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Secretary for Commerce, Industry and Technology
(Attention: Ms Gracie Foo, PAS(E))
Commerce, Industry and Technology Bureau
1 & 2/F Murray Building
Garden Road
Central
Hong Kong

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BY FAX

Fax No. : 2511 1458
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Dear Ms Foo,

Telecommunications (Amendment) Bill 2002

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

Clause 3 - proposed section 7P

- (a) How soon after a change in the ownership or control over a carrier licensee will the Telecommunications Authority (TA) conduct investigation to assess the impact of the change on competition? Is the carrier licensee concerned required to notify TA within a certain period after the change? Should provisions be made in the Bill to cover these matters?
- (b) Are there any factors which TA must take into account before forming his opinion under proposed section 7P(1) and (6)? If so, will the Administration consider setting out those factors in the Bill rather than in the guidelines? As you are aware, the matters that TA shall take into account in considering whether a conduct is anti-competitive and whether a licensee is dominant are provided expressly in sections 7K and 7L of the Telecommunications Ordinance (Cap. 106) respectively. Will the Administration consider adopting the same approach for proposed section 7P?
- (c) What powers does TA have to assist him in conducting investigations on the impact of a change or proposed change in the ownership or control over a carrier licensee on competition? Can TA invoke the power to require information under sections 7I, 35A and 36D of the Telecommunications Ordinance in conducting the investigations?

- (d) Is there any time limit within which TA is required to form an opinion and make a decision under proposed section 7P(1) and (6)? Should the time limit be provided expressly in the Bill? By way of reference, the UK Enterprise Bill, which provides for the new UK merger control regime, sets out the timetables for processing merger cases.
- (e) In proposed section 7P(1) and (6)(b)(ii), is it appropriate to use "eliminate" to refer to an anti-competitive effect which has not yet come into being? Would it be more appropriate to use "eliminate or prevent" to cater for anti-competitive effect which has resulted or would result, and anti-competitive effect which is or would be likely to result, from the change or proposed change in ownership or control over a carrier licensee?
- (f) In proposed section 7P(1) and (6)(b)(ii), what matters will TA take into account in deciding what action should be taken by the carrier licensee concerned to eliminate the anti-competitive effect? Will the Administration consider stipulating those factors in the Bill? For your information, under the UK Enterprise Bill, there are express provisions on the matters to which the regulatory body may have regard in deciding what action should be taken to remedy or prevent the anti-competitive effect.
- (g) When a carrier licensee applies to TA for consent to the proposed change in the ownership or control over the licensee under proposed section 7P(5), what information is the carrier licensee required to submit to TA in the application? Is the application required to be in a prescribed form? Should provisions be made in the Bill to cover this matter?
- (h) Proposed section 7P(6)(a), as drafted, appears to suggest that TA would have the discretion to refuse to give consent to a proposed change of control exercised over a carrier licensee even though TA is of the opinion that the proposed change would not have anti-competitive effect. Does this reflect the Administration's intention? If so, please explain the grounds upon which TA may refuse to give consent despite his opinion that the proposed change would not have anti-competitive effect. Should the affected carrier licensee be given an opportunity to make representations in such situation?
- (i) In proposed section 7P(8)(b), while the English text reads "in the case of subsection (6)(b)(ii), the Chinese text refers to "(如根據第(6)(b)(ii)款作出決定)". Please make both texts match as far as possible.

Clause 6 - proposed section 32N(1A)

- (a) Why is it proposed that the matters that may be appealed against are confined to TA's direction issued under proposed section 7P(1) and TA's decision made under proposed section 7P(6)(a) and (b)? Is it

appropriate to make TA's opinion formed under proposed section 7P(1) and (6) subject to appeal as well? As you are aware, TA's opinion formed under the existing competition provisions (i.e. sections 7K, 7L, 7M and 7N) is subject to appeal to the Telecommunications (Competition Provisions) Appeal Board (the Appeal Board). Will the Administration consider making the same arrangement for TA's opinion formed under proposed section 7P(1) and (6)?

- (b) Why is it proposed that the right of appeal be given to carrier licensees only? Since one of the policy objectives of the Bill is to promote fair and effective competition to protect consumer interest, should a consumer, or indeed any person aggrieved by TA's direction or decision made under proposed section 7P, be given the right of appeal as well? As you are aware, under section 32N(1) of the Telecommunications Ordinance, any person (not just the licensees) who is aggrieved by TA's opinion, determination, direction or decision relating to the existing competition provisions (i.e. sections 7K to 7N) may lodge an appeal to the Appeal Board. Will the Administration consider adopting the same approach for proposed section 32N(1A)?

Matters arising from the Bills Committee meeting on 25 July 2002

At the Bills Committee meeting on 25 July 2002, the Administration informed members that under the Bill, if a change or proposed change in the ownership or control exercised over a carrier licensee raises competition concerns, TA will invite representations from the carrier licensee and others and will consider those representations. However, while proposed section 7P requires TA to give the carrier licensee concerned a reasonable opportunity to make representations, there is no provision requiring TA to invite representations from other persons. Should appropriate amendments be made to proposed section 7P if it is intended that TA is required to invite representations from persons other than the carrier licensee concerned?

I would appreciate it if you would let me have your reply in both languages by 27 September 2002.

Yours sincerely,

(Connie Fung)
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