

**For discussion
on 9 May 2011**

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

**Proposed Creation of a Regulatory Affairs Manager Grade
and a Permanent Chief Regulatory Affairs Manager Post
in the Office of the Telecommunications Authority**

PURPOSE

This paper briefs Members on the proposal of the Administration regarding the creation of the following in the Office of the Telecommunications Authority (OFTA) –

- (a) a new civil service grade of Regulatory Affairs Manager with the following new ranks –
 - Chief Regulatory Affairs Manager (D1)
 - Principal Regulatory Affairs Manager (MPS Point 45 – 49)
 - Senior Regulatory Affairs Manager (MPS Point 34 – 44)
 - Regulatory Affairs Manager (MPS Point 27 – 33) ; and
- (b) a permanent directorate post of Chief Regulatory Affairs Manager (D1).

BACKGROUND

2. The Telecommunications Authority (TA) is the statutory body responsible for regulating the telecommunications industry in Hong Kong, with OFTA acting as its executive arm. There are currently two civil service grades in OFTA providing professional and technical support to its regulatory functions. They are the Telecommunications Engineer (TE) grade and the Inspector (Telecommunications)/Controller (Telecommunications) (IT/CT) grade. Members of the TE grade are responsible mainly for providing telecommunications engineering support

to OFTA and technical regulatory work, such as the planning and assignment of frequency spectrum, setting of technical standards, regulating communications satellite systems and services. Entry to the grade requires a Corporate Membership of the Hong Kong Institution of Engineers in Electronics, Electrical or Information Discipline. The IT/CT grade members are deployed mainly on frontline inspection, investigation and enforcement duties, and technical supporting services. The grade requires a diploma or higher certificate from a technical institute in electrical engineering, electronic engineering or telecommunications plus three years' relevant experience. The establishment and job descriptions of the TE grade and the IT/CT grade are at **Enclosures 1 and 2** respectively.

3. The past 15 years or so have witnessed major transformations of and rapid developments in our telecommunications industry. Before July 1995, the local fixed network and the external network were each operated by only one franchised operator. The telecommunications services available in those days were essentially voice services only. The issues that the TA had to handle were relatively straight-forward and technical-oriented. Apart from monitoring the network development programmes and the quality of services provided by the two operators, the TA performed a comparatively restricted scope of economic regulatory work which pertained mainly to the tariff revision of existing services and the approval of tariff for new services provided by these two operators under the well-established franchise scheme. Following the deregulation of the local fixed market in July 1995, the full liberalisation of the external market in 2000 and the full liberalisation of the local fixed market in 2003, the monopoly structure of our telecommunications market has transformed itself into a fully liberalised market with a large number of network and service operators competing fiercely with one another for customers' patronage. As at March 2011, Hong Kong has 16 fixed network operators, five mobile network operators, 40 external fixed network operators and 540 services-based operators.

4. As the regulator of one of the most successful and competitive telecommunications markets in the world, OFTA has to deal with increasingly intertwining technical and economic regulatory issues

of much greater diversities and complexities, which go beyond the traditional telecommunications and electronics disciplines. The work of OFTA in regulating the economic aspects of the telecommunications sector has also grown substantively over the last decade. With the introduction of the competition provisions¹ in the Telecommunications Ordinance (TO) in 2000, OFTA established the Competition Affairs Branch (CAB) to enforce fair competition in the telecommunications market. In 2004, the TO was further amended to empower the TA to regulate market activities that involve the mergers and acquisitions of telecommunications carriers². Apart from assuming the above statutory functions, OFTA also needs to enforce the misleading conduct provisions³ under the TO, resolve interconnection disputes between operators, make determinations on interconnection charges and sharing of bottleneck facilities, implement the Radio Spectrum Policy Framework through conducting auctions of radio spectrum and setting spectrum utilization fees.

5. Meanwhile, the Administration has introduced the Communications Authority (CA) Bill into the Legislative Council (LegCo) to create a unified regulatory body to cover the electronic communications sector. The existing statutory powers and functions of the Broadcasting Authority and those of the TA will be transferred to the CA. The Bill is now under the scrutiny of a Bills Committee of LegCo. In around nine months after the enactment of the Bill, OFTA and the relevant divisions in the Television and Entertainment Licensing Authority will be merged to form the Office of the Communications Authority (OFCA). Pending a review of the concerned ordinances in respect of broadcasting and telecommunications upon the establishment of the CA, there will be no substantial changes to the existing regulatory and licensing arrangements for broadcasting and telecommunications. Nevertheless, we anticipate that with the impending structural merger of the two regulatory bodies, as well as the review of the legislation in

¹ These include section 7K: Anti-competitive practices (which outlaws collusive arrangements among licensees), section 7L: Abuse of position (which prohibits a licensee in a dominant position from abusing its dominance to inhibit the competitive activities of other persons) and section 7N: Non-discrimination (which deals with discriminatory conduct).

² This refers to section 7P (which regulates mergers and acquisitions of carrier licensees) of the TO.

³ This refers to section 7M: Misleading or deceptive conduct (which prohibits a licensee from engaging in misleading or deceptive conduct in providing or acquiring equipment or services).

telecommunications and broadcasting, OFTA, and the future OFCA, will still have a long-term need of a multi-disciplinary grade to assist it in the regulation of the telecommunications/communications industry in Hong Kong.

6. To perform its multifarious regulatory role, OFTA requires the support of staff members to conduct analysis on regulatory issues from a much wider and more holistic perspective covering the legal, economic, financial, accounting, information technology and engineering aspects. To meet the service needs for the required talents which are not available in the existing TE and IT/CT grades, OFTA has been engaging non-civil service regulatory staff with expertise in the required fields, including law, economics, accounting, finance, business administration and statistics since 1999 to support studies and analyses in non-technical regulatory issues. Examples of major tasks requiring advice and inputs from staff members with qualifications and experience in engineering, economics, law, finance and accounting include –

- (a) conducting auctions of frequency spectrum for public mobile services since 2001;
- (b) assisting in the regulation of a fully liberalised local fixed market⁴ since 2003;
- (c) providing support to the promulgation of the Radio Spectrum Policy Framework in 2007 and following through with the recommendations⁵;
- (d) implementing a new regulatory regime since 2007 that is conducive to the development of fixed-mobile convergence;
- (e) deregulation of the fixed-mobile interconnection charge in 2009;
- (f) investigation into 49 complaints against anti-competition practices and 435 complaints against misleading conduct;

⁴ Since the full market liberalisation on 1 January 2003, there is no pre-set limit on the number of carrier licences for the provision of local or external fixed services. Staff members with engineering, economics, legal, financial and accounting background are required to regulate the increasingly competitive market.

⁵ This includes, but is not limited to, the assignment of frequency spectrum using a market based approach (e.g. spectrum auction), publishing the annual spectrum release plan covering upcoming three-year period on a rolling basis, conducting a review of the spectrum utilisation fee and reviewing the efficiency of Government use of spectrum. To implement the aforesaid tasks, staff members possessing legal, engineering, economics, financial and accounting background and working experience are required.

- (g) handling 34 cases of appeals before the Telecommunications (Competition Provisions) Appeal Board and legal challenges in the courts since 2000; and
- (h) making 49 determinations for the terms and conditions (including charges) of interconnection, provision of number portability and other matters.

7. In recognition of the need for OFTA to compete with the commercial sector to recruit candidates with the necessary qualifications and caliber to take on the economic regulatory functions, the Civil Service Bureau approved in 2003 a special non-civil service remuneration package⁶ for OFTA. At present, OFTA has some 30 non-civil service posts, spanning three different ranks⁷, dedicated to regulatory work. However, the existing arrangement of meeting the service need for regulation of the telecommunications industry by staff on non-civil service terms has the following problems –

- (a) a key aspect of our regulatory work involves arbitrating or mediating conflicting commercial interests among telecommunications operators. Without the status of civil servants and the prospect of a stable and long-term career in the civil service, the fact that non-civil service staff may seek employment in the private sector after their tenure in OFTA may put into question the absolute impartiality required in handling regulatory affairs;
- (b) without the certainty of long-term employment in the civil service, there was a relatively high turnover of non-civil service regulatory staff in OFTA. This has led to dilution of expertise and experience⁸; and

⁶ The special non-civil package comprises an annual leave entitlement of 18 days, a medical insurance scheme of monthly premium below \$500 (current rate with effect from June 2010), a salary up to the maximum point of comparable civil service ranks and a contract gratuity which equals 15% of the total salaries received during the contract period.

⁷ The three different ranks are Principal Regulatory Affairs Manager (salary range equivalent to MPS Point 45 to 49), Senior Regulatory Affairs Manager (salary range equivalent to MPS Point 36 to 44) and Regulatory Affairs Manager (salary range equivalent to MPS Point 21 to 35) respectively.

⁸ In the past five years, a total of 21 non-civil service regulatory staff left OFTA. The wastage rate is about 70%.

- (c) there is a question of staff morale arising from restrictions imposed on career development since non-civil service staff do not have a line of promotion to directorate posts. Difficulties also exist in developing staff members for higher responsibilities in the absence of a long-term career path.
8. To address these problems, and to better equip OFTA to perform its multifarious regulatory functions intertwined with economic and technical issues, the optimal solution is to create a new civil service grade which can embrace talents in the required disciplines (viz. engineering, information and communications technology, economics, law, finance, accounting, business administration and statistics). Moreover, it is necessary to strengthen the directorate support for TA in tackling the competition issues and related complaint and disputes cases which have become increasingly convoluted, contentious and litigious arising from the rapid development of the telecommunications industry over the past decade.

THE PROPOSAL

9. We propose to create a new civil service grade of Regulatory Affairs Manager with the following structure –

Rank	Pay Scale
Chief Regulatory Affairs Manager	D1
Principal Regulatory Affairs Manager	MPS Point 45–49
Senior Regulatory Affairs Manager	MPS Point 34–44
Regulatory Affairs Manager	MPS Point 27–33

In this connection, we propose to create a permanent directorate post of Chief Regulatory Affairs Manager. Chief Regulatory Affairs Managers will be eligible for promotion to the existing rank of Assistant Director of Telecommunications (D2) in OFTA.

JUSTIFICATION

Creation of a new Regulatory Affairs Manager Grade

10. Having regard to the nature and requirements of the work of the new grade, OFTA requires first and foremost candidates with qualifications and experience in the relevant fields of study as well as the ability to cope with complicated telecommunications regulatory issues. Professional qualifications are in general not a must for discharging such duties. With these considerations, we propose the following entry requirements for the grade –

- (a) a first or second class honours degree in electrical engineering, electronics engineering, information technology, economics, statistics, finance, accounting, law, business administration, or equivalent;
- (b) four years' post-graduate experience in the relevant field, preferably in the telecommunications sector, or equivalent; and
- (c) Level 1 results in the two language papers in the Common Recruitment Examination.

11. In proposing the structure and pay scales of the new grade, we have taken into account the need to attract and retain suitable candidates in the required specialised fields and duties and responsibilities of the proposed ranks. The justification for the proposed pay scales is elaborated in the following paragraphs.

Regulatory Affairs Manager (RAM)

12. This is the entry level of the grade. RAMs are required to provide independent advice and assessment on regulatory issues and supervise front-line staff in handling licensing matters and enforcement-related duties. They will be tasked to monitor the telecommunications market, advise on the development of telecommunications services/industry and their impact on consumers,

support research and analysis of telecommunications policy issues, evaluate licence applications, investigate into complaints against operators and enforce licence conditions and investigate into complaints under the UEM Ordinance. To effectively discharge their duties and responsibilities, RAMs are required to possess qualifications and in-depth experience in the relevant specialised fields of study. Having regard to the entry qualifications/experience and the level of responsibilities involved, we propose to pitch the pay scale of RAM at MPS Point 27 (\$36,945) to 33 (\$48,670) in order to attract qualified candidates with the right calibre and potential for development to join the grade.

Senior Regulatory Affairs Manager (SRAM)

13. SRAMs will lead a team or a unit and work to senior professional or directorate officers in the department. They are required to provide support to the senior management in research and analysis of policy issues, including drafting papers and statements, explaining Government policies or positions to the industry, stakeholders and the public, supervising and ensuring the output quality of a team/unit, as well as managing projects/research studies and formulating proposals and policies in connection with the regulation of the telecommunications industry and the enforcement of the UEM Ordinance. The proposed pay scale of MPS Point 34 (\$49,480) to 44 (\$74,675) is considered appropriate for the rank as it has to take up a wider range of duties and responsibilities at the middle management level.

Principal Regulatory Affairs Manager (PRAM)

14. PRAMs will lead and manage a section and work to the directorate officers in the department. They are required to lead studies/reviews on complex regulatory issues and prepare submissions to policy bureaux; liaise with the industry to identify measures that may improve the regulatory regime; formulate working systems and codes of practice for implementing new legislation/regulatory regime; handle major complaint cases/industry disputes on telecommunications services; and lead the implementation of programmes/projects to promote fair competition and consumers' interests in the telecommunications market. In view of the complexity of work and the level of responsibility of a

PRAM, which is well above the level of SRAM, a proposed pay scale of MPS Point 45 (\$77,375) to 49 (\$89,140) for the rank is considered appropriate.

Chief Regulatory Affairs Manager (CRAM)

15. CRAMs will supervise and coordinate the activities of a division. They are required to oversee the enforcement of legislation governing the telecommunications sector and administering the UEM Ordinance; oversee licensing of telecommunications services and compliance with code of practice, rules, regulations and licence conditions by public service operators; monitor developments of the market and new technologies and make timely proposals to adjust the regulatory framework so that OFTA may continue to keep abreast with these developments; monitor market behaviour and take actions against anti-competitive practices and misleading conduct; coordinate the effective and efficient use of scarce resources necessary for the provision of services by the service providers; support the mediation of inter-operator disputes and determinations on matters of interconnection and sharing facilities; and uphold the interests of OFTA and the Hong Kong Special Administrative Region in international and regional telecommunications and anti-spamming arenas. The proposed pay scale of the CRAM rank (i.e. Point 1 of the Directorate Pay Scale) is considered appropriate in view of the nature of work, the span of control and the high level of responsibilities involved.

16. The creation of the CRAM rank will help establish a rank structure that could provide a long-term career ladder with better prospects for members of the new civil service grade.

17. The proposed job descriptions of the various ranks of the new grade are at **Enclosures 3 to 6**.

Creation of one permanent directorate post of CRAM

18. The work of OFTA in regulating the non-technical aspects of the telecommunications sector has grown substantially over the last

decade as a result of the fast-evolving and increasingly competitive market. Following the introduction of the competition provisions in the TO in 2000, OFTA established CAB in 2001 to enforce fair competition in the telecommunications market. The Branch, headed by an Assistant Director of Telecommunications (designated as Assistant Director (Competition) (AD(C))), is responsible for the investigation into complaints of anti-competitive and misleading or deceptive practices, preparation of guidelines on the interpretation and enforcement of the competition provisions, and regulating market activities that involve mergers and acquisitions of telecommunications carriers. Other than supporting the TA in this expanded role, CAB also shares responsibilities with other branches in handling determinations and mediations to resolve industry disputes related to interconnection, sharing of bottleneck facilities and access to buildings. In addition, it provides advice on competition issues in the broadcasting sector as and when required. At present, AD(C) is the only directorate post dedicated to competition affairs.

19. With the rapid development of the telecommunications industry, the competition issues and related complaint and dispute cases have become increasingly convoluted, contentious and litigious. The complaints and dispute cases handled by CAB in recent years often involved complex economic, procedural and/or legal interpretation issues. The investigation process itself is lengthy and complex and in some typically complicated cases OFTA has handled, the investigation process took 14 to 29 months to complete, involving at times multiple parties. The complaint and dispute cases are also getting increasingly litigious, leading to appeals and judicial review proceedings. Precedents of allowing non-appellant to participate in the appeal proceedings as an intervener have been established. Case-stated proceedings are more frequently pursued than before. An appeal case could be protracted and long drawn out. In one past appeal case, the proceedings lasted for 20 months. Against the above background, to ensure the effective and efficient enforcement of fair competition in the local market, it is necessary to enhance the directorate support for competition affairs. We propose to create a permanent post of CRAM (D1), to be designated as CRAM (Competition) (CRAM(C)), to support the enforcement of the competition provisions (including the merger and acquisition provisions);

to support the mediation of inter-operator disputes in relation to competition issues; and to defend in the court and the Telecommunications (Competition Provisions) Appeal Board legal challenges against the decisions of the TA concerning the competition provisions. AD(C) will continue to steer the work of CAB, including formulation of competition-related regulation and strategies, and overseeing the investigation of consumer complaints pertinent to competition issues.

20. The proposed job descriptions of the proposed CRAM (Competition) post are at **Enclosure 7(a)**. The job description of the existing AD(C) post is at **Enclosure 7(b)**. The existing and proposed organisation charts of CAB of OFTA are at **Enclosures 8(a) and (b)**.

ARRANGEMENTS FOR THE TE GRADE

21. To ensure the optimal deployment of staff resources on a sustainable basis, the new civil service grade should perform both the technical regulatory and non-technical regulatory work. Taking also into account OFTA's role in providing engineering support to technical regulation, which is the mainstay of TE grade's work, has been diminishing, OFTA's management considers that the functions of the TE grade should gradually be subsumed under the new grade. OFTA's management will go through the due process and conduct a review of the detailed subsuming arrangements in 2013, for completion by July 2015, with a view to maintaining in OFTA a single multi-disciplinary civil service grade to perform more effectively and efficiently the intertwining economic and technical regulation of the telecommunications industry in Hong Kong.

22. The recruitment to the TE grade in OFTA has been frozen for more than 12 years since 1998 as a result of the diminished operational needs for pure engineering support in the regulatory work and given that the grade has been designated a voluntary retirement grade since 2003. Having regard to the anticipated operational requirements of the department, such a freeze will continue in the future. Having said that, the serving TE grade members will continue to contribute their

engineering expertise to the department and the number of promotion posts in the TE grade will remain unchanged before the completion of the review (mentioned in the paragraph 21 above) by July 2015. In any event, TE grade will remain a civil service grade in OFTA until the retirement of all serving grade members in about 20 years' time.

STAFF CONSULTATION

23. OFTA's management has consulted staff members of the TE grade, the IT/CT grade and the regulatory staff on non-civil service terms on the new grade proposal. In coming up with the present proposal, OFTA's management has taken into account the views and feedback received in the staff consultation.

24. Two rounds of consultation were conducted in July 2010 and February 2011. Non-civil service regulatory staff members in general welcomed the proposed creation of the new civil service grade. Their comments focused on the structure and pay scales of the new grade as well as the appointment of serving non-civil service regulatory staff to the new grade. TE grade members had no objection to the creation of the new grade. They expressed concern on the subsuming of the functions of the TE grade under the new civil service grade and the permanent freeze of the recruitment to the TE grade. They also stressed the need of having professional engineers to undertake regulatory work and opposed the recruitment of non-professional staff to replace professional engineers in OFTA.

25. OFTA's management has met with the TE grade members on the matter and noted that their comments did not relate directly to the proposed creation of the new civil service grade, to which TE grade members have expressed no objection. OFTA's management has responded to the concerns raised by the TE grade members as follows –

- (a) on the recruitment by OFTA of non-professional staff to replace professional engineers, OFTA's management has clarified that the current proposal is to create an entirely new civil service grade of RAMs – which is not a professional

engineer grade. The proposed job specifications and experience requirements are drawn up in accordance with OFTA's service needs for a group of multi-disciplinary regulatory staff, which would embrace talents in the disciplines of engineering, information and communications technology, economics, law, finance, accounting, business administration and statistics, to perform the regulatory functions. The new recruits in the proposed new civil service grade are to replace the non-civil service regulatory service staff rather than the serving TE;

- (b) on OFTA's need for professional engineers to undertake its regulatory work, OFTA's management has pointed out the fact that, unlike the requirements imposed on professional engineers working in other works departments, regulatory staff in OFTA are not required to act as authorised persons in engineering projects or to sign documents in the capacity of professional engineers. Rather, the experience OFTA has gained over the past decade indicates that regulatory staff with the appropriate engineering qualification and experience can also competently handle technical studies and technical regulatory matters. It is also common for our counterparts in advanced economies, such as the Office of Communications in the United Kingdom, the Infocomm Development Authority (iDA) in Singapore and the Communications and Media Authority in Australia, to recruit regulatory staff with degrees in engineering and other disciplines, such as economics, business and communications, instead of looking for candidates with professional qualifications in various fields. In particular, iDA maintains a common grade with multi-disciplinary staff members to handle all of its regulatory issues, including licensing and enforcement, interconnection matters, facilities management, spectrum and numbering management, technical standards as well as consumer and competition matters;

- (c) on subsuming the functions of TE grade under the new grade, OFTA's management has communicated to the TE grade members on the plan to complete a review of the detailed subsuming arrangements of the functions of the grade by July 2015 and assured them that OFTA's management will consult TE grade members on the conduct of the review; and
- (d) on freezing the recruitment to TE grade, OFTA's management has pointed out that the recruitment freeze over the past decade is a result of the diminished operational needs for pure engineering support and because the grade was designated a voluntary retirement grade in 2003. Given our assessment that a reducing operational need for pure engineering support will remain valid for the years to come, OFTA's management considers that the recruitment to the TE grade should be frozen permanently and this will not be the subject of the review to be conducted.

26. The main concerns expressed by various staff members during the consultation exercise and the response of OFTA's management are summarised at **Enclosure 9**.

ALTERNATIVES CONSIDERED

27. There is no viable alternative. In the light of the experience gained in the past decade, the alternative arrangements of posting to OFTA staff in other civil service grades, such as the Economist grade and Treasury Accountant grade, or engaging non-civil service regulatory staff to perform the non-technical regulatory work, fail to meet the long term service needs of OFTA for a group of dedicated regulatory staff to perform its multifarious regulatory roles. The current proposal will enable OFTA to attract qualified candidates, retain talents, deploy staff resources more effectively and efficiently and groom potential staff for career advancement.

28. On the proposed creation of a permanent post of CRAM for competition affairs, in view of the scope and complexity of the

responsibilities of the proposed post, it is not viable for non-directorate staff or non-civil service regulatory staff to take up the duties. Take for instance the preparation for, and the attendance at, hearings in court and before the Telecommunications (Competition Provisions) Appeal Board, the complexity of the work involved will require the attention of a dedicated officer at directorate level. Neither is it feasible for the existing directorate staff in OFTA to share out the duties of the post having regard to the nature of work and the workload involved. In terms of the nature of work, currently, all directorate officers in OFTA are TE grade members, and they do not possess the experience or expertise for handling the competition issues of the proposed CRAM post. As to workload, all directorate officers in OFTA are already fully occupied with a wide range of core regulatory duties. It is therefore not feasible for them to take up the work of the proposed CRAM post.

IMPLEMENTATION PLAN

29. Subject to the support from Members, we will proceed to seek the approval of the Establishment Sub-committee and the Finance Committee of LegCo on the creation of the RAM grade and the CRAM rank/post. Once the new grade proposal is endorsed by the Finance Committee, OFTA plans to create 31 civil service posts in the new grade by phases over a period of three years to replace non-civil service staff currently employed in handling regulatory work. In the financial year 2011-12, OFTA will create a CRAM (D1) post and eight non-directorate posts, including four PRAM posts and four SRAM posts, which will be offset by the deletion of eight non-civil service positions for regulatory work.

FINANCIAL IMPLICATION

30. The notional annual salary cost at mid-point required for the proposed CRAM(C) post is \$1,265,400. The full annual average staff cost, including salaries and staff on-cost, is \$1,742,000.

31. Subject to the approval for creation of the new grade, the Director-General of Telecommunications plans to create under delegated

authority 30 non-directorate posts over a period of three years from 2011-12 to 2013-14. They will comprise four PRAMs, eight SRAMs and 18 RAMs. The additional staff cost for creation of the non-directorate posts will be partly offset by savings arising from the deletion of 30 non-civil service positions in OFTA. The net increase in staff cost for these 30 non-directorate posts is estimated to be \$4,540,800 in a full year.

32. Since June 1995, OFTA has been operating on a trading fund basis, with its funding supported by income derived mainly from licence fees. There is sufficient provision under the Corporate Plan for 2011/12 to 2015/16 of the OFTA Trading Fund to meet the cost of this proposal.

ADVICE OF THE STANDING COMMISSION ON CIVIL SERVICE SALARIES AND CONDITIONS OF SERVICE

33. The Standing Commission on Civil Service Salaries and Conditions of Service (the Standing Commission) has advised that the long-term service need for a group of multi-disciplinary regulatory staff in OFTA has been clearly established. It considered that a more stable career, better promotion prospects, and the related benefits and allowances for civil servants would help attract and retain talents to form a more stable establishment of regulatory staff in OFTA. The Standing Commission hence supported the Administration's proposal to create the new RAM grade and the proposed pay and rank structure for the RAM grade.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

34. The Standing Committee on Directorate Salaries and Conditions of Service (Directorate Committee) has advised that the proposed creation of the new CRAM rank is functionally justified to meet OFTA's operational need for a higher level of multi-disciplinary regulatory input. Creation of the new rank will also help attract and retain talents to form a more stable environment of regulatory staff. The

Directorate Committee hence supported the Administration's proposal to create a new CRAM rank in the new RAM grade and a new post of CRAM in the CAB of OFTA.

ADVICE SOUGHT

35. Members are invited to note and comment on this proposal. Subject to Members' views, the Administration will submit the proposal to the Establishment Sub-committee on **8 June 2011** for recommendation to the Finance Committee for approval.

**Communications and Technology Branch
Commerce and Economic Development Bureau
Office of the Telecommunications Authority
April 2011**

Enclosure 1**Telecommunications Engineer Grade**
(Under Qualification Group 8 – Professional and Related Grades: Group I)*Establishment*

Rank	Pay Scale	Establishment as at 1.1.2011
Director-General of Telecommunications	D6	1
Deputy Director-General of Telecommunications	D3	1
Assistant Director of Telecommunications	D2	4
Chief Telecommunications Engineer	D1	4
Senior Telecommunications Engineer	MPS Point 45 – 49	9
Assistant Telecommunications Engineer/Telecommunications Engineer (combined establishment)	MPS Point 18 – 27/ MPS Point 32 – 44	26
Total		45*

* Including a post of TE in the Trade and Industry Department

*Job description*Chief Telecommunications Engineer

Controlling and coordinating the activities of –

1. Regulatory Divisions, to
 - (a) issue and administer licences for public telecommunications services;
 - (b) oversee compliance of regulations and licence conditions by public telecommunications service providers;

- (c) oversee development of the market and new technologies and propose regulatory framework to facilitate these developments;
- (d) protect consumer interests through monitoring of quality of service, promotion of good industry practices and the investigation of complaints;
- (e) coordinate the effective and efficient use of scarce resources, including the telecommunications infrastructures and telecommunications numbers;
- (f) resolve interconnection and other industry disputes; and
- (g) facilitate access to buildings for local fixed carriers and access to land for mobile carriers.

or

2. Development Division, to

- (a) oversee operation of the Hong Kong Telecommunications Equipment Evaluation and Certification Scheme, Mutual Recognition Arrangement and Telecommunications Standards Advisory Committee;
- (b) formulate strategies and represent the department's interests in international and regional telecommunications communities;
- (c) promote and bring international attention to the latest developments and opportunities in the Hong Kong telecommunications market;
- (d) interface with overseas or external administrations; and
- (e) co-ordinate with overseas administrations and local satellite operators on satellite matters.

or

3. Advisory and Spectrum Management Division, to

- (a) provide technical support to the policy bureau on broadcasting matters;
- (b) monitor the technical performance of the broadcasters and ensure that the licence conditions on technical aspects are complied with by the broadcasters;
- (c) liaise with the bureau, broadcasters and other interested parties in relation to the introduction of new broadcasting technologies into Hong Kong;
- (d) plan and allocate radio spectrum;
- (e) coordinate with adjacent territories on use of radio frequencies and for interference elimination and for the participation in

- international telecommunications meetings / conferences;
- (f) oversee maritime and amateur telecommunications services; and
- (g) monitor the development of the telecommunications and broadcasting technologies and the global trend on spectrum issues.

Senior Telecommunications Engineer

1. provision of technical support for licensing of telecommunications services and enforcement of the Telecommunications Ordinance;
2. management of the radio frequency spectrum;
3. technical regulatory aspects of satellite licences and satellite networks;
4. provision of technical advice to facilitate regulation of telecommunications and broadcasting services and telecommunications infrastructure development in Hong Kong;
5. operation of the Hong Kong Telecommunications Equipment Evaluation and Certification Scheme and formulation of telecommunications equipment standards; and
6. interface with foreign administrations and international organisations relevant to telecommunications.

Assistant Telecommunications Engineer/ Telecommunications Engineer

1. provision of technical support for licensing of telecommunications services and enforcement under the Telecommunications Ordinance;
2. management of the radio frequency spectrum;
3. provision of technical advice on the control and regulation of telecommunications and broadcasting services in Hong Kong;
4. provision of technical support in telecommunications infrastructure development;
5. monitoring of international telecommunications standards, type approval and certification of telecommunications equipment;
6. overseeing the work of public telecommunications organizations;
7. technical appraisal of satellite licences and coordination of satellite networks; and
8. classification of import/export applications under the Strategic Commodities Regulations.

Enclosure 2

Inspector/Controller (Telecommunications) Grade
(Under Qualification Group 4 – Technical Inspectorate and Related Grades)

Establishment

Rank	Pay Scales	Establishment as at 1.1.2011
Senior Controller (Telecommunications)	MPS Point 45 – 49	3
Controller (Telecommunications)	MPS Point 38 – 44	7
Assistant Controller (Telecommunications)	MPS Point 34 – 37	15
Inspector (Telecommunications)	MPS Point 24 – 33	39
Assistant Inspector (Telecommunications)	MPS Point 13 – 23	67
Total		131*

* Including six posts in the Trade and Industry Department

Job description

Senior Controller (Telecommunications)

Controlling and co-ordinating the activities of a section to:

1. handle problem cases of network interconnection and requests for interconnection determinations, and assist the Telecommunications Authority to make interconnection determinations;
2. process applications for and grant telecommunications licences/permits, enforce the Telecommunications Ordinance and Broadcasting Ordinance within the purview of OFTA and institute prosecutions;
3. monitor and review enforcement/prosecution procedures and recommend changes to suit new developments;

4. investigate industry and consumer complaints and handle merger and acquisition cases under the Telecommunications Ordinance; and
5. training and supervision of technical staff.

Controller (Telecommunications)

Managing and supervising a sub-section to:

1. process application for and grant telecommunications licences/permits ;
2. inspect, investigate and conduct enforcement action against any infringement of the Telecommunications Ordinance and Broadcasting Ordinance within the purview of OFTA;
3. process complaints pertinent to alleged infringements of the Telecommunications Ordinance and handle cases of merger and acquisition in the telecommunications industry;
4. co-ordinate the access to buildings by telecommunications operators and assist in resolving disputes between operators and property owners on the matter;
5. investigate radio interference and monitor radio frequency spectrum;
6. provide technical support to the Director of Marine on matters related to the carriage of radiocommunications apparatus on board ships;
7. oversee the conduct of examination and issue of certificate of competency; and
8. assist in training of technical staff.

Assistant Controller (Telecommunications)

Assisting the management of a sub-section to:

1. process applications for and grant telecommunications licence/permit;
2. arrange for inspection, investigation and operations pertinent to the enforcement of, and conduct prosecutions in respect of offences under, the Telecommunications Ordinance and Broadcasting Ordinance falling within the purview of OFTA;
3. process reports on operations and investigations in respect of offences under the Telecommunications Ordinance and Broadcasting Ordinance and other relevant ordinances;

4. investigate radio interference, monitor radio frequency spectrum, examine proposed radio and radar installations for ships and conduct radio and radar surveys on board ships;
5. monitor the service standards and performance of the public telecommunications services and conduct examinations for qualifying operators of radiocommunications apparatus;
6. provide technical support to the classification of import/export applications according to the Strategic Commodities Regulations and related matters; and
7. co-ordinate the access to buildings by telecommunications operators.

Inspector (Telecommunications)

1. processing applications for telecommunications licences and providing technical advice on applications for type-approval and certification of telecommunications equipment;
2. inspection of licensable equipment installations, investigation and conducting raids/roadblock operations on activities contravening the Telecommunications Ordinance and Broadcasting Ordinance falling within the purview of OFTA and conducting prosecutions;
3. assisting in conducting examinations for qualifying operators of radio-communications apparatus;
4. assisting in technical appraisal of telecommunications and broadcasting transmission plans, systems and networks;
5. preparing technical data required for the enforcement of telecommunications matters under the Telecommunications Ordinance, Broadcasting Ordinance and other relevant ordinances;
6. investigating radio frequency interferences, monitoring radio frequency spectrum, assisting in radio frequency planning and assignment, and conducting radio and radar surveys on board ships;
7. assisting in classification of import/export applications according to the Strategic Commodities Regulations; and
8. inspection of buildings for collection of data on space of buildings for installation of equipment by operators and answering related public enquiries.

Assistant Inspector (Telecommunications)

1. processing applications for telecommunications licence, inspecting equipment and installations covered by licences issued under the Telecommunications Ordinance;
2. investigating radio interference, monitoring radio frequency spectrum, operating and maintaining radio detection equipment, and assisting in conducting radio and radar surveys on board ships;
3. assisting in investigation, conducting raid/road block operations and other matters pertinent to the enforcement of the Telecommunications Ordinance and Broadcasting Ordinance;
4. assisting in preparing technical data required for the enforcement of telecommunications matters under the Telecommunications Ordinance, Broadcasting Ordinance and other relevant ordinances;
5. assisting in technical appraisal of telecommunications and broadcasting transmission plans, systems and networks;
6. assisting in classification of import/export applications according to the Strategic Commodities Regulations;
7. inspection of buildings for collection of data on space of buildings for installation of equipment by operators and answering related public enquiries; and
8. assisting in collection of data for monitoring competition of the telecommunications industry.

Enclosure 3

**Proposed Job Description
Regulatory Affairs Manager**

Rank : Regulatory Affairs Manager

Responsible to : Senior Regulatory Affairs Manager

Mainly duties and responsibilities -

1. providing professional advice in specialist areas, such as engineering, information and communications technology, accounting, business and cost analysis/modelling, competition affairs, economics, finance, law and statistics, in connection with the regulation of the telecommunications sector and the regulation of the sending of commercial electronic messages (CEMs) under the Unsolicited Electronic Messages Ordinance (UEM Ordinance);
2. monitoring the telecommunications market and advise on its implications on the development of the telecommunications industry, the regulatory framework, and the interests of the consumers of telecommunications services;
3. monitoring the market situation in respect of the sending of CEMs and advise on its implications on the relevant regulatory framework in relation to the UEM Ordinance;
4. providing support in research and analysis of policy and regulatory issues, including drafting of information notes, consultation papers, policy papers, statements, guidelines and codes of practice; and
5. evaluating licence applications, investigating complaints against licensees, investigating complaints under the UEM Ordinance, enforcing licence conditions, regulations and industry code of practice and handling other licence administration matters.

Proposed Job Description
Senior Regulatory Affairs Manager

Rank : Senior Regulatory Affairs Manager

Responsible to : Principal Regulatory Affairs Manager

Mainly duties and responsibilities -

1. supervising and ensuring the output quality of a team or a section in:
 - (a) handling licensing matters, such as licence application, conversion and fee collection, overseeing compliance with licence conditions and industry codes of practice by licensees and processing complaints and disputes over telecommunication services;
 - (b) managing projects, conducting analysis and research, and reviewing procedural manual and framework in connection with the regulation of the telecommunications industry;
 - (c) investigation and conducting prosecutions pertinent to enforcement of legislation under purview of the department; and reviewing the working procedures for enforcement work and the related supporting systems;
 - (d) managing the use of public scarce resources, such as telephone numbers; and
 - (e) conducting surveys and studies on the local telecommunications services market; monitoring market development and pricing behaviours of telecommunications operators; and investigating complaints about contravention of competition provisions in the Telecommunications Ordinance.

2. providing advice and recommendations in connection with the regulation of the telecommunications sector and the regulation of the sending of CEMs under the UEM Ordinance; and
3. providing support to senior management in reviewing regulatory policy, including drafting of consultation papers, policy papers and statement, codes of practice, and explaining Government policies or positions to members of the Legislative Council/District Council, the industry, stakeholders and the public.

Proposed Job Description
Principal Regulatory Affairs Manager

Rank : Principal Regulatory Affairs Manager

Responsible to : Chief Regulatory Affairs Manager

Mainly duties and responsibilities -

1. Leading and managing the activities of a division or a section relating to:
 - (a) enforcement of legislation governing the telecommunications sector and administering the Unsolicited Electronic Messages Ordinance (UEM Ordinance);
 - (b) interconnection and shared use of telecommunications networks and facilities;
 - (c) controlling and administering the telecommunications numbering plan;
 - (d) promotion of fair competition within the telecommunications sector;
 - (e) monitoring quality of service, promoting good industry practices, investigating consumer complaints and the promotion and support of the customer complaint settlement scheme;
 - (f) licensing of telecommunications services, networks, systems and installations and enforcement of licence conditions;
 - (g) regulatory accounting practices, tariffs and price control of the industry;

- (h) conducting radio spectrum auctions and providing related support; and
 - (i) reviewing and implementing the regulatory framework for universal service arrangements.
2. Providing support to senior management in analysing complex licensing issues, handling major cases of industry disputes/complaints and conducting major regulatory policy reviews, including proposing amendments to legislation and regulatory frameworks, preparation of consultation papers, policy papers and statements, codes of practice, setting of technical and accounting standards and explaining Government policies or positions to the industry, stakeholders and the public.

Enclosure 6

**Proposed Job Description
Chief Regulatory Affairs Manager**

Rank : Chief Regulatory Affairs Manager

Responsible to : Assistant Director of Telecommunications

Mainly duties and responsibilities -

Controlling and coordinating the activities of a division to:

1. oversee the enforcement of legislation governing the telecommunications sector and administering the Unsolicited Electronic Messages Ordinance;
2. oversee the licensing of telecommunications services and compliance with code of practice, rules, regulations and licence conditions by telecommunications service providers;
3. monitor development of the market and new technologies and propose regulatory framework to facilitate these developments, conduct industry or public consultation where appropriate, and formulate technical/accounting standards, codes of practice and guidelines for the enforcement of legislation and licence conditions;
4. monitor market behaviours, identify anti-competitive practices and misleading conduct, initiate investigations and take actions against such practices and conduct;
5. protect consumer interests through monitoring of quality of service, raising public awareness, promotion of good industry practices and the investigation of complaints;
6. oversee the effective and efficient use of scarce resources necessary for the provision of services by service providers, such as frequency spectrum, telephone numbers, way-leave and other bottleneck facilities;

7. provide support in the mediation of inter-operator disputes and in determinations on matters of interconnection and sharing facilities; and
8. formulate strategies and represent the interests of the Department and the Hong Kong Special Administrative Region Government in international and regional telecommunications and anti-spamming arenas.

Proposed Job Description
Chief Regulatory Affairs Manager (Competition)

Rank : Chief Regulatory Affairs Manager

Responsible to : Assistant Director of Telecommunications
(Competition)

Main Duties and Responsibilities -

Responsible to the Assistant Director (Competition) for the following main duties:

1. overseeing investigation of complaints about anti-competitive practices; misleading conduct and merger and acquisition cases and to recommend actions against anti-competitive practices;
2. providing support to the senior management in the court and the Telecommunications (Competition Provisions) Appeal Board on legal challenges against the decisions of the Telecommunications Authority concerning fair competition provisions;
3. handling the mediation of inter-operator disputes and cases related to determinations on matters of interconnection and sharing facilities and making recommendations to the senior management;
4. supporting the review of telecommunications policy and legislation pertinent to the regulation of the telecommunications market from the competition perspective,
5. supervising the conduct of surveys and studies on the telecommunications services market for monitoring market development and market conduct (including the pricing behaviour) of telecommunications operators;

6. developing special schemes and programmes to facilitate resolution of disputes among consumers and operators and to enhance fair competition in the telecommunications market and oversee implementation of the programmes and schemes; and
7. providing recommendations on competition issues in the broadcasting sector as and when required.

Job Description
Assistant Director (Competition)

Rank : Assistant Director of Telecommunications

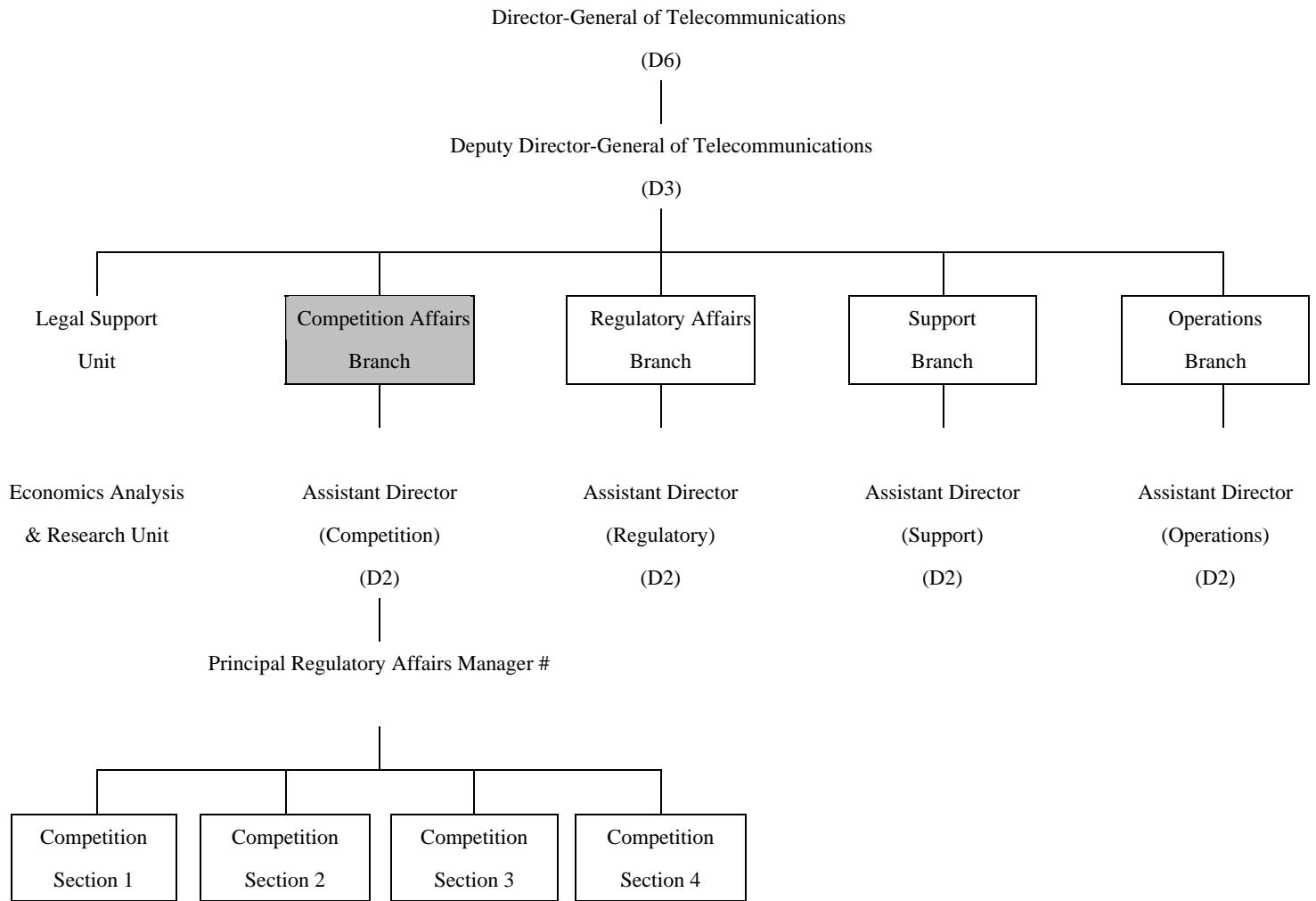
Main Duties and Responsibilities –

Responsible to the Deputy Director-General of Telecommunications for the following main duties –

1. supervising and coordinating the work in the promotion and protection of fair competition in the operation of public telecommunications services;
2. monitoring market behaviors, identifying anti-competitive practices, initiating investigations either proactively or in response to complaints, and taking actions against anti-competitive practices;
3. providing support in the mediation of inter-operator disputes and in determinations on matters of interconnection and sharing facilities in relation to competitive issues;
4. reviewing regulatory frameworks, conducting industry or public consultation where appropriate, and issuing guidelines for the enforcement of the competition provisions in the legislation and licence conditions;
5. providing advice, support and recommendations in the review of telecommunications policy and legislation, particularly in the areas of fair competition;
6. providing support on competition issues in the Broadcasting sector as and when required; and
7. supporting the Telecommunications Authority (TA) in handling and defending cases of appeals against the decisions of the TA concerning fair competition provisions, including cases with legal proceedings, such as judicial review of TA's decisions.

Enclosure 8(a)

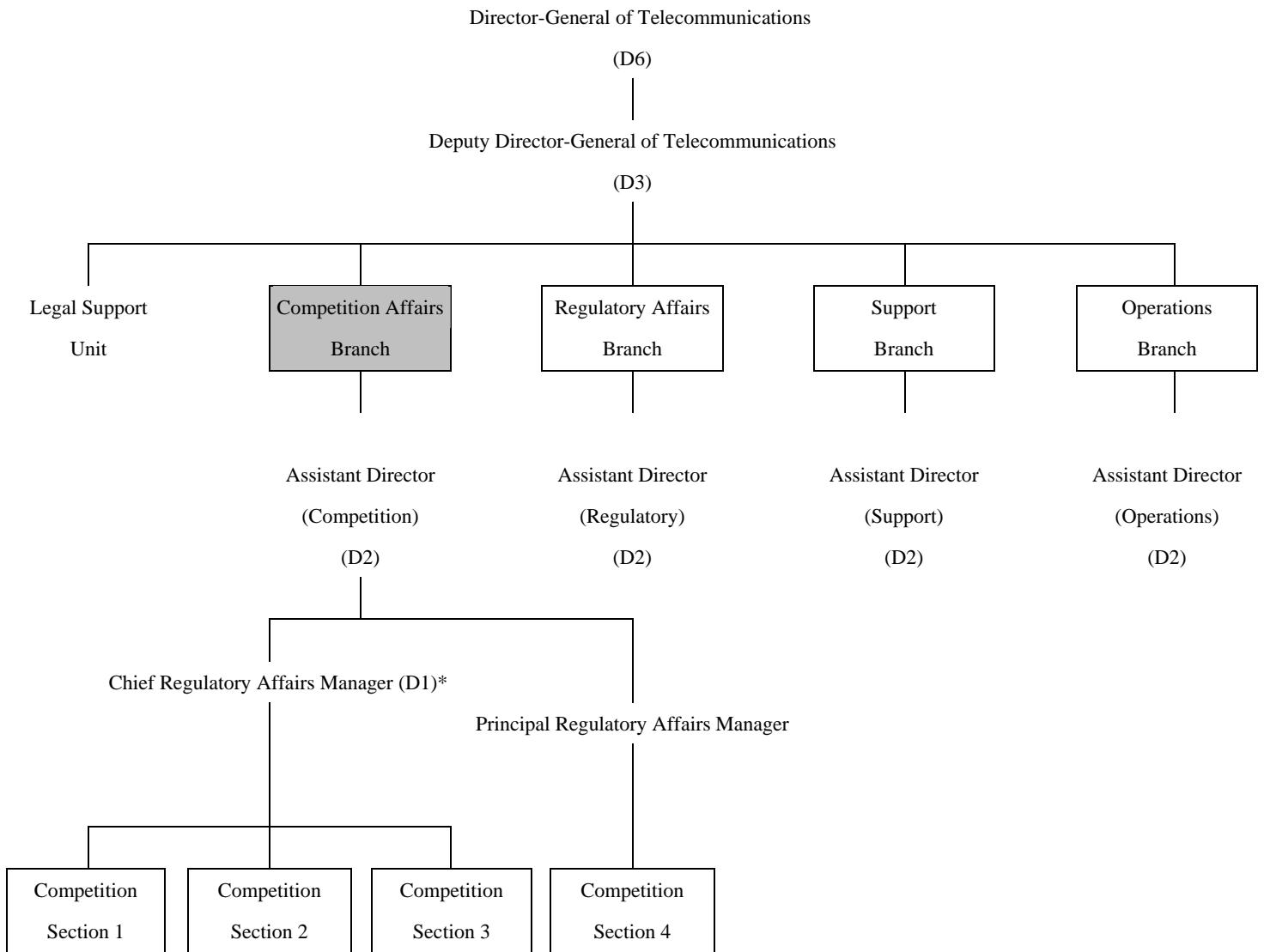
Existing Organisation Chart of Competition Affairs Branch



Non-civil service position

Enclosure 8(b)

**Proposed Organisation Chart of Competition Affairs Branch
after the Creation of the Regulatory Affairs Manager Grade**



* Proposed new directorate post

**Proposed creation of a new civil service grade
of Regulatory Affairs Manager**

**Summary of the issues of concern raised by staff members
and the Management's position**

(A) On the need to create a new civil service grade

Staff's concern	Management's position
1. It is not necessary to create a new grade because economic regulatory work can be undertaken by professionals seconded from relevant civil service grades, or by the Inspector (Telecommunications)/Controller (Telecommunications) (IT/CT) grade members and professionals in the required disciplines of economics or accounting directly recruited to fill the promotional posts in IT/CT grade.	<ul style="list-style-type: none">Professionals in existing civil service grades are subject to postings. Office of the Telecommunications Authority (OFTA) cannot retain their regulatory experience nor groom them in work areas beyond their own specialised fields for acquiring the all round competencies for higher responsibilities in the long term. Moreover, the structures of these grades are not tailored to fit the operational needs of OFTA.The IT/CT grade is a technical inspectorate grade and the grade members are mainly deployed on frontline inspection, investigation and enforcement duties. OFTA last conducted direct recruitment to the promotion rank of Controller (Telecommunications) (CT) in 1988. This was an exceptional arrangement due to the lack of suitable serving officers for promotion to the CT posts concerned. It should not be formalised as a channel for recruiting outside candidates for economic regulatory work.

(B) On the grade structure and pay scales

Staff's concern	Management's position
<p>1. The grade structure should model on other civil service professional grades, i.e. two non-directorate ranks, and the maximum pay of the ranks should be MPS 44 and MPS 49 respectively.</p> <p>2. The starting pay of Tier 1 rank should be MPS Pt 32 because:</p> <ul style="list-style-type: none">• The starting pay of comparable professional grades, which do not have any experience requirements, range from MPS Pt 27 to 32. (Economist/Statistician- MPS 27; Treasury Accountant - MPS 30; Solicitor/ Telecommunications Engineer – MPS 32)• Recruits with professional qualifications should be granted the starting pay of MPS 32. For degree holders with five years' experience, the starting pay should also be MPS 32 in view of the higher experience requirement than the comparable civil service professional grades.	<ul style="list-style-type: none">• The main thrust of regulatory work is to monitor market development and formulate regulatory framework that can cope with a fast changing multi-operator environment, oversee compliance of rules and regulations by service providers, protect consumer interests, coordinate the use of scarce public resources by operators and mediate industry disputes.• To perform the regulatory tasks, we require staff members with qualifications and in-depth experience in the relevant fields of study. Professional qualifications are not a must for discharging the regulatory duty in general.• It is necessary to have three non-directorate ranks in the new grade as each rank performs different functions. In view of the functional requirements and qualification requirements of the proposed new grade, it is not appropriate to benchmark the new grade with the existing professional grades.

(C) On subsuming the functions of the TE grade in the new grade

Staff's concern	Management's position
<p>1. It is necessary to retain the Telecommunications Engineer (TE) grade in the long run because:</p> <ul style="list-style-type: none">• Professionally qualified staff members are required for performing the functions of setting technical standards, control of radio interference, spectrum management, and acting as expert witnesses in court cases, etc;• A separate professional grade can be established to perform economic regulation.	<ul style="list-style-type: none">• The regulatory functions should be performed by a single grade comprising talents in the required fields, including the engineering discipline, in the long run, so as to achieve the most flexible and efficient deployment of staff resources to meet the challenges of the regulatory work in the fast evolving telecommunications sector, which is intertwined with technical and economic issues.
2. OFTA should resume recruitment of TEs and stop recruiting Regulatory Affairs Managers with engineering background.	<ul style="list-style-type: none">• Professional qualifications are not a must for discharging the regulatory duty in general though OFTA does have operational needs for some regulatory staff with professional qualifications to better perform its certain regulatory functions. The Management will stipulate entry requirements at the Senior Regulatory Affairs Manager (SRAM) rank and above for either degree holders or professionally qualified candidates to facilitate recruitment of candidates with different qualifications during the initial recruitment exercises for the new grade.• The TE grade will remain a separate grade until the retirement of all serving grade members in about 20 years' time. Serving TE grade members may be considered for

Staff's concern	Management's position
	<p>promotion to senior ranks in the new grade in addition to those in the TE grade.</p>
3. If it is decided to subsume the TE grade in the new grade, serving TE grade members should be allowed to be re-posted to other departments or be redundant according to the established civil service rules.	<ul style="list-style-type: none">The department has a continual service need for staff members with expertise in engineering and therefore all serving TE grade members need to be retained. Hence, there is not a case for redundancy of staff.

(D) On the appointment of serving non-civil service regulatory staff to the new grade

Staff's concern	Management's position
<p>1. Serving regulatory staff in OFTA should be given a higher priority for appointment in the open recruitment exercise.</p> <p>2. The language proficiency requirements (Level 1 in English and Chinese in CRE, or equivalent) and written examination, if any, should be waived for serving regulatory staff as they have proven their competence and language ability in performing their jobs in OFTA.</p>	<ul style="list-style-type: none">Under the prevailing civil service recruitment policy, civil service vacancies should be filled through an open, fair and competitive recruitment process and it is not appropriate to accord priority to a particular group of non-civil servants, including the serving regulatory staff in OFTA. Serving regulatory staff would have to compete with outside candidates for appointment to the new grade. However, their working experience in OFTA would provide them with a competitive edge over other applicants in the selection process.Having regard to the above civil service recruitment policy, it is not appropriate to waive the entry

Staff's concern	Management's position
	requirements, or selection tests if any, for serving regulatory staff in OFTA who apply for appointment to the new grade.
3. Incremental credit for experience (ICE) should be granted to serving regulatory staff in recognition of their experience in OFTA.	<ul style="list-style-type: none">Under the prevailing civil service guidelines, the Management should ascertain if there are difficulties in recruiting a sufficient number of suitable candidates willing to join at the normal entry salary to fill all the vacancies. When there is no recruitment difficulty, then ICE will not be paid to those recruits with previous relevant experience. The rationale for this policy is the prudent use of public resources.
4. The three-year probationary period should be waived on a pro-rata basis in recognition of regulatory staff experience in OFTA.	<ul style="list-style-type: none">Under the prevailing civil service guidelines, the Management may reduce the probationary period, by no more than half of the normal three-year probationary period, of the regulatory staff who are selected for appointment to the new grade. A system for administering the reduction of probationary period for appointed regulatory staff will be worked out.

(E) On promotion of IT/CT grade members to the new grade

Staff's concern	Management's position
1. IT/CT grade members should be given promotion opportunities in the new grade because: <ul style="list-style-type: none">IT/CT grade members have	<ul style="list-style-type: none">The IT/CT grade is a technical inspectorate grade and its role is distinctly different from that of the TE grade and the proposed new grade.

<p>been deployed to handle regulatory work for many years and two serving SCTs were directly recruited to the CT rank which required a degree and eight years' experience.</p> <ul style="list-style-type: none">• In the staff consultation for creation of a similar new grade conducted in 1998, IT/CT grade members were given the opportunity of switching to the proposed new grade under special arrangement.	<ul style="list-style-type: none">• The CT rank is a promotion rank in the IT/CT grade. OFTA last conducted direct recruitment of CTs in 1988. This was an exceptional arrangement due to the lack of serving officers suitable for promotion to the CT posts concerned. It should not be formalised as a channel for recruiting outside candidates for economic regulatory work.• The current proposal is different from the one made in 1998, which involved the conversion of a number of posts in the IT/CT grade to posts in the new grade. The current proposal will not have any impact on the current posts in the IT/CT grade and hence there is not a case for special in-service transfer arrangement for IT/CT grade members to join the new grade.
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