

TELECOMMUNICATIONS ORDINANCE

(CHAPTER 106)

Waiver under Section 36A(5B)

Interpretations

1. In this Waiver, unless the context otherwise requires,

“Authority” means the Telecommunications Authority;

“Ordinance” means the Telecommunications Ordinance (Cap. 106);
and

“2001 Waiver” means the waiver issued by the Authority on 20 March 2001 pursuant to section 36A(5B) of the Ordinance,

and except as hereinbefore provided or unless the context otherwise requires, words or expressions herein shall have the meanings assigned to them in the Ordinance or subsidiary legislation enacted under the Ordinance (including any statutory modification or re-enactment thereof for the time being in force) and words and expressions in the singular include the plural and *vice versa*.

The Waiver

2. The Authority, in exercise of his power under section 36A(5B) of the Ordinance, having regard to such relevant considerations including the following :

- (a) the previous arrangements for the filing of interconnection agreements which were subject to the 2001 Waiver;
- (b) the market developments and changes since the issue of the 2001 Waiver;

- (c) the availability and accessibility of the most up-to-date information concerning interconnection arrangements being an important element for the better performance of the functions of the Authority under the Ordinance and for facilitating more effective monitoring and regulatory oversight on interconnection arrangements between different network operators;
- (d) the obligation of the HKSAR Government under the World Trade Organisation Agreement on Basic Telecommunications (WTO Agreement) to ensure that a major supplier¹¹ will make publicly available either its interconnection agreements or a reference interconnection offer; and
- (e) generally, the kinds of interconnection agreements for which the requirement of filing to be hereby waived under section 36A(5B) are not of such a nature as to require close monitoring by the Authority or may affect the fulfilment of the Government's obligation under the WTO Agreement. Where the circumstances so warrant or the public interest so requires, the Authority may resort to his powers under the Ordinance including sections 7I, 35A or 36D for copies of the relevant interconnection agreements or other information;

HEREBY waives generally a party to an interconnection agreement the obligation to file a copy of an interconnection agreement with the Authority within 14 days of it being made save and except for those interconnection agreements of the kinds as described in Schedule 1.

3. Notwithstanding Schedule 1, the obligation to file those interconnection agreements made between holders of carrier licences described in Schedule 2 is also waived.

4. Notwithstanding this Waiver, the Authority may in writing require

¹¹ A major supplier is defined in the WTO Agreement as a supplier, which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

a party at any time after 14 days of an interconnection agreement being made by that party to that interconnection agreement to file a copy thereof within a specified period.

5. For the avoidance of doubt, nothing in this Waiver shall have the effect of amending, altering, varying, abrogating or in any way affecting the power and rights of the Authority under the Ordinance or the relevant licences each provision of which other than those affected by this Waiver shall remain operative and as effectual as though this Waiver had not been granted.

6. The Authority may withdraw, modify or replace this Waiver and/or the Schedule in whole or in part in relation to a particular interconnection agreement or interconnection agreements of a certain kind that is covered by this Waiver and/or introduce additional terms and conditions of this Waiver from time to time.

7. This Waiver supersedes the 2001 Waiver and shall become effective from the date hereof and shall continue in force until withdrawn, modified or replaced by the Authority.

8. This Waiver shall be made public.

(Miss Eliza Lee)
Telecommunications Authority
2 March 2012

SCHEDULE 1

Interconnection Agreements subject to filing requirement

1. Interconnection agreements made between holders of carrier licences in relation to telecommunications systems or services provided under licence.

SCHEDULE 2

Interconnection Agreements not subject to filing requirement under Schedule 1

2. Notwithstanding Schedule 1, where:
 - (a) all the parties to the interconnection agreement are external fixed carriers and none of them maintains or operates any submarine cable landing stations in Hong Kong; or
 - (b) any one of the parties to the interconnection agreement is a space station carrier

the filing of the said interconnection agreements is not required.

3. In Schedules 1 and 2:

“carrier licence” has the meaning as defined in section 2 of the Ordinance;

“external fixed carrier” means a holder of a carrier licence for the provision of external telecommunications services only. For the avoidance of doubt, a carrier licensee who is authorized to provide both internal and external telecommunications services is not considered as an external fixed carrier for the purpose of this Waiver;

“interconnection agreement” means any agreement which is in force irrespective of whether it is made before or after the date of this Waiver for interconnection to and between telecommunications systems or services of which the type

includes those as defined in section 36A(3D) of the Ordinance;

“space station carrier” means a holder of space station carrier licence or telemetry, tracking, command and monitoring licence which is issued for the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications.
