



**Wharf New T&T Limited**  
**Submission to LegCo Panel on Information Technology and Broadcasting**  
**On Implementation of Full Liberalisation of the Local FTNS market**

**12 November 2001**

1. Wharf New T&T fully supports the Government on open competition in the local fixed lines market, *ideally* as open as the ETS market or the mobile market. Some of the TA's proposed implementation details require refining and we will provide our detailed comments to the TA on 27 November 2001.
2. Consumers might wonder why after six years since deregulation, the local fixed lines market is not as competitive as that in the mobile market. To achieve a truly competitive market Wharf New T&T submits that regulatory changes are a must and should be at a much faster pace. There should not be any assumption that issuing more licences is the only or correct way to increase competition, although it would arguably be the easy way for the Government.
3. Wharf New T&T sees the following issues as stumbling blocks to the development of a truly competitive market. Some of these issues are product of anti-competitive conduct and abuse of dominance by the ex-monopoly operator who retains a strangling hold of over 90% of the market share and the bottleneck facilities. Through imposition of excessive charges, excessive delay and restrictive provisions the dominant operator works to make sure that there will be no succession rivals in the wings. A blueprint for reform would make a big difference even if just a few steps are taken.
4. This submission outlines the current problems which come in the form of excessive charges, excessive delay and restrictive covenants. These should form the basis for regulatory reform which will present challenge to the TA; nevertheless they are essential if we are to see the benefits of true competition in the telecommunication industry in Hong Kong.

Type I interconnection

5. This is necessary for the efficient delivery of traffic in a multi-network environment. For that to happen, there must be sufficient capacity, at a minimum cost and easily scalable.

- (a) *Capacity* - insufficient capacity over the point of interconnection means subscribers of one network will not be able to call subscribers or service providers of another network operator. This poses real threat to the efficient operation of multiple networks, to the users and to the development of competition.

It is crucial for the regulator to mandate interconnection and to lay down and enforce very clear rules in establishing and maintaining interconnection. The regulator must be prepared to step in swiftly to direct interconnection when the operators fail to reach agreement within a reasonable time, which should be short.

- (b) *Relationship* – each operator has to establish and maintain interconnection under their respective FTNS licences so as to operate in a multiple network environment; and each operator has to operate, maintain and provide a good, efficient and continuous service to meet their respective obligation under their respective FTNS licence. *The relationship between them therefore is one of equal standing with equal responsibility.* It is therefore inappropriate for them to treat each other as “*requester*” and “*provider*” as the case may be. It is also not appropriate that one operator would have to “*request*” for interconnection capacity. It is equally inappropriate that the other operator being requested could have the right to review and consider whether or not the “*request*” is reasonable or acceptable and to decide whether it would “*provide*”, when to provide and on what terms. To demand that would be to give an operator the opportunity to raise its competitors’ cost and barrier and thereby weaken their ability to compete effectively. We believe the TA must first of all recognize this relationship and the terms of interconnection between the operators must truly reflect that.

- (c) *Cost* – Currently one of the biggest problems is the discrepancy between the wholesale (ie the inter-carrier) and the retail interconnection charges. In the case of retail interconnect (i.e. PNETS) charges, PCCW-HKT’s PNETS charges is reviewed by OFTA every year and is on a downward trend. As a result of the last revision PCCW-HKT further reduced its PNETS charges to its ISP customers from 2.3 cents to 2.0 cents per minute. Wharf New T&T’s PNETS charge to its ISP customers' tracks very closely with PCCW-HKT’s in order to compete. In theory we can set our own charge but in practice it does not work. On the wholesale side the interconnection charge between the network operators remain unchanged since the last determination by OFTA in 1998 and this charge is at average of 2.5 cents. As a result for every minute of say dial up traffic from PCCW-HKT to an ISP hosted on Wharf New T&T’s network, we have to incur a loss of 0.5 cents or represents a form of subsidy to PCCW-HKT. In effect other network operators are being *penalized* for winning over the ISP customers from PCCW-HKT. This represents a major discrepancy in maintaining fair competition in the market.

- (d) *Self-build* – Wharf New T&T currently interconnects with PCCW-HKT by leasing interconnect links from PCCW-HKT. This is a result of lack of network coverage in the early days and the keen desire to commence service offering as soon as possible shortly after the issuing of the FTNS licence. As network coverage extends this leasing arrangement should be replaced by our own network and thereby reduce our reliance on PCCW-HKT. Indeed we have been negotiating with PCCW-HKT to interconnect at mutually agreed points. Yet since we initiated the discussion in 1998 this has not been realized notwithstanding that the locations have been identified and agreed as well as the implementation schedule. The draft agreement contains some very harsh and unfair terms so we requested OFTA's assistance in May 2001. OFTA had twice called for a tri-party meeting and each time PCCW-HKT refused to come with all sorts of excuses.

#### Type II interconnection

6. This is mandated by OFTA to overcome constraints at bottleneck facilities and to speed up competition to PCCW-HKT.

In economic terms this avoids duplication of resources. Yet the incumbent has imposed various barriers and extracts all sorts of ransom in facilitating Type II interconnection.

- (a) *Co-location sites* – the number of sites that we can implement a year very much depends on the resource allocation of PCCW-HKT and also on space availability. The implementation of one site typically takes about 6 to 7 months and costs at least HK\$2million one-off. In addition there would be ongoing costs.
- (b) *Local Access Link (LAL) quota* – PCCW-HKT imposes quota on the number of LALs to be cutover per exchange per operator. Clearly this limits the speed that customers can change and therefore speed of competition. We have once worked out ourselves that at this rate, at an exchange with 100,000 lines, assuming 15% customers decided to churn to our network, with this quota we estimate that the maximum waiting time for a customer to switch would be 8 months. This shows that when 50% of PCCW-HKT's exchanges are opened up for Type II interconnection it does not mean that 50% of the customers would enjoy choice.
- (c) *Fibre to the building* – Increasingly, PCCW-HKT is converting more and more buildings from copper to fibre. While the conversion itself may be a legitimate commercial decision, PCCW-HKT has been rejecting our LAL orders to these buildings after the conversion claiming lack of copper cable. We are concerned that, the Government on one hand encourages Type II interconnection so as to speed up competition and choice to consumers, yet on the other hand the necessary cables appear to be intentionally removed so as to circumvent regulatory obligation. We believe OFTA should urgently look into the issue so as to ensure that the Government's decision would not be circumvented as this demonstrates that the incumbent is not presently subject to effective control.

- (d) *Broadband Type II interconnection* – The Government mandated broadband Type II interconnection in November 2000, yet after nearly one year of negotiation no commercial agreement has been concluded. Recently in order to fend off the determination by OFTA, PCCW-HKT published its tariffs, the terms of which are extremely harsh and unfair. On those terms there would be no business case based on Type II interconnection and there would not be competitive choice for the consumers for broadband access. In the Tariff published by PCCW-HKT it charges \$198 per month and one-off \$1491 for full bandwidth and \$182 per month and one-off \$2576 for partial bandwidth. This compares with PCCW-HKT's tariff to its residential customers at \$198 per month and \$196 per month to its ISP customers. With that sort of charges there cannot be any viable business case and there will not be any competition.

#### Number portability

7. Number portability comes at a high cost, according to the determination by OFTA early this year the one-off per line set up charge is \$95.40 per number which is payable by the recipient network operator to the donor network operator. In most cases by the new operators to the dominant operator as there are more churns from the dominant operator. A high number port charge acts as an obstacle to the free movement of customers. It is not hard to see the effect – particularly if this is compared with mobile number port where there is no charge between the mobile operators.

Charges is just one of the problems for number porting in fixed lines. There is an unofficial quota on the quantity of number port, which PCCW-HKT will perform per day for each operator. Any requests above the quota will not be entertained as it happened recently. When that happened customers could not switch over on the scheduled time and complaints would increase for the long installation waits. We were fortunate for OFTA's clarification and assistance to resolve the issue recently. This is a clear breach of a guideline by OFTA and we hope OFTA will impose maximum penalty to ensure that this will not happen again.

#### Directory Enquiry Services

8. All FTNS operators have to provide directory enquiry services to their customers. This requires the operators to establish and maintain a unified directory database of all customers in Hong Kong (except for those who do not wish to be listed). Yet to date we are still relying on PCCW-HKT to answer our customer's directory enquiries and pay PCCW-HKT for each and every call answered. We have been asking PCCW-HKT to give us the raw directory information of its customers for 2 years and we do not seem to be getting anywhere. Any control that the dominant operator can exert over its competitors will give it the opportunity to raise their costs and thereby weaken their ability to compete effectively.

### Lack of transparency in charges

9. Interconnection charge is one of the areas with the most contentions. It is nearly impossible to have a competitive marketplace unless we have a rational pricing structure. Through our own assessment the charges imposed by the dominant operator are in all cases way above our own estimation. OFTA has said in its various statements on the cost recovery principles for various interconnection activities. In the case of number portability OFTA in its statement in September 1997 detailed the applicable compensation principles, which include relevant costs; costs causality; cost minimization; effective competition; and distribution of benefits. It recognizes that effective competition requires that one operator should not have the ability to raise its competitors' costs or to weaken their ability to compete.

Reality tells us this is difficult to police. In nearly all cases there is no transparency as there is no cost breakdown being provided and there is no room for meaningful negotiation. Request for determination takes time and OFTA may not accept the request. As a result we end up with excessive costs and over-compensation to the dominant operator.

10. Often, the regulator should never forget that the interconnection market is not a competitive one. The dominant operator has no genuine commercial interest in any commercial negotiation. It is simple economics that the market share of the dominant operator erodes whenever there is a new interconnection agreement being put in place which threatens its decades-old cash cow. Given the reluctance of the regulator to step in, the dominant operator will only enter into such negotiations to attain its best position. Its best position is where it can charge its competitor an unreasonable interconnection costs and introduce excessive delay, thereby making the interconnection process economically unsound for its competitor.
11. In summary Wharf New T&T submits that to allow true competition to flourish the TA must remove ALL barriers which come in the form of:
  - excessive charges by the dominant operator for implementation of various interconnection facilities;
  - lack of transparency in charges of the dominant operator;
  - refusal to provide sufficient interconnection capacity on fair and reasonable terms, promptly and efficiently;
  - unreasonable delay in the implementation of interconnection including self-build and broadband Type II interconnection; and
  - the insufficient quota unilaterally set by the dominant operator in the cutover of local access links and number ports.