CB(1) 93/03-04(03)

HGC
Hutchison Global Communications

Hutchison Telecom

HUTCHISON GLOBAL COMMUNICATIONS LIMITED

19/F, Two Harbourfront
22 Tak Fung Street
Hunghom
Kowloon

HUTCHISON TELECOMMUNICATIONS (HONG KONG) LIMITED

18/F, Two Harbourfront
22 Tak Fung Street
Hunghom
Kowloon

Date: 16 October 2003

By Mail and By E-mail: dyau@legco.gov.hk

Mr. Sin Chung-kai
Chairman to Panel on
Information Technology and Broadcasting
3/F, Citibank Tower
3, Garden Road, Central
Hong Kong

Dear Sir

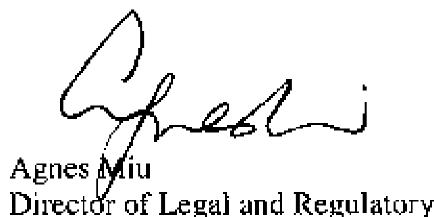
Re: Consultation on Merger Guidelines For Hong Kong Telecommunications Markets

Please see attached for your information and distribution to other Panel members a copy of our submission to OFTA on this subject.

You will note that, given the importance of this subject, we have asked for a second consultation. We hope that IT Panel will support such request which is also made by other operators.

Yours sincerely

For and on behalf of
Hutchison Global Communications Limited



Agnes Miu
Director of Legal and Regulatory

For and on behalf of
Hutchison Telecommunications (Hong Kong) Limited

Oswald Kwok
Senior Legal Counsel

cc: M.H. Au/Edward Whitehorn – OFTA
Stuart Chiron/Terry Cassells – PCCW Limited
Dumas Chow – New World Telecommunications Ltd.
Ritchie Ma – Telstra Corporation Limited
Hayden Flynn – Mallesons Stephen Jacques
Eric Lee – Smartone Mobile Communications Ltd.

JOINT SUBMISSION

TO

THE OFFICE OF THE TELECOMMUNICATIONS AUTHORITY

CONSULTATION ON DRAFT MERGER GUIDELINES FOR HONG KONG TELECOMMUNICATIONS MARKETS

29 September 2003

We are pleased to have the opportunity to provide our comments on the draft Guidelines prepared by the TA, to be issued under Sections 6D(1) and 6D(2) of Telecommunications Ordinance (“the Ordinance”).

A. General comments

1. Purpose of the Guidelines

As the TA sets out in paragraph 1.1 of the draft Guidelines, the purpose of the Guidelines is to provide “practical guidance” on Section 7P of the Ordinance concerning “changes in relation to carrier licensees”.

The Guidelines will only be of practical value to carrier licensees and investors if it provides reasonable predictability of the TA’s decision in a given set of circumstances.

The Guidelines as drafted, however, merely provide an overview of certain basic economic concepts and the analytical principles to be used in a merger analysis. They however do not explain how the TA will apply them in his review of a transaction involving a carrier licensee. The Guidelines do not provide sufficient examples or benchmarks to give readers enough understanding as to how the TA’s decisions will be made. The Guidelines therefore fails to meet the business community’s need for practical guidance in doing their own analysis prior to planning a transaction.

Given that the Guidelines are only to apply to the telecommunications sector and more specifically, only in relation to changes in carrier licensees, we would expect that the Guidelines can be more narrowly and accurately focused on the issues pertinent to carrier licensees, with more specific relevant examples.

2. Need for reinstatement of policy objectives

The policy objectives behind this new merger and acquisition regulatory regime need to be reinstated in the Guidelines. Such reinstatement will set a framework to the application of the Guidelines and thereby avoid outcomes that may be inconsistent with the spirit of the law.

An extract from earlier statement of the Hong Kong Government on competition policy can serve as a good reminder to all of the policy objectives behind the new merger and acquisition regulatory regime:

“*The objective of the Government’s competition policy is to enhance economic efficiency and free flow of trade, thereby also benefiting consumer welfare. The Government is committed to competition as a means to achieving the said objective, and not as an end in itself.*

The Government considers competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. We will not interfere with market forces simply on the basis of the number of operators, scale of operations, or normal commercial constraints faced by new entrants. We will take action only when market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency or free trade, to the detriment of the overall interest of

Hong Kong." (*Statement on Competition Policy*, *Competition Policy Advisory Group, May 1998*)

3. Recognition of the positive aspects of mergers

The Guidelines has an anti-merger flavour. Given the policy objectives of the merger and acquisition regulatory regime being pro-competition, the positive aspects of mergers should be expressly recognized.

For example, the Australian Merger Guidelines give such a clear recognition in their very first page:

"Mergers perform an importance role in the efficient functioning of the economy. They allow firms to achieve efficiencies such as economy of scale, synergies and risk spreading. Furthermore, they facilitate an active "market for corporate control" in which under performing firms and managers are replaced by better ones".

The Australian Guidelines further recognizes that *"the majority of mergers do not raise competition concerns*".

It is therefore only the very few exceptional cases which alter the structure of markets with effects of substantially lessening competition that should raise concern. The TA should only seek to regulate transactions when such substantially lessening competition effect has been clearly established.

4. Need for a statement of the TA's enforcement philosophy

It therefore should follow that where there is doubt as to the anti-competition effects of a merger or acquisition and that a transaction cannot be clearly established to have the effect of substantially lessening competition, the TA should approve the merger and there should be a statement in the Guidelines to that effect. We will further elaborate on the issue of standard of proof in Section B4 below.

Such approach will avoid the benefits of a proposed merger and acquisition being lost forever as a result of regulatory errors. Any potential negative effect that may arise from a merger or acquisition can be addressed by conduct regulation under the existing provisions of the Telecommunications Ordinance (Sections 7L, 7K and 7N).

5. Recognition of Hong Kong as a small economy

Given Hong Kong's small and externally oriented economy, the TA should give due consideration to the economic characteristics of small market economies in formulating these Guidelines: it is always harder for firms to achieve minimum efficient scale of operation. To achieve productive efficiency in a small economy usually imply that concentration should be higher than in larger economies, as few firms can be supported by a small market. Strictly adopting competition policies as developed for larger economies like the EU or the US may not in all respects be appropriate for a small economy such as Hong Kong.

6. Factors to be considered in determining "substantially lessening competition" to follow the order as set out in the Ordinance.

The Telecommunication Ordinance sets out a single statutory test for the review of mergers and acquisitions, i.e. whether a transaction has the effect of "substantially lessening competition" in the market. Schedule 2 to the Ordinance sets out a list of matters to be taken in account by the TA before forming an opinion on whether a transaction has the effect of substantially lessening competition. It would therefore be helpful that, in the TA's competition analysis as set out in the Guidelines, the factors to be considered are analysed in the order as they are set out in Schedule 2 to the Ordinance.

Please also kindly insert an index page to the Guidelines to allow easy reference to different sections of the Guidelines.

7. Burden of Proof

The Guidelines should make it clear that before the TA can block a transaction, the burden of proof is on the TA to establish the "substantially lessening competition" effect of the transaction. It is not for the parties involved to prove the lack of adverse effect on competition.

8. Safe harbours

Both CITB and OFTA are well aware of our request for safe harbours to be included in the new merger and acquisition regulatory regime - to exclude transaction which has no practical effect on competition – for example because of the low value of the transaction or small market share of the parties involved. . We have previously requested that such "safe harbours" be included in the legislation.

We did not have the opportunity to agree on what safe harbours should be included in the new merger and acquisition regime. However, we have the understanding that we will explore the establishment of safe harbours during the formulation of the Guidelines.

As currently drafted, the Guidelines will allow the TA to investigate any transaction falling within Section 7P of the Ordinance. This is neither in the interest of business certainty nor an efficient use of regulatory resources.

Other jurisdictions that have merger control have thresholds based on turnover, assets acquired and/or market share which must first be met before the authority has jurisdiction. In the UK, the competition authority has no power to examine a merger or acquisition unless either a certain market share would be achieved or increased by the merger, or the assets of the "target" company exceed a certain level. Taiwan uses a market share test. The US uses a "size of party" or "size of transaction" test. The EU uses a turnover test. In Australia, the ACCC's Merger Guidelines use concentration thresholds as a screening device to eliminate the need for detailed market share studies where the merger is unlikely to give rise to any competitive concerns.

There is also no exclusion in the Guidelines for internal corporate restructuring within the same group of companies, where control of a company within the group is not shared

with or transferred to third parties outside the group. Such transactions should not be the subject of regulatory review and should be expressly excluded in the Guidelines.

We suggest that the Guidelines should provide “safe harbours” based on “bright line” jurisdictional rules according to turnover or assets, or market share. We would be happy to discuss with the TA in further detail proposals for safe harbours.

9. Second Consultation

These Guidelines are meant to provide the implementation details of the regulatory regime for mergers and acquisitions as envisaged under the Ordinance. It is therefore of great importance to investors and licensees in providing predictability of the TA’s decisions so that investors and licensees can plan their mergers and acquisitions activities accordingly.

As presently drafted, the Guidelines fail to provide practical guidance on the operation of Section 7P. A second consultation is therefore of particular importance in order that the industry can ensure that the revised Guidelines, taking into account the industry’s comments, will come close to serving the purpose that they are needed to serve.

We applaud OFTA’s approach towards some recent consultations. On the subject of interconnection charges in respect of international call forwarding, OFTA has given operators 5 separate occasions to make representations, each following publication of OFTA’s views on the subject. Given the importance of the Guidelines to the industry, we hope that OFTA will allow operators the same, if not more, opportunities for comment.

B. Specific comments on certain paragraphs in the Guidelines

1. Financial transactions which do not raise competition concerns (paragraphs 1.20 - 1.21)

The transaction list in the draft Guidelines appears to be adequate. Nevertheless, the Guidelines should spell out clearly that the merger provisions do not apply to mortgages or other security arrangements established in respect of the shareholdings in carrier licensee or the associated companies, which are provided to financiers or to the other shareholders as security for performance of obligations. The Guidelines should emphasize that the merger provisions do not apply to transactions, which are tied to purely financial transactions, for example, lending transactions to avoid creating uncertainty about money raising exercise of the carrier licensees.

Further, the Guidelines should clarify the coverage of the “financial holding company”. It should cover both listed or privately held investment/trust funds.

2. Overlapping provisions in licences (paragraphs 1.22 – 1.24)

We urge that the TA gives deeper thoughts on the licence conditions equivalent to Sections 7K (on anti-competitive conduct) and 7L (on abuse of position), which remain effective under the new merger control regime. The TA should make clear that those overlapping licence conditions should be removed from the relevant licences (including those in the existing 3G licences) in order to do away any uncertainties regarding their application to mergers and acquisitions.

3. Ancillary restraints (paragraph 1.25)

Non-compete covenants are just one example of ancillary restraints recognized by competition authorities. This paragraph needs to be amended to cover "any restriction" which is an integral part of the merger transaction, eg. licences of intellectual property and know-how, purchase and supply agreements.

4. Market definition (paragraphs 3.1 – 3.51)

We appreciate OFTA's effort to reiterating some textbook principles on market definition. However, we should be grateful if OFTA would explain in greater detail how these principles are to be applied to the business of carrier licensees.

We recognise that these principles for market definition are widely used in other jurisdictions. But these principles are developed for general merger guidelines applicable to all sectors.

When the Hong Kong merger and acquisition regulatory regime specifically only deals with carrier licensees, we do expect more specific guidelines tailored made for the industry, with examples quoted from the industry to explain how the cited principles work.

"Carrier licensees" in Hong Kong as defined under the Telecommunications Ordinance only include local fixed network operators, external fixed network operators and mobile network operators. Section 7P of the Ordinance only seeks to deal with "a change in relation to a carrier licenses". Such a change will only occur if there has a change in the prescribed level of shareholding in a carrier licensee.

The new merger regulation does not seek to deal with the sale of a part of a business belonging to a carrier licensee. So we will therefore be looking at the entire market covered by the carrier licensees, and not one or more specific product markets of the licensees.

We would therefore ask that the TA gives more specific guidance as to how market will be defined in relation to an acquisition of each type of carrier licensees, a merger between two carriers holding the same type of licence and a merger between two carriers holding different type of licences.

We also request that the TA addresses the following questions in his analysis of market definition:

i. In relation to an acquisition of a carrier licence, will the market be defined in the same way, irrespective of who the acquirer is? Will the market definition vary, depending on whether the acquirer has any interest in other sectors of the telecommunication industry?

ii. In defining market, can the TA please confirms in the Guidelines that he will not be looking beyond the telecommunications market, e.g. broadcasting market or any other market? We query the TA's reference to pay TV in Section 4.97.

iii. How do the concepts of "cluster markets", "cellophane fallacy" and "temporal markets" apply in relation to our seeking to define markets for the few classes of carrier licensees covered by the Ordinance?

We note that in CITB's Legco Brief dated 18 March 2003, CITB did state clearly that one of the objectives of "the Bill" (now the Ordinance) and the Guidelines is to "assist the industry investors to make informed decisions on M&A matters". The questions we raised above therefore should be answered now in the Guidelines, not at the time when an application is made.

5. <u>Substantiality test – creation of market power</u> (paragraphs 4.8 - 4.15)

We request that the TA provides more clarity on how the substantiality test is to be applied, and the standard of proof that must be met by the TA.

In paragraph 4.10, it is stated that "the TA will interpret a substantial lessening of competition in terms of the creation or enhancement of market power". Does this mean that the TA will equate substantially lessening competition with any extent of market power being created or enhanced?

One would expect that there is market power to result in a substantial lessening of competition only when the market power is such that the parties possessing it has the ability to increase prices independently without any competitive constraint.

In paragraphs 4.13, 4.14 and 4.15, the TA examined a few slightly different interpretation of market power/dominant position/meaning of substantially lessening of competition as used in the US, EC and Australia. However, the TA did not conclude with what his view is. We expect to see in the Guidelines a very clear unequivocal statement of what the substantial lessening of competition test means for Hong Kong.

The standard of proof to be met by the TA for determining whether a change "has, or is likely to have, the effect of substantially lessening competition ("SLC")" is not set out in the Guidelines. The SLC must be sufficiently high; it is not sufficient for the TA to believe that an SLC is possible; for the TA to reach an adverse decision either the change must have resulted in a SLC or the TA must expect such a result. It is unhelpful for the TA to state "substantiality is a subject test that does not lend itself well to economic analysis" (para. 4.8 of the Guidelines), and this statement should be deleted from the Guidelines.

Under Section 7P, the TA is permitted to take action where an SLC is likely to occur; it is essential for the Guidelines to make it clear that this is to be interpreted as "more likely than not" or "on the balance of probabilities". In its merger reference guidelines the Competition Commission in the United Kingdom has stated that it will normally consider that a merger "may be expected" to result in a SLC (the test under the Enterprises Act 2002) if it is "more likely than not" that a SLC will result.

Furthermore, the Guidelines do not expressly consider the application of the SLC to horizontal and vertical mergers involving carrier licensees. The analysis required for each type of merger is very different.

6. Unilateral v. co-ordinated exercise of market power

In paragraph 4.16 of the draft Guidelines, the TA sees a merger lessening competition in two ways:

a. by enabling the merged firm to exercise market power unilaterally; or

b. by increasing the potential for the co-ordinated exercise of market power, either overtly or tacitly, by the remaining competitors.

While we recognise that in most countries, current merger guidelines require that regulators examine both ways of lessening competition in assessing the effects of a merger. However, as you are probably aware, the relevance of the latter case to a merger review has often been debated.

We are of the view that in assessing a merger, a regulator should not take into account how the remaining competitors may co-ordinate with each other in the exercise of market power. Such conduct, invariably, is outside the control of the merged parties and can be separately contained through conduct regulation under existing provisions of the Telecommunications Ordinance.

7. Market share and concentration (paragraphs 4.24 - 4.29)

The industry certainly needs more guidance on this very important factor in merger consideration.

The current draft Guidelines do not provide any threshold figure or test which operators can rely on to make "informed decisions" on a transaction for themselves.

We note the recent correspondence between OFTA and PCCW on the applicability of HHI index or a modified version of it to Hong Kong. While we are not fully familiar with the HHI index, we very much support the idea of a mathematical formula for calculating market share and concentration ratio which can provide more predictability of TA's decisions. We look forward to further meetings with OFTA to develop a formula which is suitable for Hong Kong.

8. Removal of a vigorous and effective competitor (paragraphs 4.30 - 4.32)

The analysis of the TA here raises concern. The TA seems to suggest that where one or both parties of the merger have been vigorous competitors in the market, the TA will be concerned with the likely adverse effect on competition if one of them disappears from the market.

Given the cut-throat competition that exists in all sectors of the Hong Kong telecommunications market, there is hardly an operator who is not a vigorous competitor. Any operator who is not a vigorous and effective competitor would have disappeared from the market in no time. The TA's approach to this factor will suggest that any merger will be his concern. We would suggest that the TA reviews his position on this point.

9. Barriers to entry (paragraphs 4.34 – 4.54)

Since these draft Guidelines are only to be applied in relation to three types of carrier licencees, we request that OFTA provides some detailed analysis as to how barriers to entry is deemed to affect competition in relation to each type of carrier licensees.

10. Efficiencies (paragraphs 4.72 – 4.81)

We agree that it can be difficult to provide demonstrable evidence in support of efficiency gains resulting from a merger, but we believe it is incorrect for the TA to apply a presumption against such efficiencies: the last sentence of paragraph 4.81 should be deleted. Similarly, the second bullet point of paragraph 4.76 should be amended to state: “the efficiencies must be clear and very likely to arise”. Whilst compelling evidence can be presented, it would not possible to “verify” prospective efficiencies at the time of a decision. We do not believe the third criteria - “translated efficiencies” is correctly stated: is not the issue whether merged entity has an incentive to pass on a reasonable share of the benefits to customers?

11. Failing firms (paragraphs 4.82 - 4.88)

In the draft Guidelines, the TA proposes to use the usual “with and without” test to assess the anti-competition effect of the acquisition of a failing firms, just like in any other case of acquisition or merger.

We would propose that a failing firm should be treated differently and we suggest that we look at an example from Singapore.

The Singapore draft Merger Guidelines leave no doubt as to how IDA will make its decision regarding a “Failing Undertaking”. It categorically provides that IDA will generally approve a Consolidation that will otherwise be found to be likely to unreasonably restrict competition where any of the Applicants is a “Failing Undertaking” or “Failing Division” as defined in the draft Guidelines (Section 6.4.3 of the Singapore draft Merger Guidelines).

The Singapore example demonstrates an approach towards failing firms, different from the usual merger review, which will more easily allow a failing firm to be acquired.

The condition currently imposed by the TA under paragraph 4.84 is almost impossible to satisfy. Acquisition of failing firms in Hong Kong will therefore be made difficult.

We urge the TA to adopt a more lenient approach towards failing firms, given the pro-efficiency effects of mergers and acquisitions of failing firms, e.g. avoiding disruption to service, loss of employment and user inconvenience, etc.

12. Confidentiality (paragraph 6.23)

We would request that the TA publishes submissions received in a merger investigation only after consent of the relevant parties has been obtained.

13. Import competition (paragraphs 4.90 – 4.91)

Again, we would like the TA to give specific guidance as to how this, as a factor in merger consideration, applies to each type of carrier licensees.

14. Benefit to the public (paragraph 5)

Under Section 7P of the Ordinance, the TA has a positive obligation to consider any public benefits of the proposed change that outweigh any detriment constituted by such effect. The Guidelines impose, however, conditions on the public benefit test (i.e. that the public benefit is real, likely to be realisable within a reasonable period and is sustainable), which have the effect of narrowing the test to the extent that the TA will only consider public benefits if these conditions are met. This appears to be inconsistent with the underlying legislation and we query whether the Guidelines go beyond what was envisaged under Section 7P.

Paragraph 5 of the draft Guidelines identifies only one example of the public benefit (consumer benefit), and we request that further guidance be provided. For instance, public benefits may include employment in Hong Kong, maintaining and promoting competitive activity in markets outside Hong Kong, significant increases in exports, significant substitution of domestic products for imported goods or services and generally account should be taken of all other relevant matters that relate to the international competitiveness of Hong Kong.

The existence or the likelihood of public benefits to the public will be examined at the time of application. The crystallization of the expected public benefits can be prevented by unforeseen circumstances occurring after the transaction. It would be inconsistent with international practice, and Section 7P, to request applicants to guarantee (by way of performance bonds or taking up new licence conditions) the realization of the expected public benefits. Whilst compelling evidence can be produced to the satisfaction of the TA at the time of the notification, it is not possible to predict market behaviour and evolution with absolute certainty; a request for a guarantee, performance bond etc. is not realistic and is tantamount to seeking a penalty upon failure to bring about the intended benefits. Such a request would not only be unreasonable to the applicant but deviate, as far as we are aware, from the mainstream international practices.

15. Fees (paragraph 6.24)

In CITB's Legco Brief dated 5 June 2003, CITB estimated that the level of charges for a minor M&A case and a major case would be around HK$55,000 and HK$110,000 respectively. We expect such indication to be repeated in the Guidelines.

16. Timetable (paragraph 6.9)

We are grateful for your clarification that the TA actually intends to complete the process of the review and announce his decision within a three-month period. We hope that in the next draft of the Guidelines, amendments will be made to avoid the ambiguity in the current drafting.

17. Application Form and information required (paragraph 6.6 to 6.9 and Annex)

In the draft Guidelines, a carrier or its acquirer may approach the TA to seek prior consent for any proposed merger and acquisition transaction involving that carrier by way of an informal advice (which is not binding on the TA) or formal application for prior consent. Such informal/formal application mechanism also exists in nearby jurisdictions, for example, Australia and Singapore. Under the Merger Enforcement Guidelines issued by the Canadian Competition Bureau in March 1991, Canada has a somewhat different mechanism, which requires pre-notification to the Director of Investigation and Research of the Bureau of Competition Policy if the proposed transactions exceed the following two thresholds:

a. the combined size of the merging parties and their affiliates; and
b. the size of the transaction.

Unlike the informal/formal application mechanism, the prenotification provision focuses on high transaction value mergers and the information required for evaluation and the approval places more significant emphasis on the financial information of the notifier, for example sales figures, asset values, and to the extent available, pro forma financial statement.

Each application mechanism has its own emphasis on the approval criteria and therefore it requires particular type of information to process the application. Nevertheless, the list of information required for the formal application under the draft Guidelines is relatively lengthy and lacks the necessary focus as compared with those in the Australian Merger Guidelines and Canadian Guidelines.

The Australian Guidelines define the scope of the required information focusing mainly on the structure of the proposed transaction and encourage parties to lodge written submissions setting out and including the following:-

a. background information about the parties;
b. the structure of the market, including any relevant information about other major market participants;
c. the commercial rationale for the merger;
d. an analysis of the proposed transaction in terms of the factors referred to in Section 50(3) of the Trade Practices Act; and
e. supporting documentation.

Nevertheless, the draft Guidelines attempt to exhaustively extract all possible details of the proposed transaction. The Singapore draft Merger Guidelines adopt the same approach but has managed to shorten the minimum information list by creating a short form consolidation application form applicable to certain specified transactions. Long form consolidation application form still applies to other transactions. Such short form is used if the proposed transaction is either a horizontal acquisition which will not result in the post-acquisition entity having more than a 15% in any telecommunication market within Singapore or a non-horizontal acquisition in which none of the applicants has more than a 25% share of any telecommunication market in which it participates, whether or not within Singapore.

We are of the view that the information requested by the TA as set out in the Application for Prior Consent is too wide and onerous. Furthermore, it is not always clear that there is an objective justification for the request. Rather than a "shot-gun" approach, the TA should only request information that it is reasonable, and necessary to analyse the notified transaction and the affected markets. The principles of proportionality should apply and we therefore urge the TA to reconsider the information request, and explain the relevance of certain of the requested documents.

We request also that the TA consider further the extent of information it requires in order to analysis a "change". In other jurisdictions (as described above), the level of information requested is dependent on whether the transaction gives rise to substantive competition concerns e.g. significant horizontal overlaps between the parties (eg. short-form notifications under the EC Merger Regulation). Even if the Guidelines do not include further guidance on "safe harbours" (as requested above), where the "change" is not significant in competition terms, the level of market analysis and other information to be provided should be minimised to the extent necessary. In paragraph 6.7 of the draft Guidelines, scope to request information derogations should be included, which would be in line with the approach adopted by the European Commission.

Set out below are specific comments on the Application and the information to be submitted.

Para No.	Information request	Comment/Reason for removal
5.	Type of transaction: "acquisition of assets"	This should be removed; asset sales are not within the TA's power to review under Section 7P.
7. –10	Details of group structure etc.	This should be limited to those holding companies and subsidiaries active the telecommunications sector in Hong Kong only; and limited to information concerning carrier licensees. The scope of the TA's powers is limited to carrier licensees, and there is no legal base for requesting information concerning other types of telecommunications licences members of their group may hold (information which we presume the TA already has).
12.	Details of any notifications to listing authorities	It is up to each applicant to comply with its listing obligations, and it is beyond the TA's authority to request details of notifications to the TA. At most, parties should be requested to provide a copy of any public stock exchange

<table>
<tr><td></td><td></td><td>announcements.</td></tr>
<tr><td>14.</td><td>Changes of directorships</td><td>This request should be deleted; it is not within the TA's remit under Section 7P to review changes of directorships of carrier licensees.</td></tr>
<tr><td>15.</td><td>Business plans for the acquiring company and the target for the current and 2 previous years</td><td>We are only aware of the Singapore draft Merger Guidelines which require the disclosure of business plans, which are still subject to public consultation. For instance, the European Commission, the UK Competition Commission and the FTC in the United States request information that has been prepared for the board etc for the purpose of assessing the parties transaction. There is no objective reason for the TA to request this information for the purposes of conducting its review under Section 7P.</td></tr>
<tr><td>19 – 22</td><td>Description of each product and service</td><td>This is too onerous, and it would be preferable to request a general description of the products and services of each party, and then the information requested in paras. 21 and 22 should relate to the markets identified, and not to each product or service which will inevitably be grouped within markets.</td></tr>
<tr><td>22(b)</td><td>An estimate of the capital expenditure required to enter the market on a scale necessary to gain a 5% market share</td><td rowspan="2">We do not understand the reason for this request, and such estimates may be misleading and not serve as good and objective determinants of the relevant market boundaries. The inclusion of these documents in the list of information would create a false impression that such estimates are the only determinants.</td></tr>
<tr><td>22(c)</td><td>An estimate of the ratio of annual expenditure on advertisement/promotion relative to sales required to achieve a market share of 5%</td></tr>
<tr><td>26(d)</td><td>Copies of analyses, reports, studies and surveys submitted to or prepared for any member(s) of the board of directors or the shareholders' meeting for the</td><td>This information should only be requested where the TA has decided to conduct a more detailed investigation, and should not be provided as a</td></tr>
</table>

	purpose of assessing or analysing the proposed transaction with respect to competitive conditions, competitors and market conditions	matter of course. Even in the EU, the European Commission only requests this information whether there are "affected markets". This is commercially sensitive.
23.	Details of any shareholding agreement or joint venture with other operators in the telecommunications sector	This information should not be requested as a matter of course, and in most cases would not be relevant to the particular transaction being considered. Again, the TA should have prevailing reasons to request this information, and should only do so as the exception rather than the norm.
Declaration	Point one of the Declaration	This statement must be stated to be subject to the principles of confidentiality.