

Mr Ambrose Ho
Chairman, Communications Authority
20/F, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

24 October, 2013

Dear Sir,

**Plum Consulting Report on Impact Assessment of Re-Auction of
2.1 GHz Spectrum ("3G Spectrum") in Hong Kong**

We refer to our meeting with you on 19 October 2013 in which Plum Consulting presented its findings regarding the captioned matter.

We appreciate the CA's interest in this matter and thank you for placing Plum Consulting on its agenda. While we note that no questions were raised by any of the members of the CA at the meeting, we would welcome any questions if they arise as you consider the issue of service continuity and harm to consumers under Option 3 and the Network Strategies report.

The material presented in response to the consultation papers indicates that Option 1 is better for consumers in each of the stated objectives: (i) customer service continuity; (ii) efficient spectrum utilization; (iii) promotion of effective competition; (iv) encouragement of investment; and (v) promotion of innovative services. This material includes written submissions filed under the consultation as well as analyses provided by Plum Consulting and others. At the same time, the reasoning produced in favour of Option 3 in the Second Consultation Paper is speculative and is accompanied by little real analysis.

The issue of service degradation has recently become the focus of the consultation, but in reality this is just one of the above five stated objectives where Option 1 is more attractive than Option 3. The First Consultation Paper acknowledges that Option 1 is preferable to Option 3 in terms of customer service continuity. Indeed, it is obvious that Option 3 will have a substantial and adverse long term effect on users. As such, it is unclear to us why Option 3 is still being considered. Certainly, no interested party (including more recently the Consumer Council) supports an option which the CA has admitted will harm users, especially when such harm is avoidable.

From the very start of the consultation process (30 March 2012), the Government recognised that service degradation was an important issue and was a real concern under Option 3. Service degradation was also raised by members of the Legislative Council Panel on Information Technology and Broadcasting at the hearing on 27 March 2013 when OFCA announced that it would be hiring a consultant to study the impact. However, the CA and

SCED did not engage Network Strategies to undertake a study on the impact of service degradation of adopting Option 3 until after the deadline for submission of responses under the Second Consultation Paper had expired (11 April 2013). It is unfortunate that Option 3 was presented as the preferred option in the Second Consultation Paper before the issue of service continuity (and substantial consumer harm) had been properly analysed.

The outcome is that the public, lawmakers and the operators have had no opportunity to comment on the Network Strategies Study and its findings. The CA and SCED have failed to disclose the Network Strategies Study, to undertake any further consultation on its findings and to extend the timetable for publication of the decision on re-allocation of the 3G Spectrum to allow time for sufficient consultation. It is true that Network Strategies met with each mobile operator and obtained data from them, but such meetings did not in any way satisfy the obligation to fully consult under this decision-making process.

In its Second Consultation Paper, the CA and SCED proposed Option 3 for further consultation on the (erroneous) basis that the customer service degradation which would result from Option 3 - as estimated by OFCA at that time (for example, the estimated reduction in download speeds of 9%) - was outweighed by other perceived benefits which would result from the assessment of the 'multiple objectives' identified in the consultation papers. By engaging Network Strategies to conduct a detailed study on the issue of customer service degradation, OFCA has clearly implied that its initial assessment on this issue may have been unsound. The public is therefore now entitled to know, and be given an opportunity to comment on, what the real extent of customer service degradation is (according to Network Strategies' findings), whether this has affected the CA and SCED's assessment of the 'multiple objectives' and proposed option, and if so why. This is particularly the case now that the Plum Consulting Study has revealed that much higher levels of customer service degradation are likely to result from Option 3. Without such disclosure and consultation, there has been no proper consultation, and the consultation process is fundamentally flawed.

The CA must be taken to be aware that a consultation needs not only to be carried out, but to be carried out properly. Yet, the CA has attempted to make up time and ground by rushing through completion of the Network Strategies Study, and then keeping it secret until it publishes its decision. By not even publishing the Network Strategies Study in advance of the decision let alone affording any right of reply to interested parties, the CA and the SCED have failed to repair this glaring deficiency in their consultation process.

In reality, the operators were faced with the prospect of a decision being made based on a study which would not be released if at all until after the decision has been made. It was also a study which, from our limited contact with Network Strategies, appeared to be seriously flawed. In an attempt to draw the attention of the public and lawmakers as well as the CA and SCED to the significant negative consequences on the quality of 3G services of adopting Option 3, and the possibility that the Network Strategies Study would not be made public or fully consulted on, the operators commissioned their own parallel study in response to the

announcement by the CA of the Network Strategies Study being undertaken. Contrary to the CA and SCED, the operators have published the findings of the independent Plum Consulting study in full.

OFCA, by letter dated 18 October 2013 ("Letter"), now castigates the operators not only for an *"inexcusably late submission"* of the Plum Consulting report, but also for not permitting Network Strategies to be provided with a copy of the Plum Consulting report. This is really turning the proper course of action on its head. What should have occurred is that the operators, other interested parties and the public should have been given the opportunity to review the Network Strategies Study in full and then submit their comments as part of the consultation process. Instead, the operators have had to put in their own parallel study in order to draw attention to the serious consequences of Option 3 on service quality. Far from criticising the operators, the CA should recognise that its consultation is inadequate and incomplete because the interested parties have not had time or the opportunity to make representations on the Network Strategies Study and its conclusions on the impact of Option 3 on service quality. This should be sufficient reason alone to rule out Option 3 and all the more so without any quantifiable benefits being identified when set against the costs relative to Option 1.

As regards the issue raised by the CA in the Letter concerning the brevity of notice for the meeting on 19 October 2013, we have consistently made clear our willingness to engage in an open discussion with the CA and SCED on the issue of customer service degradation. The proper course of action would have been to disclose the Network Strategies report when it was finalised (we understand in August 2013) so that such a dialogue could take place. The short notice is really a result of this report not having been disclosed as it should have been, our need (as explained above) to commission a separate report by Plum Consulting, combined with the continued (and still unexplained) intransigence of the CA and SCED towards extending the October 2013 decision-making target, so that a proper dialogue and consultation can take place.

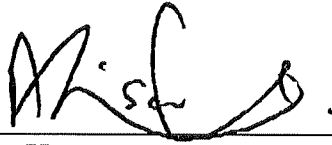
Decision-making should be undertaken outside of a black box in an open and transparent manner and the interests of consumers need to be fully taken into account. In the meantime, all our respective rights in relation to the consultation are reserved.

Yours faithfully,

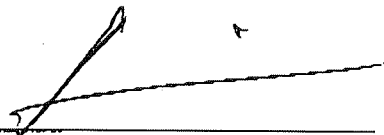
cc Mr Gregory So, Secretary for Commerce and Economic Development
(Fax: 2110 1056)

Mr Danny Lau, Deputy Director-General (Telecommunications), OFCA
(Fax: 2803 5111)

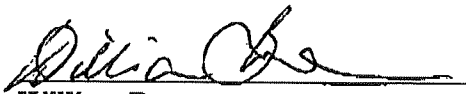
Ms Yue Tin-po, Chief Council Secretary, Legislative Council Panel on Information
Technology and Broadcasting [For distribution to members of the Panel]
(Fax: 3151 7052)



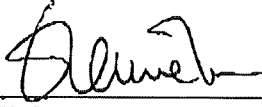
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