

**For Information
on 11 June 2007**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Conclusion of Consultation on
Deregulation for Fixed-Mobile Convergence**

Purpose

This paper informs Members of the conclusions of the two rounds of public consultation carried out by the Telecommunications Authority (TA) on regulatory issues in relation to the development of fixed-mobile convergence (FMC).

Introduction

2. As the regulator for the telecommunications sector in Hong Kong, the TA considers it necessary to review the regulatory framework in order to facilitate developments in the telecommunications sector under a fixed-mobile convergence (FMC) environment where distinctions between fixed and mobile networks and services are becoming blurred.

3. The TA commenced the FMC review by first publishing a consultation paper on 21 September 2005. The focus of that paper was to solicit public views on the proposed introduction of a Unified Carrier Licence (UCL) which can authorise the provision of fixed and mobile services under a single licence.

4. The TA subsequently engaged a consultant to conduct a comprehensive study on the regulatory changes that may be warranted in the light of FMC. Having considered the recommendations of the consultant and the feedbacks from the first consultation, the TA set out his preliminary views and proposals for the regulatory changes in a second consultation paper issued on 14 July 2006. At the Panel meeting on 13 November 2006, the Office of the Telecommunications Authority (OFTA)

briefed Members on the various issues in relation to that consultation exercise.

5. Responses to the second consultation paper were received from a total of 23 parties and they are listed in Annex 1. Having fully considered the submissions received and having requested the consultant to review its recommendations in the light of these submissions, the TA sets out his conclusions in a statement entitled “Deregulation for Fixed-Mobile Convergence” (FMC Statement) published on 27 April 2007. An executive summary highlighting the main conclusions of the TA is given in Annex 2.

Summary of Submissions and Conclusions by the TA

6. The respondents’ comments and the TA’s conclusions on the major regulatory issues brought out in the FMC review are summarised below.

Interconnection Settlement Arrangements

7. In the second consultation paper, the TA proposed to follow a market driven approach and deregulate the existing regulatory guidance that favours “Mobile Party’s Network Pays” (MPNP) for fixed-mobile interconnection charge (FMIC). Specifically, the TA proposed that the MPNP guidance should be phased out over an appropriate transition period, say two years. After the transition period, the network operators will be free to negotiate the terms and conditions of interconnection based on mutually acceptable settlement options.

8. Submissions from the respondents had no objection in principle to a market-driven approach. Fixed network operators (FNOs) in general did not want a change to the status quo on the ground that the existing regulation has not caused any significant detriment to the market. On the other hand, the mobile network operators (MNOs) wanted the TA to remove the regulatory asymmetry between fixed and mobile operators as soon as possible to restore a “level playing field” and they saw no market failure to be likely due to de-regulation. Two Members of the Legislative Council also expressed support for the removal of regulatory barriers to facilitate competition and innovation. Regarding the

transition period, MNOs wanted no or a shorter transition period and FNOs wanted a longer one, while some other respondents considered 2 years to be appropriate. There was no consensus among the submissions as to whether a replacement regulatory guidance should be issued by the TA should he be required to intervene as a last resort.

9. Taking into account the views expressed in the submissions, the TA has concluded that there is no reason why he should not follow the longstanding market-driven policy for the telecommunications sector in relation to FMC issues. Under the current environment, where effective competition already exists in the market for fixed and mobile services, it is unnecessary and inappropriate to retain the regulatory guidance in favour of MPNP. Also, on the assessment of the impacts of the proposed deregulation, the TA has concluded that on balance the benefits of allowing the market to prevail outweigh those of maintaining the existing regulated MPNP regime. Accordingly, he will make the following changes:

- (a) The TA will deregulate the existing FMIC arrangement (including both time based charge and set up of interconnection links) i.e. withdraw the regulatory guidance that favours MPNP, subject to a 2-year transition period.
- (b) The TA will not issue replacement regulatory guidance upon the withdrawal of the existing regulatory guidance, but will continue to monitor market development and re-consider the need should market conditions change and/or indications of likely market failure emerge.

10. There will be no change to the existing regime of any-to-any (A2A) connectivity requirement under which the concerned obligations of licensees will be maintained by virtue of the relevant powers in the Telecommunications Ordinance (“Ordinance”) and the licence conditions. The TA will intervene only in the event that commercial negotiation in the market fails to achieve A2A to the detriment of public interest.

Interconnection charges from service providers

11. In the second consultation paper, the TA considered that there is room for deregulation of the Local Access Charge (LAC) payable by

external telecommunications services (ETS) providers to FNOs, as mobile LAC is now unregulated.

12. In the submissions, MNOs, while supporting a “level playing field” on LAC, had no consensus whether to remove regulatory asymmetry by increasing or decreasing intervention. FNOs, while opposing deregulation, also had no consensus whether to maintain the status quo or increase intervention. None of the submissions have suggested or given support to a deregulation of LAC. There was also no material submission from ETS providers.

13. Having considered the submissions and having re-examined the existing LAC market for interconnection between service providers and facilities-based operators, the TA has drawn the conclusion that it may be pre-mature to deregulate LAC completely at this stage. However, the withdrawal of MPNP will remove regulated asymmetry and there might be more effective competition between FNOs and MNOs for interconnection of their networks with ETS providers, thus exerting competitive pressure on the level of LAC. The TA would observe if more effective competition does develop for LAC upon the withdrawal of MPNP guidance such that there will be a scope for deregulation of the level of LAC in due course.

Licensing Regime – Unified Carrier Licence

14. Under the UCL proposed in the first consultation paper, network operators providing fixed or mobile services can be authorised by one single licence and they will be treated equally in terms of licence fees and most of the rights and obligations. The second consultation paper sought further views on this proposal.

15. Some respondents indicated explicit support to the proposed creation of UCL in their submissions and others gave specific comments on the licence conditions. Many operators, however, requested that any decisions on UCL should be held in abeyance until completion of both the Spectrum Policy Review (SPR) and the FMC consultations. These operators claimed to reserve their rights to submit further comments later.

16. The TA considers that the FMC review and the proposal to create UCL are complementary and forward-looking exercises which can be and

should be done in a holistic manner. SPR is a strategic policy review for the management of radio spectrum as a scarce public resource and it does not have a direct relationship with UCL as a new licensing regime. While in principle the TA cannot see any valid reasons as to why the operators cannot give comments on the UCL before the completion of the SPR and FMC consultations, the two consultations have both been concluded and the results announced on 24 April¹ and 27 April 2007 respectively. The objections raised in paragraph 15 have therefore become non-issues.

17. After having fully considered the submissions on UCL received in the two rounds of consultation, the TA will recommend to the Secretary for Commerce, Industry and Technology (SCIT) that a regulation be made under section 7(2) of the Ordinance prescribing a UCL. Before making the regulation, SCIT is required to conduct consultation in accordance with section 7(3) of the Ordinance on the General Conditions (GCs), period of validity and licence fee of the new licence. Therefore operators that did not respond to the UCL issues raised in the second consultation paper would have another opportunity to make submissions on them before a decision on the regulation for the UCL is made. The Special Conditions (SCs) of the new licence would be outside the regulation to be made by the SCIT and separate consultation will be conducted by the TA before the actual issue of UCLs .

Number Portability

18. Fixed-mobile number portability (FMNP) whereby numbers can be ported across fixed and mobile platforms is not currently supported. In the FMC environment, a user may be assigned with a single number for access to both fixed and mobile services and therefore there may be a need for FMNP. However, FMNP once implemented will make fixed and mobile numbers no longer distinguishable and it will be impossible to maintain the distinction under the Hong Kong Numbering Plan. As such, the TA proposed in the second consultation paper to conduct further studies to ascertain market demand before making a firm proposal on its introduction in Hong Kong.

¹ For the outcome of the SPR consultation, please refer to the Legislative Council Brief on Proposed Spectrum Policy Framework – Outcome of Consultation (File Ref: CTB(CR) 7/4/16(06)) issued by the Administration on 24 April 2007.

19. In response, one FNO considered that the FMNP implementation might provide a level playing field for all FNOs and MNOs. The MNOs generally supported the implementation of FMNP without delay. Two Legislative Councillors believed that FMNP might remove the barriers in the market, promote competition and allow customers to have more choice of services. Other respondents agreed with the TA that the introduction of FMNP would need to be considered in greater detail and that market research should be conducted to collect more information on the demand for FMNP.

20. After considering the submissions and the views of the consultant, the TA has concluded that he will conduct market research as originally proposed to collect information on, for example, consumer demand for FMNP, and the likely costs and benefits of FMNP, before deciding whether to introduce FMNP.

Potential Litigation

21. On 26 October 2006, PCCW HKT-Telephone Limited (PCCW) filed an application to the High Court for judicial review of the second consultation process. The Court disallowed PCCW's application on 13 February 2007. An appeal has been filed by PCCW to the Court of Appeal and a hearing will take place in September this year. Subsequent to the publication of the FMC Statement, PCCW has also filed a competition appeal under section 32N of the Ordinance to the Telecommunications (Competition Provisions) Appeal Board on 11 May 2007. Despite these legal challenges, the TA has taken steps to ensure that the whole consultation exercise has been conducted in a fair, open and transparent manner with all the submissions received fully considered. In addition, in drawing the conclusions above, the TA has had regards to the interests of all stakeholders (including consumers and operators) and the need to strike an appropriate balance between regulation and market competition.

Office of the Telecommunications Authority
4 June 2007

**List of Parties giving Responses to the Second Consultation Paper on
Deregulation for Fixed-Mobile Convergence**

- (1) AT&T Global Network Services Hong Kong Limited
- (2) China Mobile Peoples Telephone Company
- (3) Dr Lui Hon-Kwong
- (4) Eagle Technology Trading Co. Ltd
- (5) Hong Kong Broadband Network Limited
- (6) Hong Kong Cable Television Limited
- (7) Hong Kong CSL Limited and New World PCS Limited
- (8) Hong Kong Telecommunications Users Group, Hong Kong Management Association
- (9) Hutchison Global Communications Limited
- (10) Legislative Councillor Albert W.Y Chan
- (11) Legislative Councillor Leung Yiu Chung
- (12) Metro Broadcast Corporation Limited
- (13) New World Telecommunications Limited
- (14) PCCW-HKT Telephone Limited² (“PCCW”)
- (15) Peter CS Choi
- (16) Senior Citizen Home Safety Association
- (17) Shinetown Telecommunication Limited
- (18) SmarTone Mobile Communications Limited
- (19) Sonic Teleservices
- (20) Television Broadcasts Limited
- (21) TVB Pay Vision Limited
- (22) Wharf T&T Limited³ (“WTT”)
- (23) WINET Engineering Limited

² PCCW and WTT did not file submissions directly to the TA in response to the Second Consultation Paper. Instead they chose to exhibit to their affidavit evidence (in support of challenges to the fairness of the consultation process) the submissions that they would have filed, but for their objections to the manner in which the consultation was conducted. Both PCCW and WTT were advised that the TA would consider these submissions and neither objected to this.

³ See footnote 2.

DEREGULATION FOR FIXED-MOBILE CONVERGENCE

Statement of the Telecommunications Authority

27 April 2007

EXECUTIVE SUMMARY

The Telecommunications Authority (TA)'s concluded views and the regulatory changes that will be adopted as a consequence of the review in relation to fixed mobile convergence are summarized below:

Fixed Mobile Interconnection Charge (FMIC)

- (1) The TA will deregulate the existing FMIC arrangement. The regulatory guidance in favour of MPNP contained in the TA's Statement No.7 (Second Revision) on Interconnection and Related Competition Issues will be withdrawn, subject to a transition period.
- (2) The TA will also withdraw the regulatory guidance on interconnection links subject to the same transition period as for FMIC.
- (3) There will be a transition period of 2 years starting from the date of issue of this Statement before the changes in (1) and (2) are implemented.
- (4) The TA will not issue replacement regulatory guidance upon the withdrawal of the existing regulatory guidance. The TA will continue to monitor market developments and will re-consider the need for regulatory guidance should market conditions change and/or indications of likely market failure emerge.
- (5) For the avoidance of doubt, there will be no change to:
 - (a) the existing "Any-to-Any" ("A2A") regime which is preserved in its entirety by virtue of the relevant powers in the

Telecommunications Ordinance (“Ordinance”) and made a condition of all licences granted to operators. The TA will intervene, on a case by case basis, where commercial negotiations between operators fail to achieve A2A connectivity; and

(b) the TA’s power under section 36A of the Ordinance as a last resort to intervene, on an ex post basis, if commercial negotiation fails to produce agreed terms of interconnection between FNOs and MNOs within a reasonable period of time.

(6) The TA Statement No. 7 will be modified at the end of the transition period to reflect the above changes.

Local Access Charges (LAC)

(7) The existing LAC arrangement will be maintained.

(8) If and when there is a complete and valid application for a modification or withdrawal of the existing determination of LAC, the TA will consider the request in separate proceedings.

Unified Carrier Licence (UCL)

(9) The TA will make a recommendation to the Secretary for Commerce, Industry and Technology (SCIT) concerning the creation of the UCL by subsidiary legislation which will cover the general conditions, period of validity and licence fee of the UCL.

(10) If SCIT approves the creation of the UCL, the TA may carry out further consultation (if necessary) at the appropriate time to solicit views on the special conditions for issue of the UCL.

Fixed Mobile Number Portability (FMNP)

(11) The TA will conduct market research to understand the extent of consumer demand for FMNP and thus facilitate an assessment of the costs and benefits of FMNP before deciding whether to implement FMNP.

- (12) If having made this assessment the TA decides to implement FMNP, a FMNP Working Group, consisting of members from the stakeholders, will be formed to address:
- (a) the technical and operational issues arising from the introduction of FMNP
 - (b) the feasibility and detailed arrangements for a centralised database to support number portability
- (13) All carriers (fixed or mobile) should have access to all number porting data (fixed number porting and mobile number porting). OFTA will convene a technical working group to examine the technical issues arising from MNOs having access to the ONP database.
- (14) The TA will request the NAC to review the remaining availability of numbers with the prefix '6' and '9' for mobile services and any differential treatment for FNOs and MNOs in the distribution of new number blocks.

Road Opening and Building Access Rights

- (15) The existing arrangement for road opening will be maintained, i.e. the right will only be given to those operators that are authorized under their licence to provide public wireline-based services.
- (16) The existing arrangement for building access will be maintained.

The TA wishes to emphasize that nothing in this document should be taken to suggest that he is fettering his discretion in relation to his powers under sections 36A and 36B of the Ordinance. The TA will continue to exercise these powers where necessary.