

Moving from *ex ante* to *ex post*  
regulation of PCCW's tariffs by issuing a  
new Fixed Carrier Licence

Office of the Telecommunications Authority  
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# The *Ex Ante* Tariff Regulation under Existing PCCW's Licence



⌘ Unless TA forms an opinion that PCCW is non-dominant

- ☒ PCCW must seek TA's prior approval for every individual price offer
- ☒ TA's assessment takes 30 – 45 days maximum (to assess profitability analysis and other details related to offers) (2003 averages -17 days for revisions and 25 days for new services)
- ☒ PCCW must publish every individual price offer
- ☒ No unauthorised discounts

## Limitations of Existing *Ex Ante* Regulation



- ⌘ *Ex ante* regulation applied on ‘all or nothing’ basis
- ⌘ Unable to relax *ex ante* regulation when market competition is developing (unless PCCW is declared non-dominant)
- ⌘ Inconsistent with principle that level of regulation should be proportionate and commensurate with market conditions

# 'Prior Tariff Approval Requirement' is No Longer Proportionate



- ⌘ This requirement was imposed in 1995 when liberalisation of local fixed network market commenced
- ⌘ Proportionate in the early years of liberalisation when PCCW was 'super-dominant'
- ⌘ Market has moved on

## PCCW is No Longer 'Super-Dominant'



- ⌘ Market fully liberalised since 2003
- ⌘ PCCW's market share steadily declining to 69%
- ⌘ Established competitors and rampant sales activities
- ⌘ Local loops can be duplicated for an estimated 75% - 80% of households
- ⌘ Alternative products (mobile, VoIP, etc.)

## International best practice - UK



- ⌘ Ofcom determined that British Telecom (BT) has ‘Significant Market Power’ in Fixed Narrowband Retail Services Markets
- ⌘ Ofcom imposed following obligations on BT
  - ☑ Price cap
  - ☑ No undue discrimination
  - ☑ Price publication and notification
  - ☑ Accounting separation
- ⌘ Prior tariff approval from Ofcom not a requirement

## International best practice - Australia



- ⌘ *Ex ante* regulation on tariffs replaced by *ex post* regulation in 1997 when market was fully liberalised but when Telstra was still dominant
- ⌘ Telstra is required to file tariffs with Australian Competition and Consumer Commission (ACCC)
- ⌘ ACCC may publish tariffs filed by Telstra if benefits to public outweigh detriments due to lessening of competition and prejudice to commercial interest
- ⌘ Prior tariff approval not a requirement

# Risk of Implementing *Ex Post* Regulation by Declaration of Non-Dominance



## ⌘ The declaration of non-dominance

- ☑ could block subsequent application of section 7L of Telecommunications Ordinance against abuse of dominance by PCCW
- ☑ would enable PCCW to offer price discrimination, including selective discounts, without transparency to TA and other competitors for monitoring of anti-competitive practices

## ⌘ Maintaining *ex post* safeguards intact is essential to address any potential anti-competitive practices of PCCW which still has considerable market power



# Proposals in Consultation



- ⌘ Replacement of PCCW's Fixed Telecommunications Network Services Licence by a Fixed Carrier Licence with *ex ante* tariff approval requirement removed
- ⌘ PCCW to publish tariffs of services
- ⌘ PCCW to notify TA of discounts to customers
- ⌘ TA may publish discounts notified where consumer interest so justifies (e.g. for residential telephone line charges)

## Proposals in Consultation (continued)



- ⌘ Dominance test removed (no presumption of dominance or non-dominance)
- ⌘ Conditions redundant to Telecommunications Ordinance removed (e.g. conditions on prohibition of anti-competitive practices removed as corresponding provisions already in Ordinance)
- ⌘ Current cost accounting requirements inserted



End