

Wharf T&T Limited
九倉電訊有限公司

11/F, Telecom Tower
Wharf T&T Square, 123 Hoi Bun Road
Kwun Tong, Kowloon, Hong Kong
Telephone (852) 2112 1121
Facsimile (852) 2112 1122
Website www.wharftt.com



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Our Ref: 000.121

Direct Line: 2112 2672

Direct Fax: 2112 2680

28 September 2010

Hon Lau Kong-wah, JP
Chairman - Bills Committee on Communications Authority Bill
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

By Email (MLEUNG@LEGCO.GOV.HK)

Dear Mr. Lau,

Bills Committee on Communications Authority Bill

Thank you for your invitation to make representation to the Bills Committee on the Communications Authority Bill.

Please find enclosed our views and comments on the Communications Authority Bill for the Bills Committee's consideration.

Thank you for your attention.

Yours sincerely,

Agnes Tan
VP, Legal, Regulatory & Carrier Affairs

Encl.

WHARF T&T LIMITED

SUBMISSION TO THE BILLS COMMITTEE ON COMMUNICATIONS AUTHORITY BILL OF THE LEGISLATIVE COUNCIL

28 SEPTEMBER 2010

- 1 Wharf T&T Limited (“WTT”) welcomes the opportunity to submit its views on the Communications Authority Bill (the “Bill”), which seeks to merge the power and functions of the Broadcasting Authority (“BA”) and the Telecommunications Authority (“TA”) under a single statutory body to be called the Communications Authority (“CA”).
- 2 According to the Legislative Council Brief released by the Commerce and Economic Development Bureau in June 2010 (the “Brief”), the Bill is justified on the grounds that the markets of broadcasting and telecommunications services are converging and a unified regulatory body would present a coordinated approach to address increasingly complicated issues brought about by such convergence. Further it was noted that many advanced communications jurisdictions, such as the UK and Australia, have already merged their once-separated telecommunications and broadcasting regulators into a single regulatory body, therefore following this trend “*would enhance the efficiency and effectiveness of the regulatory arrangement, and facilitate further development of the entire electronic communications sector*”.
- 3 The proposal to merge the BA and the TA would create a “mega” statutory body which would amalgamate the functions and powers that are at present vested separately with the two authorities and would become the sole regulator for the entire electronic communications sector in Hong Kong. Whilst it is appreciated that such proposal is intended to facilitate a coordinated regulatory regime amidst the convergence of the broadcasting and telecommunications markets, it should also be recognized that centralizing all the BA’s and TA’s powers and functions into the single hand of the CA would not be an easy task.
- 4 WTT supports the creation of a unified regulatory authority to take over the functions of the TA and BA. The present concern is not whether we should have a unified regulatory authority; rather it is to ensure that the merger would be implemented in an orderly manner and within a reasonable timeframe to avoid and minimize any confusions and uncertainty and to ensure that the merger would indeed deliver the promised benefits to Hong Kong. As the formation of the new CA would directly affect the industry and members of the public, it is important that the merger is implemented in an orderly and transparent manner.
- 5 We believe there should be a properly drawn up plan by the Administration as to how it would implement the formation of the new authority and the transition from the existing two authorities to the newly formed authority with realistic time frame of activities. The Administration should also explain how members of the CA would be selected, what criteria would be used to determine their suitability. In the transition the Administration should ensure that there would be minimum interruption to the daily operation of the work of the authorities before the merger following the enactment of the Bill, before the set up of the CA.

- 6 We believe there should be further explanation from the Administration on how the CA would conduct its business and how its future mode of operation would affect the industry. Under the new regime, every policy or regulatory decision within the jurisdiction of the CA would be determined by a majority of votes of the members present and voting on it. The Director-General of the CA would be tasked to implement the decisions of the CA. For the telecommunications industry, this means a very drastic change from decisions by an individual (the Director-General of the Telecommunications) to one by a 7 to 12 members board. Whilst the decision might be more accountable and transparent, however the decision making process would be protracted and there is a danger that vital issues might be unduly delayed and overlooked. In that regard, we believe the Administration should provide further information to the industry as to whether there would be proper delegation and what decisions would be put to the board of the CA and what decisions would be put to the Director-General of the CA, i.e. a clearly defined delegation of responsibility. There are pros and cons with each regime, nevertheless for clarity the division of responsibilities between the Director-General of the CA and the CA should be clearly defined at the outset.
- 7 Given the Administration's proposal to undertake a 2-staged approach, we believe it should commit on when it would commence the review of the Telecommunications Ordinance and the Broadcasting Ordinance and when could we expect to see a public consultation on the Communications Bill. We appreciate that a review of the existing legislations would not be an easy task and would ultimately take some time, it is therefore important that the Administration draw up a time frame of its activities in order that we would not lose sight of the review and to prepare the industry for the forthcoming review. The Administration should appreciate that drastic changes and having a number of key regulatory reviews underway at the same time are disruptive to businesses.
- 8 We understand that the costs of setting up the CA and OFCA would be paid out of the trading fund. The OFTA trading fund would be renamed as the Office of the Communications Authority Trading Fund. Following the merger of the TA and BA, it is expected that the merged statutory body would be operating more efficiently as common resources would be shared, it is therefore expect that the costs of running OFCA to be reduced due to efficiency and elimination of duplicated resources. As licensees contributing to the trading fund, one would expect that the licence fees payable by the licensees should be reviewed at the same time and reduced accordingly.

Submitted by Wharf T&T Limited
28 September 2010