

LegCo Panel on Information Technology and Broadcasting **Proposed Merger of Cable & Wireless HKT and Singapore Telecom**

A. Introduction

The Cable and Wireless PLC and Singapore Telecommunications (Singtel) announced on 24 January 2000 that they were engaged in active discussions over a proposed merger of Cable and Wireless Hong Kong Telecom (C&WHKT) and Singtel. Both the Cable & Wireless Group and Singaporean Government contacted the HK Special Administrative Region Government to brief us on the proposed merger.

B. The regulatory requirements

2. Hong Kong does not have any foreign ownership restriction on our telecommunications licensees. This is our policy and is consistent with our commitments under the World Trade Organisation (WTO). If C&WHKT and Singtel reach agreement on the merger, we will consider the detailed terms to ensure that the regulatory requirements can be fully discharged by the new, merged entity, in relation to the telecommunications and broadcasting licences currently held by the C&WHKT group.

3. The C&WHKT group now holds a number of telecommunications and broadcasting licences. They include a fixed telecommunication network service (FTNS) licence, public radiocommunication service licences for mobile phone service and a programme service (video-on-demand) licence. Licensees under the C&WHKT group must satisfy the Telecommunications Authority (TA) and the Broadcasting Authority (BA) that they meet in full the various licence terms and conditions, including any obligations and restrictions to which they are subject.

4. On *the telecommunications side*, since we do not restrict foreign ownership, the key issues for the Government are to maintain a level playing field and to ensure compliance of the merged entity under our regulatory regime. C&WHKT is the dominant operator in the local fixed telecommunications market, in International Direct Dialing (IDD) services over routes which are not yet fully competitive (e.g., Mainland China, Philippines and Indonesia), as well as in the external telecommunications facilities market which has only just been liberalised

from 1 January 2000. It is subject to more stringent regulatory controls (such as price controls) and must observe the Universal Service Obligation (USO) to provide basic telephone service throughout Hong Kong.

5. The licence conditions of the various telecommunications licences do not require prior consent of the TA with regard to changes in the shareholding of the company holding the licence. Two of the public radiocommunication service licences for mobile service held by C&WHKT CSL Limited require only notification for disposal of shares in the holding companies. This requirement has already been removed from the more recent licence issued for its Personal Communications Services (PCS). TA's consent will be required under the telecommunications licences if the merger involves the transfer of licences. In the case of an FTNS Licence, a licensee in a dominant position in the public basic telephone service over fixed networks is required to seek the prior consent of the TA to assign, transfer or otherwise dispose of more than 15% of the licensee's assets constituting the network (under Clause 4.2). If the proposed merger involves only a change in shareholding of the holding company, the Clauses on transfer of licence or assignment, etc. of assets will not apply.

6. As regards *the broadcasting side*, the C&WHKT group also holds a programme service licence for its video-on-demand service. Under the Television Ordinance (Cap 52), approval may be required arising from the foreign ownership restriction and the "disqualified person" requirement. It is worth noting that under the Broadcasting Bill which has been gazetted on 28 January 2000 and will be introduced into Legislative Council, we propose to remove and relax certain restrictions in these regards. For example, we have proposed in the Bill to remove the requirement for approval on "unqualified voting controllers" (referring essentially to those persons who do not meet the residency requirement) to acquire over 2% of the voting share of a Domestic Pay TV licence.

C. A Pro-competition Telecommunications Market

7. To ensure a pro-competition regulatory regime, safeguards against any abuse of position by the dominant player has always been a key issue for the Government. While the proposed merger involves the dominant operators in Hong Kong and Singapore, our key task is to ensure that our regulatory regime effectively monitors the activities of our licensees and provides sufficient safeguards against anti-competitive

behaviour by the dominant operator.

8. To this end, we have introduced the Telecommunication (Amendment) Bill to the Legislative Council in May 1999, following the completion of the 1998 Review on Fixed Telecommunications Policy. The major provisions which will strengthen safeguards against anti-competitive conduct of licensees include :

- To strengthen competition safeguards under new sections 7K to 7N. The new provisions serve to consolidate the powers for the promotion of fair competition and to codify the powers now provided in the FTNS licences into primary legislation;
- To increase the financial penalty to a reasonable level under new section 36C and to provide civil remedies to the aggrieved under new section 39A. We propose to empower the TA to impose financial penalties if he has established that licensees have breached any licence conditions, any provision in the Ordinance or its regulation or any direction issued by the TA. Moreover, the level of financial penalties to be imposed by the TA to a maximum of \$1 million. If the TA considers it inadequate, he may apply to the Court of First Instance to impose a penalty not exceeding 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, or \$10 million, whichever is higher. The Bill also introduces a recourse to civil remedies to those aggrieved by any anti-competitive conduct of licensees; and
- To introduce a pro-competition measure in the provision of external telecommunications services under new section 6B. A new provision in the Bill empowers the TA to issue written directions in relation to external services, requiring the licensee not to engage in activities which have the purpose or effect of distorting competition in the telecommunications market. It aims to deal with situations known in the industry as “one-way accounting rate by-pass” and “whipsawing” in the international accounting rate system¹.

¹ For example, a licensee in Hong Kong affiliated with an operator in an overseas market which is not yet open to competition may enter into an arrangement with that overseas operator whereby outgoing traffic from Hong Kong will be sent under the normal international accounting rate system while incoming traffic to Hong Kong will be sent through International Simple Resale to by-pass the international accounting rate system. This would result in substantial net outpayment from Hong Kong to the detriment of the overall interest of Hong Kong. This is known as “one-way accounting rate by-pass”. “Whipsawing” refers to activities of a monopoly operator in an overseas market

9. The provisions contained in the Bill are necessary to strengthen the pro-competition regulatory regime. We hope that the Bill which is now being examined by the Bills Committee will be supported by Members and passed as soon as possible.

D. Way Forward

10. We will consider carefully the detailed terms and conditions of the proposed merger between CWHKT and Singapore Telecom when they are available. The merged entity must meet our regulatory requirements, which are well-established and transparent. Given the dominant position of the CWHKT in certain segments of the telecommunications market, we must also ensure that it will continue to fully discharge its licence obligations, including the USO to provide basic telephone service throughout the territory, that it must continue to provide a satisfactory level of service to consumers, and that it must provide access on interconnection and bottleneck facilities which is essential in maintaining a level playing field in our progressively liberalised telecommunications market.

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playing one licensee in Hong Kong off against another so as to negotiate for the lowest inpayment rate to Hong Kong. Such activities would result in less inpayment to Hong Kong and to the detriment of the overall interest of Hong Kong.