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HUTCHISON TELEPHONE COMPANY LIMITED
HUTCHISON 3G HK LIMITED

Submission to Legislative Council Bills Committee On Proposed Regulation of Mergers and Acquisitions In the Telecommunications Market Under Telecommunications (Amendment) Bill 2002

Executive Summary

- Hutchison supports the Government's policy to promote fair, healthy and effective competition.

- However, for the following reasons which are elaborated in our submission, Hutchison is of the view that **the application of mergers and acquisitions regulations to the telecommunications industry is unjustified and inappropriate**.

- Hutchison questions the assumptions and findings based on which the Government argues that a sector specific merger and acquisition regulatory regime is necessary for the telecommunications industry.

- **The Hong Kong mobile sector is relatively small and highly competitive.** Barrier to entry is relatively low and there are mandatory access rules to safeguard competition. Further, the telecommunications industry is not the only industry in Hong Kong faced with scarcity of resources on which the business is operated. The Government has failed to explain why the telecommunications industry is singled out on such basis.

- The telecommunications industry is **already subject to comprehensive prohibitions against anti-competitive conduct**, and the concerns which the Government perceives and raises about the industry are fully addressed by the existing regulatory regime particularly the wide powers the TA has to regulate conduct.

- In fact there have been a number of mergers and acquisitions over the last few years which demonstrate that **competition has worked effectively under the existing regulatory regime**.

- With the introduction of the proposed regime, **Hong Kong SAR would become the only jurisdiction in which competition laws and the review of mergers and acquisitions would apply only to one sector of the economy**, the telecommunications sector.

- In other countries, **the difficult condition of the telecommunications industry has precipitated a rethink of the extent and operation of regulation**, including the strictness of controls on mergers. So, at the same time that other countries are considering relaxing regulatory controls to assist their telecommunications industries, **Hong Kong continues to add to the regulatory burden**.

- Hutchison is concerned that under the proposed Bill **the powers which should be exercised by the Legislative Council will be transferred to the TA**, an administrative authority. The guidelines, which aim to set out the criteria the TA will consider in determining whether a change or proposed change has, or is likely to have, an anti-competitive effect, and which therefore represent the crux of the regulations, are yet to be drafted, consulted upon or issued by the TA.

- With the technical deficiencies and uncertainties of, and the overwhelming power reserved to the TA under, the proposed regulatory framework, although branded by ITBB as an *ex post* regime, **the proposed regulation effectively remains an *ex ante* one**. It **intensifies regulatory intervention, and increases rather than decreases regulatory uncertainties and disincentives to investment**.

- The overseas merger control regimes on which the Bill has been modelled are administered by general competition authorities and not by industry specific regulators who lack the necessary skills, experience and perspective required for competition matters. These regimes have also come under strong criticism for their uncertainty, unpredictability and distorting effects on rational business conduct.

- **It is in fact for the sake of upholding and ensuring the competitiveness of the Hong Kong telecommunications market that Hutchison strongly urges the Legislatives Council to consider rejecting the sector specific application of regulation of mergers and acquisitions to the telecommunications industry.**