



8 November 2001

Submission to Legislative Council

Response to OFTA's Consultation Paper
on
Implementation of the Full Liberalisation of
The Local Fixed Telecommunications Network Services Market
from
1 January 2003

We welcome this opportunity to share with you all the views of Hutchison Global Crossing on OFTA's Consultation Paper on "Implementation of the full liberalisation of the local fixed telecommunications network services market from 1 January 2003".

Full liberalisation of the local FTNS market has huge implications for the local telecommunications market across all sectors of telecommunications business. While we are not opposed to liberalisation as an objective, we are eager to see that OFTA has a comprehensive plan which can ensure that the implementation of the liberalisation process will actually result in a healthy operating environment conducive to fair competition.

OFTA's Consultation Paper, however, is surprisingly short for the complexity of the subject it seeks to address. It leaves a lot of questions unanswered, and hence, a lot of uncertainty as to how the new regime would work and how it would benefit consumers and Hong Kong at large.

We would like to summarise the issues we see with OFTA's proposals as follows:

1. The absence of qualifying criteria or service commitments for the new entrants

In the May 1999 Legislative Council Brief prepared by ITBB, concerning the grant of licences, it was stated that the TA would, "in line with its usual licensing practice, take into account relevant considerations, e.g. limitations on the available natural resources (such as frequency spectrum, rights of way, etc.), the technical soundness of the proposal from the applicant, the applicant's technical capability to implement the proposal, the financial soundness of the proposal, the applicant's commitment to investment in the proposed services, and a need to avoid undue destruction to the environment".

There is, however, no reference to these or any other licensing criteria or service commitments in OFTA's paper.

We can see the absence of service commitments leading to negative multiple chain effects which can worsen the current state of competition:

- (a) Under OFTA's proposal, even new entrants without serious service offerings can enjoy all the rights of an FTNS operator, e.g. participation in road opening, Section 36A determination of terms of interconnection, etc. There is a risk that some manipulative new entrants with control over certain rights of way with no intention to offer services at all can extort undue gains from other operators. From their position as FTNS operators, they can easily burden other operators in the road opening co-ordination process and can render the regulatory process to abuse for their private purposes. This will only delay service roll-out and innovation of those operators with serious business objectives and commitment to provide services.
- (b) In the absence of minimum service commitments, it is hard to imagine any company wanting to invest in the less profitable market sectors in Hong Kong. If the new entrants are allowed to choose to invest for self-serving purposes or in the profitable sectors only, there is a real risk that other consumers can miss out on the benefits of competition.

- (c) The current FTNS operators are required to meet minimum investment and service commitments. They have therefore deployed their network and extended their services outside the narrow corporate sector. The revenue which the FTNS operators derive from serving the more profitable customers helps meet the costs of servicing the wider consumer population. If the new entrants can enter the market without any service commitments and focus only on high value customers, they will siphon off valuable revenue which may adversely impact the competitiveness of services offered by existing operators to other consumers.

We recognise that, in the different environment of a fully liberalised market with readily available competing infrastructure, the service commitments and qualification criteria for new entrants may need to be different from those which apply to the existing FTNS operators. For example, to encourage efficient use of the existing infrastructure, the commitments may be more focused on requiring offering of services to consumers instead of on network development. There may also be more focus on investment in value added applications and new generation services instead of in basic infrastructure to reinforce the Government's policy objective of developing Hong Kong into a leading digital city.

We therefore suggest that Hong Kong impose certain minimum service requirements on new entrants in terms of service availability to a certain percentage of the Hong Kong population.

2. How much should the new entrants be allowed to build in Hong Kong?

There is no discussion in OFTA's paper on how much the new entrants would be allowed to build in Hong Kong.

Hong Kong is one of the world's most congested and densely built cities and has a greater concentration of competing network infrastructure than almost any other place. We have five fixed wireline network operators and five fixed wireless network operators.

Continuing infrastructure development without limits can possibly be costly to Hong Kong, its consumers and the communications industry.

A more detailed cost-and-benefit analysis is needed to examine the consequences of additional participants with competing interests in the industry in our already overbuilt environment. Added strain on the already limited resources like rights of way, building access, burdens on the road-opening co-ordination process, possibility of excessive duplication of infrastructure resulting in waste of limited capital resources and economic inefficiency are just a few examples of the difficult issues we have to resolve in connection with the proposed liberalisation.

3. Uncertainty as to the new regulatory regime

Regulation needs to evolve with the market. The current regulatory regime in Hong Kong is based on pre 1995 thinking. It was developed before the Internet phenomena, at a time when PCCW/HKT was dominant in virtually every market and before the new fixed operators have had an opportunity to roll-out their networks.

The current regime will become outdated by 2003 with a much increased level of liberalisation. Both existing operators and new entrants need to understand the regulatory regime in which they operate before they are willing to invest or continue to invest in Hong Kong. The Government and the Hong Kong public also need to be ensured that the new regulatory regime can actually allow the proposed liberalisation to bear its fruits as intended.

OFTA has not addressed the question as to what the new liberalised market needs in terms of regulation or deregulation in order to function properly. Perpetuating certain existing features of the current regulatory regime in the new era can in fact stifle competition. OFTA needs to clearly account for the following before moving forward:-

- a. Economic and policy basis of the new regulatory regime.
- b. Extent to which new entrants and existing operators should be regulated or deregulated.
- c. Mechanism for phasing out regulation as appropriate.
- d. Continuing role of OFTA in a highly liberalised market.
- e. The risks of full liberalisation for Hong Kong's city-based economy when most of our neighbours are not open markets.

4. We all need more time for study and analysis

As explained above, there are some very complex issues to be resolved in order that we minimise the risk of mis-managing the process of liberalisation.

The European Union has taken 8 months to debate and resolve issues relating to liberalisation. New Zealand and Australia have respectively taken 9 months and 15 months.

Hong Kong only proposes to do it in 6 weeks with all these complex issues unaddressed.

We understand that the Government's Audit Commission is undertaking an audit to examine the Government's efforts in developing and promoting a liberalised telecommunications market in Hong Kong (including the regulatory work of OFTA) and to identify areas where further improvements can be made. The report is intended to be released in April next year. This is in fact a timely review of the success and failures of the Hong Kong liberalisation process. Results of this study can certainly go towards helping us answer the issues listed above.

We urge all Legco Members and OFTA to allow enough time and effort to be spent on these important issues. Whether Hong Kong will succeed as an international telecommunications hub and information society are dependent upon how well these issues are resolved.

The costs of mistakes can be very high. The Australian regime is now acknowledged to have failed to protect investments and new entrants with devastating results. In 1999, there were 11 major telecommunications operators investing in Australia. In 2001, only 5 of them are still operating.

In the USA, policies intended to foster service-based competition appear to have had the opposite effect of severely damaging competition in key broadband services. Two out of the three larger broadband operators that provide nation-wide services have gone into liquidation.

Misguided regulatory policies can lead to lost jobs and the waste of billions of dollars of social resources and investor funds.

We certainly hope that we do not repeat these mistakes. There is still more than a year before January 2003. We can meaningfully use the time we have in hand to work through these issues without delaying the implementation of full liberalisation in January 2003.