

LEGCO PANEL ON INFORMATION TECHNOLOGY AND BROADCASTING:

**LEVEL 3 COMMUNICATIONS' SUBMISSION TO THE PANEL'S DISCUSSION OF
OFTA'S 2003 CONSULTATION PAPER, 12 NOVEMBER 2001**

Level 3 welcomes the opportunity to comment on the Panel's consideration of 2003 liberalisation issues.

About Level 3

Level 3 is a global information and communications services company, building the world's first communications network fully optimised for IP communications. As a key part of this global network, we are in the advanced stages of completing the first leg of an independent high-capacity submarine cable network, already links Hong Kong directly to Japan, the United States and Europe, and which will soon add Taiwan and Korea to the link. Last year, Level 3 was awarded Hong Kong's first cable-based EFTNS (External Fixed Telecommunications Network Services) licence, and has been offering services to the Hong Kong Internet community since late 2000, via our state-of-the-art gateway located in Quarry Bay.

Level 3 has committed, both publicly and as a condition of our EFTNS licence, to make available to the Hong Kong Internet community a plentiful supply of international capacity at dramatic discounts to today's prices, which are currently 8-10 times the prices paid in the United States and Europe.

Key problems with the proposed regulations

The regulations are intended to fully open Hong Kong's domestic fixed telecommunications markets, allowing new carriers to build their own fixed networks to compete with the four incumbent local FTNS operators from 2003.

Unfortunately, there are major problems with some of the preliminary views reached by OFTA in its Consultation Paper. The key problems are:

1. New carriers will be unable to commence building their facilities-based networks in readiness for 2003, but can only commence building them from 2003. This means that the introduction of true competition will be much farther away than 2003.
2. New carriers will not enjoy adequate rights to build their networks. The right-of-way and building access provisions applying to new carriers are grossly inadequate, and will only lead to a new series of "bottlenecks" that will frustrate Hong Kong's policy objectives and deter new investment.

Absence of "build" rights before 2003

OFTA holds the preliminary view that to allow new competitors to build (but not operate) their networks before 2003 would breach the Moratorium deal.

First, it cannot be seriously questioned that requiring potential new carriers to wait until 2003 to start building their networks is inconsistent with the Government's policy objectives to

introduce facilities-based competition from 2003. You cannot have facilities based competition without facilities.

This being so, we strongly disagree with OFTA's view regarding the Moratorium arrangements. We consider that it is quite possible to legally build (but not operate) network elements prior to 2003.

OFTA's current proposal, that carriers can make commercial arrangements for the deployment of networks from 2003 (but cannot, for example, use regulatory assistance in obtaining the same results), is deeply flawed. This is because it unfairly advantages those companies that may be affiliated with the owners of existing networks or rights of way, at the expense of independent operators. It will therefore send a strong negative signal to potential investors regarding the discriminatory effect of Hong Kong regulations.

New entrants require at least 1-2 years to build competitive networks. As such, in the event that these new licensees are unable to commence building their networks until 2003, then the market will not actually begin to fully until 2004 or 2005, when these networks become operational. Hong Kong can simply not afford to delay the introduction of open competition until this far in the future.

Absence of mandated rights of way and building access rights

OFTA's current proposal is to deny to new carriers the rights currently held by incumbent carriers. That is, new carriers cannot access buildings as of right. Instead, they must first negotiate with (1) existing carriers within these buildings to interconnect with them for access to customers and (2) property owners to access their properties. The ability to open public roads is also intended to be dealt with by OFTA on a "case-by-case" basis.

This policy has the potential to utterly subvert the objectives of the 2003 regulations. This is because, rather than enabling new carriers to break down the bottlenecks that have hampered Hong Kong's IT development for the past 5 years, it will extend and entrench the "tollkeeper" role of incumbent FTNS operators, and create clusters of new bottlenecks for large property companies.

We are not satisfied with OFTA's justification for this policy, namely that congestion in buildings warrants a case-by-case approach. The imperative is that all carriers have equal rights, not that new carriers are given second-class rights compared to those that had been enjoyed under the former regime.

The effect

The combined impact of the two policies above will be to appear to invite potential investors to build networks in Hong Kong, but then to deny them the very rights they need to do so.

Approximately 40-60% of the operating costs of Hong Kong ISPs are spent on international bandwidth. These costs need to fall dramatically, in a very short period of time, if this community is to survive and prosper, and if the general Hong Kong community is to be able to participate fully in the on-line economy and maintain its position as the region's premier business hub.

Given the rapid pace of regulatory reform and commercial developments, both regionally and worldwide, this timeline is extremely disadvantageous to Hong Kong aspirations, and reforms are needed urgently.

The solution

In our view, the following reforms are required:

- to prevent Hong Kong falling behind in developing as a regional communications hub, new local fixed carrier licensees must be permitted to commence the significant task of building their networks in readiness for 1 January 2003.

In order that this can happen, OFTA should re-examines its preliminary views regarding the ability of new carriers to build prior to 2003, and consults publicly regarding all possible means of allowing build-outs. There are a number of creative solutions available, including as a last resort the approach adopted in relation to HKTI's international exclusivities: The economic consequences for Hong Kong would justify this approach.

- Local fixed carriers operating from 2003 must be given automatic rights to enter and inspect buildings, and to install equipment (including in-building wiring) if sufficient space exists. A very simple notification procedure, immediately enforceable by the Courts (by-passing the need to approach OFTA), would achieve this result. The Australian regulatory regime has devised an approach that has proven very effective.

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