kong *is not* a result of lack of investment in network and service rollout by the new FTNS licensees. Anti-competitive conducts and abuse of dominance are preventing and slowing the development of true competition in the local fixed line market in Hong Kong.

2 The stumbling block to the development of true competition

Type I Interconnection at network gateway – for passing of traffic between networks

- 2.1 The network of New T&T is interconnected with PCCW-HKT since July 1995 as required by their respective FTNS licence conditions for the passing of traffic across the 2 networks. TA's Statement No. 7¹ (Revised), Statement No. 8² and the 1998 Determination³ set out the charging principles.

¹ TA Statement No. 7 (Revised) dated 18 November 1997 on Interconnection and Related Competition Issues – “Carrier-to-Carrier Charging Principles” (TA's Statement No. 7 (Revised))

² TA Statement No. 8 dated 10 June 1995 on “Point of Interconnection”,

³ Determination under Section 36A for The Terms and Conditions of Interconnection between Hong Kong Telephone Company Limited and New T&T Hong Kong Limited dated 21 August 1998 (the 1998 Determination)

- 2.2 The 2 networks are interconnected at different switches for different traffic types. Traffic is sent across the networks via different route depending on the types of traffic. Basically ISP and external telecommunication services (ETS) traffic goes through a different route from the direct traffic. New T&T believes that it is technically not necessary to have separate traffic routes. The separation causes inefficiency in network capacity in that the other route cannot use slack capacity in one route, and therefore they demand more capacity to be provided.
- 2.3 Since April 1999 New T&T has been requesting PCCW-HKT for more interconnect (i.e. POI) capacity, this request significantly exceeded the previously requested amount. This increase was contributed by increase in Internet traffic and IDD traffic.
- 2.4 PCCW-HKT persistently refuses to provide the requested POI capacity unless New T&T agrees to its terms and conditions. PCCW-HKT rejects New T&T's needs for larger POI capacity. It argues that New T&T's requirement is short term as it believes that the capacity required for narrowband Internet traffic will soon become obsolete due to broadband take up. PCCW-HKT also argues that New T&T's forecasts are always excessive. To provide the required capacity PCCW-HKT demands for commitment on term and traffic volume, in cases where rearrangement work is involved PCCW-HKT demanded payment of one-off reconfiguration fee plus unspecified volume commitment and term.

As an illustration of the severity of the shortage:

- For 2000 the actual POI links provided against actual request represents a **shortage of 70%**
- For 2000 the actual POI links provided for ISP traffic against actual request represents a **shortage of 78%**
- For 2000 the actual POI links provided for ETS and direct traffic against actual request represents a **shortage of 60%**

- 2.5 New T&T rejects the terms and conditions demanded by PCCW-HKT because:
- They are *inconsistent* with the existing regulatory framework. The existing regulatory framework already provides sufficient safeguard to PCCW-HKT, in that if New T&T's forecast turns out to be grossly excessive it would have to pay for the unused capacity;
 - The commitments demanded have anti-competitive effect. The commitment would significantly increase the costs of interconnection to New T&T and therefore reduce the flexibility for New T&T to offer better and more attractive terms to its retail customers. At the retail level PCCW-HKT does not ask for similar commitments from its retail customers. Also PCCW-HKT's demand means that the interconnection charge payable to PCCW-HKT would be significantly higher than the revenue from PNETS charge that it could receive. It would not be possible for New T&T to compete under these terms, it

might as well not offer service to ISPs or ETS service providers, and this would mean that they would have no genuine choice of fixed lines operator;

- The estimate on the future of narrowband Internet traffic is anybody's guess. PCCW-HKT estimates that this traffic will peak around 2001 and then deteriorate due to migration to broadband. However statistics from OFTA show that while broadband Internet access is growing rapidly, at the same time narrowband Internet traffic is still tremendous and is driving the demand on POI capacity. This demand has to be met by network infrastructure operators;
- PCCW-HKT attempts to put the entire burden on the forecast on the future of narrowband Internet traffic and other traffic on New T&T. This is unfair as there are many external factors driving the traffic volume which are not within the control of New T&T; and
- PCCW-HKT does not really have any excuses not to provide POI capacity for other traffic types namely ETS and direct traffic.

2.6 The persistent shortage of POI capacity since early 1999 means that over the last 2 years:

- New T&T's growth in the fixed lines market, particularly the provision of service to ISP and ETS service providers, has been severely constrained;
- The services to end users and customers are severely degraded which resulted in numerous customers complaints and churn. New T&T's goodwill is severely tarnished. The services and goodwill of our customers who are themselves service providers (eg ISPs ETS) are severely tarnished as well;
- New T&T has to artificially suppress its customers' growth and in some cases cease to provide services to its customers. This includes service to its related company, i-CABLE;
- PCCW-HKT effectively controls the growth of its competitor and maintains its dominance;
- Hong Kong consumers are deprived of genuine choice of service providers; and
- The attainment of Hong Kong Government's telecommunication policy objectives is at risk.

2.7 Despite various mediation efforts by the TA since 1999 the shortage pervades. In February 2000 New T&T requested the TA to make a determination. The TA has earlier this year issued a preliminary analysis on the request for

determination and New T&T has submitted its response to the TA on 31 January 2001.

- 2.8 New T&T urges the TA to immediately direct PCCW-HKT to provide the desperately needed POI capacity, in particular the capacity for non-ISP traffic (i.e. ETS and direct traffic) as there is no dispute on the future of this group of traffic. New T&T also urges the TA to find PCCW-HKT engaging in anti-competitive conduct and abuse its dominance in failing to provide sufficient POI capacity since 1999 and imposing harsh terms and conditions for provisioning.

Type II Interconnection at the local loop – the last mile to reach customers

- 2.9 Type II interconnection overcomes bottleneck constraint, environmental disruption and wasteful duplication of resources. To implement this form of interconnection it is necessary for the exchange of PCCW-HKT to be modified to accommodate the equipment of the requesting operator. In New T&T's experience the implementation of co-location at various exchange sites of PCCW-HKT takes far too long in most instances. On average it takes about 10 months from the time of request to hand over of site to implement one exchange site. For year 2000 only 2 exchange sites were implemented out of a total request of 7 sites.
- 2.10 In addition to site constraint is the restriction on the number of lines to be cut over per day. Currently for each exchange per operator per day the quota is 36 lines. This quota simply cannot cope with the real demand patterns and requirements of customers. Yet PCCW-HKT does not seem to have problem in performing cut over of lines for its own customers at greater volume. Whilst the 36 lines limit is set out in the Industry Code of Practice for the Interconnection of Local Access Link, it was set nearly 2 years ago and should be reviewed in light of market demands.
- 2.11 In addition the cutover time slot imposed by PCCW-HKT is unhelpful. The time slot required by the customers in most cases cannot be met and have to be constantly rescheduled. This brings a lot of inconvenience and frustration to the customers.
- 2.12 Finally it is very costly to implement and maintain Type II interconnection. The cost of preparing the site is usually about 20-30% higher than our own contractor's cost.
- 2.13 No doubt Type II interconnection, if implemented fairly and equitably, allows the greatest speed to market by new entrants as compared to direct access to individual buildings. However the administrative hurdles and costs imposed by PCCW-HKT are delaying the provision of services to customers.

Others

Every request for sharing of bottleneck facilities and interconnection matters come at high price and protracted delay. This adds to the costs of doing

business for new entrants, delays their market penetration and generally reduces their ability to compete effectively with the dominant operator. Just to name a few:

Number Porting

- 2.14 For every customer that New T&T acquires which involves number porting, this comes at a very high price and protracted delay especially if the customers are themselves service providers where the number allocated to them are not level 2 number. As an illustration in October 2000 New T&T requested PCCW-HKT to facilitate number port for a customer. The cost of number migration is closed to \$80,000 and represents almost twice the annual line rental revenue to New T&T. The cost of porting is simply too excessive and often takes too long.
- 2.15 Another incident involving a customer, ABN Amro Bank N.V. illustrates the difficulty we face in number porting. In this case the customer completed the relevant form for number port and initially omitted the words “N.V.” which was subsequently included by hand. PCCW-HKT rejected the request claiming wrong customer name and company chop notwithstanding that a copy of the relevant business registration and Certificate of Registration showing the correct name of the customer were provided to PCCW-HKT at the same time when the number port request form was sent in to it. It took various discussions involving OFTA and New T&T for 2 days for PCCW-HKT to finally agree to proceed with the number porting.

Access to PCCW-HKT’s Fortresses

- 2.16 New T&T has been trying for years to gain access to the common equipment room for installation of its telecommunication equipment at buildings controlled or owned by PCCW-HKT so as to serve tenants at those buildings, including Yuen Chau Kok, Telecom House, Hermes House, just to name a few. Despite the assistance from OFTA throughout the years each request and proposal was effectively rejected by PCCW-HKT who simply would not cooperate. New T&T managed to provide service to customer at Yuen Chau Kok only because the customer eventually agreed that New T&T could install its equipment at the customer’s site, not the common equipment room. Whilst PCCW-HKT agreed to perform fibre work for New T&T to serve customers at Telecom House, this comes at a very high cost. Just to illustrate, to service a customer at Telecom House without access equipment at the common equipment room, New T&T would have to install a set of access equipment that costs over \$250,000 at each customer site, we simply cannot provide service to customer with that approach.

3 Response to PCCW-HKT’s submission to Legco dated 8 January 2001

- 3.1 *PCCW-HKT claims that its competitors can request PCCW-HKT to make investment, based on unsupported and often optimistic forecasts of required interconnection capacity, without making any financial or other commitment to actually achieving them.*

The FTNS licence requires the licensee including PCCW-HKT to provide interconnection promptly and efficiently.

New T&T in making the request to PCCW-HKT to provide interconnection capacity is also at the same time making substantial investment on its side of the network to match the capacity from PCCW-HKT. PCCW-HKT is not alone in making the requisite investment.

The current regulatory regime already provides for compensation to the operators in facilitating interconnection, these are enshrined in TA Statement No. 7 (Revised), No 8 and the 1998 Determination. In particular Statement No. 8 explicitly states that the requesting operator is in a better position to state its requirement, if its requirement turns out to be grossly excessive then it is to bear the full cost of the unused capacity. This provides more than sufficient safeguard to PCCW-HKT and it should therefore provide the desperately needed capacity first and to recover the cost if indeed the requirement turns out to be grossly excessive.

Even when the TA confirmed in his letter dated 3 November 1999 that, “[t]he TA is also satisfied that any issues relating to costs – including the issue of the effect of forecasting accuracy – can be dealt by way of a determination unless agreed between the parties. The TA is also satisfied that the interests of the parties will not be adversely affected if the issue of costs and terms and conditions was to be resolved or determined after the issue of the capacity was resolved”, PCCW-HKT would not make the capacity available.

It appears that PCCW-HKT scorns at the current regulatory regime and therefore refuses to provide the desperately needed capacity. PCCW-HKT basically wants to dictate how much capacity New T&T needs and on its terms and conditions. It would not have it any other way.

- 3.2 *PCCW-HKT claims that New T&T consistently engaged in over-forecasting and under-utilization.* New T&T believes that the refusal to provide the desperately needed capacity by PCCW-HKT has nothing to do with over-forecasting or under-utilization. The refusal to provide stems from PCCW-HKT’s view of the current regulatory regime and its belief that the growth of narrowband Internet traffic is short-term due to broadband access.

Indeed PCCW-HKT has not questioned the forecasts previously provided by New T&T until 1999. PCCW-HKT has not planned according to forecasts provided, if PCCW-HKT has planned according to forecasts we would not experience the severe shortage since 1999.

Due to the shortage since 1999, the problem has compounded in 2000 and 2001 in that due to the shortage in 1999, the requirement was carried over to 2000 and so on. With that clearly the requirement for 2001 would represent a significant jump from previous years.

PCCW-HKT simply refuses to provide capacity based on New T&T's forecasts and stated requirement. Even for year 2000 it agreed to provide only 280 T1s in March 2000 and it was after New T&T complained to OFTA and initiated a request for determination. In agreeing to provide 280 T1s for 2000 PCCW-HKT set the time frame for provisioning and the condition that no more than half of it is to be used for narrowband Internet traffic. As a result of severe congestions leading to customer complaints and churn, New T&T again requested OFTA to assist. It was after numerous phone calls, letters and meetings called by OFTA that PCCW-HKT reluctantly offered to advance provisioning of 20T1s out of the 90 T1s that it unilaterally set for Q1 2001 in December 2000. PCCW-HKT also agreed to rearrange 20 T1s but at a very high cost (closed to \$300,000) without any cost breakdown being provided to New T&T despite numerous requests. The whole process is designed to deny the requirement and to delay the provisioning.

- 3.3 *PCCW-HKT claims it provides interconnection responsibly, efficiently and cost-effectively, in a realistic time- and cost- frame. New T&T finds this hard to believe.*

How much interconnection capacity that New T&T requires is not up to PCCW-HKT to dictate. PCCW-HKT's obligation is to provide the interconnection capacity requested by New T&T. Its recourse is to go to the TA if the requirement is unreasonable.

The shortage of capacity is also in part contributed by the network architecture designed by PCCW-HKT for interconnection. It is simply inefficient. Different traffic types are separated over different trunk group for no good technical reason when they could be grouped together to allow for greater efficiency. New T&T proposes to PCCW-HKT 2 technical solutions, one is to combine the trunk group so as to allow for greater efficiency and therefore lesser demand on capacity. The proposals were effectively rejected by PCCW-HKT. To implement New T&T's proposed method 1, PCCW-HKT demands that New T&T must: (a) pay to PCCW-HKT \$60million one-off up-front set-up costs plus unspecified on-going charges; and (b) contractually commit to PCCW-HKT the level of interconnect traffic volume and the term for the interconnect resources.

PCCW-HKT further demands that to implement New T&T's proposed method 2, New T&T must (a) pay PCCW-HKT the one off rearrangement costs of \$730million plus unspecified on-going charges; and (c) commit on the level of traffic volume and term.

New T&T built its entire network infrastructure for just \$3 Billion and yet PCCW-HKT claims \$60million and \$730million plus unspecified on-going charges just to do some simple reconfiguration on its network! Is this efficiency, cost-effectiveness and responsible?

New T&T argues that PCCW-HKT's cost base is excessive. PCCW-HKT has enjoyed decades of monopoly in the provision of internal and external telecommunication services in Hong Kong and supposedly has built a massive

network infrastructure during its time as a monopoly service provider. Had it not invested in cost-efficient infrastructure with the monopoly profit that it reaped from the Hong Kong public? And why is the competitors being made to compensate PCCW-HKT skyrocket amount for interconnection? With that sort of cost structure there would never be a level playing field.

- 3.4 *PCCW-HKT claims that it actively sought to avoid congestion, to the point where there is little or none. It claimed to have reconfigured its POI links to provide additional ones to New T&T and to accelerate new links in a concerted effort to avoid problems.*

PCCW-HKT has the obligation under its licence to facilitate interconnection promptly and efficiently. It also has the obligation under its licence to provide a good, efficient and continuous service in a manner satisfactory to the TA. These are fundamental obligations.

PCCW-HKT has simply not done enough. It has failed to provide the desperately needed capacity to New T&T. For 2000 we are talking about a shortfall of 70%! This shortfall has resulted in many customer complaints to New T&T and customer churns. All these have been reported to OFTA. It was because of New T&T's repeated requests to OFTA to urge PCCW-HKT to provide more capacity and the customer complaints that OFTA contacted PCCW-HKT. It was then that PCCW-HKT offered to advance provisioning of some of the capacity and advance 20 T1s from capacity reserved for Q1 of 2001.

Yes, PCCW-HKT did agree to rearrange 20 T1s for New T&T, but at a whopping cost of closed to \$300,000, this demand came without a single piece of cost breakdown despite repeated requests!

Yes, PCCW-HKT did offer to provide 300 T1s for 2001 (not the 360T1s stated in PCCW-HKT's submission to Legco dated 8 January 2001). This was because PCCW-HKT had not reserved enough capacity for New T&T unless New T&T accepted a "special commercial arrangement". This "special commercial arrangement" involves a reconfiguration of an existing switch, it would take 6 months and it would provide additional 300 T1s *but at a one-off reconfiguration cost of closed to \$10million plus migration costs of other operators (as required by concerned operators) and requirement to commit on traffic volume over an unspecified period of time.* No reasonable commercial organization would commit to that sort of terms. Is this commitment to provide capacity and to avoid congestion? This is more the case of killing the competitor when they have absolutely no choice.

The amount demanded by PCCW-HKT to provide the 300T1s would mean that the interconnection cost for New T&T would be at least 48% higher than the potential revenue from PNETS charges from retail customers. With this sort of cost structure at the interconnect level New T&T might as well not offer services to ISP or ETS service providers.

4 **Conclusion**

In the case of the mobile market where the competition started without the presence of a monopoly incumbent operator, the market has developed very differently from that of a fixed line market with the presence of a monopoly incumbent operator, why? New T&T submits that competition in the fixed lines market can come about rapidly and efficiently to the benefits of Hong Kong if and only if we can effectively eradicate anti-competitive conduct and abuse of dominance.

Submitted by New T&T Hong Kong Limited
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