

3 September 1999

New T&T Hong Kong Limited

**Submission to the Bills Committee on
Telecommunication (Amendment) Bill 1999**

1. New T&T welcomes the Bills Committee's invitation to present its views on the Telecommunication (Amendment) Bill 1999 (the "Bill").
2. The amendments proposed in the Bill are intended to enhance competition safeguards, improve interconnection access arrangements to telecommunication services, streamline licensing procedures and provide the Telecommunications Authority (the "Authority") with powers over certain technical areas.
3. New T&T welcomes the amendments proposed in the Bill in principle. We believe that a clear and balanced legal framework is fundamental and essential for any liberalisation regime and to help shape the development of the telecommunication industry in Hong Kong.
4. As the guardian of the Government's telecommunication policy objectives, we believe the Secretary of the Information Technology and Broadcasting Bureau and the Authority have the responsibility to ensure that these objectives are achieved.

The functions of the Authority must be clearly spelt out to avoid any uncertainty. The Authority must be vested with the necessary power to fully discharge his functions.

There should however be adequate checks and balances on the power of the Authority. To provide for adequate checks and balances we suggest the establishment of an independent appeal board with the responsibility to review the decision of the Authority and where appropriate quash the decision of the Authority. However this appeal board should not have the authority to replace the decision of the Authority. There must be guidelines imposed to ensure that the appeal process is not abused.

5. During the review of the fixed telecommunication in 1998 there were concerns expressed over the dismal state of competition in the FTNS market. The Consumer Council was concerned that some 3 years after the start of competition Cable & Wireless HKT still has 98.5% of the exchange lines in Hong Kong.
6. As one of the new operators New T&T shares the same concern over the dismal state of competition. We have been frustrated by the lack of clarity in the functions and power of the Authority. This lack of clarity has been fully exploited by the incumbent dominant operator to its full advantage at the direct expense of the new operators.
7. This lack of clarity on the functions and powers of the Authority was evident **even before** the liberalisation of FTNS in June 1995. This also explains why for over a year the Authority attempted to have the operating relationships between the new operators and Cable & Wireless HKT defined by "commercial negotiation" between the then (as yet) unlicensed new operators and the incumbent operator. It was not

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surprising that the incumbent operator refused all concessions and attempted to place operating constraints on its competitors. It was only in April 1995 (two months before licences were to be issued) that the Authority published a series of statements on how he was minded on the question of these operating relationships. Whilst some of these statements were helpful (e.g. the mandating of the passing of traffic between networks) many fundamental issues such as the costs of interconnect were still left to “commercial negotiation”, We believe this was because the Authority feared that he had no powers to enforce his views without amendments to the Telecommunication Ordinance, a view put forward by the incumbent operator to the new operators many times during the “commercial negotiations”.

8. **Even after** the liberalisation of FTNS in June 1995 the situation has not improved. In fact the situation has worsened. Every dealings between the new operators and Cable & Wireless HKT is characterised by protracted commercial negotiations due to the Authority’s light-handed approach. It is not surprising that every service to be provided by the new operators which requires interconnection with or cooperation from Cable & Wireless HKT takes an unacceptable long lead time to implement or is aborted because it ends up being too costly.
9. Let’s take a look at Type II interconnection. The Authority in his statement number 6 released on 3 June 1995 expressly stated that Type II interconnection falls within interconnection under section 36A of the Telecommunication Ordinance. When New World Telephone applied for a determination on Type II interconnection under section 36A between itself and Cable & Wireless HKT in 1998, it was only to be followed by a request for judicial review of the Authority’s power by Cable & Wireless HKT. This threat of a protracted judicial review process led to a resumption of commercial negotiation between New World Telephone and Cable & Wireless HKT which took nearly 6 months to conclude, and this commercial negotiation was facilitated by the Authority! Following conclusion of the commercial arrangement between New World Telephone and Cable & Wireless HKT, same terms and conditions were being offered to the other two new operators. However a simple amendment exercise which should not take longer than two weeks ended up taking some over two months to conclude. Again the Authority was powerless to mandate the start and finish date of such simple exercise.
10. We believe Cable & Wireless HKT has been allowed to dictate the pace of development of competition in the FTNS market in Hong Kong because of the lack of clarity on the functions and powers of the Authority. Because of this lack of clarity the Authority adopts the light-handed approach to regulation and leaves the new operators to fight for survival with the incumbent dominant operator. When the Authority has been requested to intervene he has been too hesitant and takes far too long to exercise his power. This has been detrimental to the development of competition in the FTNS market.

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11. Let us also look at some of the well publicised incidents:
- (a) The Authority's statement dated 19 February 1998 where 4 cases of marketing practices of bundling the sale of equipment with the offer of free telephone services of Cable & Wireless HKT were condemned. No fine was imposed;
 - (b) The Authority's direction of 1 April 1998 where 6 cases of further marketing practices of bundling the sale of equipment with the offer of free telephone services of Cable & Wireless HKT were condemned. No fine was imposed;
 - (c) The Authority's direction of 24 June 1998 where 20,000 cases of systematic anti-competitive discounting by Cable & Wireless HKT were condemned. A fine of HK\$20,000 was imposed on Cable & Wireless HKT, which amounted to HK\$1.00 per case; and
 - (d) The Authority's direction of 12 February 1999 where 589 cases of anti-competitive discounting were condemned. This time a fine of HK\$50,000 was imposed on Cable & Wireless HKT.

With such records behind it, it is no wonder that Cable & Wireless HKT is fighting this Bill very hard.

12. We believe the most fundamental problem, which still has profound impact today, was the absence of a clear legal basis for the definition and management of competition in the market for FTNS market. Because of its absence the Authority has, and continues to have, grave difficulty on rectifying inappropriate operating relationships and restrictions placed on the new operators by Cable & Wireless HKT; nor has it been able to deal effectively with abuses of its dominance. This omission is without precedent in any advanced economy which has deregulated its telecommunications market.
13. Members of the Bills Committee we urge you to consider the Bill in the context of the regulatory environment and the state of competition in the FTNS market in Hong Kong.
14. We reiterate that a clear and balanced legal framework is fundamental and essential For any liberalisation regime. Whilst the Authority must be vested with the necessary power to discharge his responsibilities, there must be adequate checks and balances on his power through an independent appeal board.
15. On behalf of New T&T we thank you for giving us this opportunity to express our views on the Bill.