

Update of the Existing Arrangements for the Filing and Publication of Interconnection Agreements

Statement of the Telecommunications Authority

2 March 2012

Executive Summary

Having conducted a review of the current arrangements for the filing and publication of interconnection agreements and having considered the comments of the industry, the Telecommunications Authority (“TA”) has decided to adopt vide this Statement the following updated arrangements –

- (a) All carrier licensees are obliged to file with the TA a copy of an interconnection agreement within 14 days after the agreement has been made. The filing of interconnection agreements shall be made in electronic form in the portable document format (“PDF”) or other popular formats with searchable function.
- (b) Carrier licensees’ obligation to file interconnection agreements is waived if (i) all the parties to an interconnection agreement are external fixed carriers who do not maintain or operate any submarine cable landing station in Hong Kong or (ii) any one of the parties to the interconnection agreement is a space station carrier licensee.
- (c) The waiver issued by the TA under section 36A(5B) of the Telecommunications Ordinance (the “Ordinance”) as annexed in Annex 1 of this Statement takes immediate effect and supersedes a previous waiver on the subject which the TA issued in March 2001.
- (d) In line with the existing arrangements, the TA will continue to publish three types of interconnection agreements, namely Type I, Type II and blockwiring interconnection agreements between carrier licensees, with the following information redacted –
 - (i) the name of the licensees involved in the interconnection agreement; and

- (ii) information which is specific or proprietary to any particular operator and which is of no relevance to third parties.

To fulfil the publication requirement, the concerned carrier licensees shall submit, in addition to the unabridged version of the agreement which is required under paragraph (a) above, a redacted version of the agreement to the TA (with the above information suppressed) in PDF or other popular formats with searchable function. The TA will take a final decision on which part of the document should be redacted for the purpose of publication.

- (e) The updated filing and publication arrangements are applicable to all relevant interconnection agreements which are in force. This means that all interconnection agreements, irrespective of whether they have been made before or after the effective date of the waiver in paragraph (b) above, are subject to the updated filing and publication requirements as long as they are still in force.
- (f) Carrier licensees are required to complete the filing of the relevant interconnection agreements and the submission of the redacted version of the interconnection agreements to the TA for publication before 3 September 2012 (i.e. six months from the date of this Statement).

Introduction

2. On 19 April 2011, the TA issued a consultation paper entitled “Update of the Existing Arrangements for the Filing and Publication of Interconnection Agreements” (the “Consultation Paper”)¹ to seek the industry’s views on his proposals to update the filing and publication requirements of interconnection agreements reached by telecommunications licensees.

3. After the closing of the consultation period, the TA received submissions from the following parties –

- (a) CSL Limited (“CSL”)
- (b) Hong Kong Telecommunications (HKT) Limited (“HKT”)

¹ The Consultation Paper can be downloaded from OFTA’s website <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20110419.pdf>.

- (c) Hutchison Telecommunications (Hong Kong) Limited (“Hutchison”)
- (d) Pacnet Cable (HK) Limited and Pacnet Global (HK) Limited (“Pacnet”)
- (e) SmarTone Mobile Communications Limited (“SmarTone”)
- (f) Wharf T&T Limited (“Wharf”)

4. The submissions can be downloaded from the website of the Office of Telecommunications Authority (“OFTA”)². Having duly considered the submissions received, the TA sets out in this Statement his decision on the updated arrangements for the filing and publication of interconnection agreements. For the avoidance of doubt, all views and conclusion given or made by the TA in this Statement are for the purpose of updating the arrangements for the filing and publication of interconnection agreements only and shall not prejudice the exercise of power by the TA in relation to any matters which are not covered by this Statement.

Background

Current arrangement for the filing of interconnection agreements

5. Pursuant to section 36A(5A) of the Ordinance, parties to an interconnection agreement shall ensure that a copy of the agreement is filed with the TA within 14 days after the agreement has been made. Section 36A(5B) provides that the obligation may be waived by the TA in relation to a particular interconnection agreement or interconnection agreements of a certain kind.

6. In March 2001, the TA issued a waiver under section 36A(5B) of the Ordinance (the “2001 Waiver”)³, waiving licensees’ obligation to file interconnection agreements of the following kinds –

- (a) interconnection agreement in respect of interconnection between a carrier licensee of local fixed services and a Public Non-Exclusive Telecommunications Service (“PNETS”) licensee⁴, except where

² All submissions are published at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20110725/table.html>.

³ The 2001 Waiver is available at <http://www.ofta.gov.hk/en/ordinance/pdf/to-2001-20.pdf>.

⁴ For the purpose of the 2001 Waiver, the term “PNETS” licence does not include those holders of PNETS licence who only provide “Radio Distribution Service” or “Mobile Virtual Network Service”.

it is related to a dominant operator and not based on the terms and conditions of published tariffs;

- (b) interconnection agreement in respect of interconnection between a carrier licensee of local fixed services and a mobile carrier licensee, except where it is related to a dominant operator and not based on the terms and conditions of the published tariffs;
- (c) interconnection agreement in respect of interconnection between a mobile carrier licensee and a PNETS licensee; and
- (d) interconnection agreement in respect of interconnection to an in-building system, except where it is established between carrier licensees of local fixed services.

7. In summary, except for the above four kinds of interconnection agreements covered by the 2001 Waiver, all parties to an interconnection agreement are obliged under section 36A(5A) of the Ordinance to file a copy of their interconnection agreement with the TA.

Current arrangement for the publication of interconnection agreements

8. Under the Ordinance, the TA has the power to publish interconnection agreements. Pursuant to section 36A(5C) of the Ordinance, the TA may publish all or any part of an interconnection agreement if he –

- (a) considers it is in the interest of the public to do so;
- (b) has first given the concerned parties an opportunity to make representations on which parts of the interconnection agreement should not be published; and
- (c) has considered such representations received within the time specified by him.

9. In 2002, after conducting an industry consultation, the TA set out the publication arrangement for interconnection agreements in the TA Statement “Publication under Section 36A(5C) of the Telecommunications Ordinance of Interconnection Agreements Entered into with PCCW-HKT Telephone Limited”

dated 18 October 2002 (the “2002 Statement”)⁵, specifying that only the interconnection agreements regarding Type I interconnection, Type II interconnection and interconnection to in-building blockwiring systems entered into between PCCW-HKT Telephone Limited (“PCCW-HKT”)⁶ and other operators would be published. The TA also decided that the identity of the other operators and information which was specific or proprietary to a particular operator and which was of no relevance to other operators would be redacted. Since then, OFTA has adhered to the above arrangement and published the relevant interconnection agreements on its website for public information.

Need for updating the arrangements for the filing and publication of interconnection agreements

10. Since the issue of the 2001 Waiver and the 2002 Statement, significant developments both in the market and the regulatory regime have taken place. These developments include the full liberalisation of the local fixed market in 2003, the cessation of *ex ante* tariff regulation on PCCW-HKT in 2005 (except for certain then ongoing interconnection related tariffs), the introduction of the Services-Based Operator (“SBO”) and Unified Carrier Licence (“UCL”) licensing regimes in 2006 and 2008 respectively, the withdrawal of mandatory Type II interconnection in 2008, the removal of regulatory guidance on fixed mobile interconnection charge (“FMIC”) in 2009, and the revision of the regulatory regime on Local Access Charge (“LAC”) in end 2011.

11. In view of these market and regulatory developments, the TA has indicated in the Consultation Paper that it would be timely and necessary to update the filing and publication arrangements having regard to the fact that –

- (a) With the implementation of the UCL and SBO licensing regimes, the types of licences involved in the interconnection agreements that were specified in the 2001 Waiver and the 2002 Statement are out of date;
- (b) The 2001/2002 regime, which focuses on the publication of interconnection agreements entered into with PCCW-HKT only, is

⁵ The 2002 Statement is available at http://www.ofta.gov.hk/en/interconnection/inter_pub.pdf.

⁶ Currently the holder of the Unified Carrier Licence No. 25 which is jointly and severally held by PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited (referred to as “PCCW-HKT” hereafter in this Statement).

no longer appropriate given the full liberalisation of the Hong Kong telecommunications market and the removal of presumed dominance of PCCW-HKT since January 2005;

- (c) With the development of fixed-mobile convergence (“FMC”), it is no longer appropriate to apply asymmetric and technology-specific regulation on any type of carrier licensees based on whether fixed or mobile technology is used by the licensees; and
- (d) In the light of the rapid changes in market environment and technologies, the filing and publication arrangements have to be flexible and robust enough to cater for such changes.

12. The TA has also indicated in the Consultation Paper that the updated filing and publication arrangements should meet the following objectives –

- (a) the Hong Kong Special Administrative Region (“HKSAR”) Government, as a member of the World Trade Organisation (“WTO”) and a signatory to the agreement on basic telecommunications services under the auspices of the General Agreement on Trade in Services (“GATS”), has to continue to fulfil its obligation⁷;
- (b) the need to preserve the existing transparency of information relating to interconnection arrangements (as regards the types of interconnection services and supporting facilities available, the technical terms and commercial terms under the concluded

⁷ In paragraph 2.4 of the WTO GATS Reference Paper on Basic Telecommunications, it is stated that -

“2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.”

The definition of “major supplier” is given 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.”*

The definition of “essential facilities” is given as

“Facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and*
- (b) cannot feasibly be economically or technically substituted in order to provide a service.”*

agreements) for the purpose of establishing prompt and efficient interconnections among incumbent operators and new entrants; and

- (c) the need to ensure the continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for market surveillance and regulatory oversight by the TA on interconnection arrangements among operators to facilitate the performance of his functions under the Ordinance.

Proposed changes to current filing arrangement

13. In the Consultation Paper, the TA proposed that the filing requirement should be maintained and, as a matter of consistency and fairness, the obligation to file should apply to all carrier licensees including fixed and mobile carrier licensees⁸. The TA also proposed that the filing requirement would be waived if (a) all the interconnecting parties are external fixed carriers who do not maintain or operate any submarine cable landing stations in Hong Kong, or (b) any one of the interconnecting parties is a space station carrier. The TA gave his preliminary view that waiving the filing obligation of these carrier licensees was justified because, in the past, there had been few regulatory disputes, if any, arising from the relevant interconnections among them. In addition, the TA also proposed that, having regard to the past regulatory experience and the present market situation, as the interconnection agreements of SBO licensees⁹ do not require close monitoring by the TA, they should not be subject to the filing requirement. In filing interconnection agreements, the TA proposed that the concerned carrier licensees should provide both a signed copy of the agreement and an electronic copy in PDF or similar format with searchable function to the TA.

14. The TA invited views and comments on the proposed updates to the existing arrangement for the filing of interconnection agreements and asked the following question –

⁸ Pursuant to the definition given in section 2 of the Ordinance, carrier licensees include holders of UCL, Fixed Carrier Licence, Fixed Carrier (Restricted) Licence, Fixed Telecommunication Network Services Licence, Mobile Carrier Licence or Mobile Carrier (Restricted) Licence.

⁹ It includes the interconnection agreement involving public radio communications relay services and mobile virtual network operator (“MVNO”) service which are originally not waived by 2001 Waiver.

Q.1 Do you agree with the proposed update to the existing arrangement for the filing of interconnection agreements? Do you have any other views or suggestions?

Views and comments received

15. CSL, HKT, SmarTone, Hutchison and Wharf raised objection to the proposed updates to the existing arrangement for the filing of interconnection agreements, and expressed that the filing requirement would create unnecessary administrative burden to the industry and OFTA. CSL, SmarTone and Wharf further submitted that the filing obligation should either be completely waived, or only be restricted to the dominant operator. HKT, Hutchison and Wharf argued that most of the major interconnection arrangements today are agreed on a commercial basis without OFTA's intervention, and thus there is no need for regulatory oversight or close monitoring as there is no market failure. However, HKT also commented that if the requirement to file interconnection agreements has to continue, it would agree with the TA's proposal that the obligation should equally be imposed on all fixed and mobile operators.

16. Pacnet raised no objection to the proposed updated arrangement, but it sought exemption from the filing requirement. On the ground that there is no Type I and Type II interconnection at its cable landing station and it is not a major supplier in the market, Pacnet claimed that it should not be subject to the filing requirement.

The TA's considerations

17. The TA is of the view that while the telecommunications market is more competitive than it was a decade ago, maintaining regulatory oversight on interconnections made among carrier licensees remains an important function of the regulator. With the developments of FMC and migration of existing circuit-switched network platforms to IP-based platforms such as Next Generation Network ("NGN"), such regulatory oversight will help ensure that any necessary intervention by the TA in interconnection matters will be efficient, evidence-based, proportionate and reflecting as far as possible the prevalent commercial realities. Furthermore, the readily available information about interconnection arrangements among operators will not only facilitate the TA's handling of interconnection related disputes and complaints, but will also provide the TA with concrete factual information and useful reference in

formulating regulatory policies and practices regarding interconnection matters. This will in turn safeguard access to public telecommunications services by users and consumers in an effective and economically efficient manner.

18. Regarding the proposal of the respondents including CSL, SmarTone and Wharf to only apply the filing requirement to a “dominant operator”, the TA would like to point out that with effect from January 2005, no licensee is presumed to be in a dominant position in any market for telecommunications services. The effect of the proposal of the three licensees is therefore that no operator in any market of telecommunications services in Hong Kong needs to comply with the filing arrangement. This is not acceptable for reasons already explained above. In fact, with the extensive coverage of the networks of fixed and mobile carriers today, the inclusion of all fixed and mobile network operators in the proposed filing arrangement would be justified given the high degree of their market participation and presence in the Hong Kong telecommunications market. It is incumbent upon the TA to maintain regulatory oversight of the interconnection arrangements of facility-based carrier licensees as proposed in the Consultation Paper.

19. The TA has considered but is not convinced that the filing requirement will give rise to undue administrative burden on the industry. To mitigate against possible concern on that front, the filing process will be kept simple and straight forward. In order to further simplify the filing procedures, concerned licensees are now only required to submit the electronic version of the documents to the TA after they have been signed, instead of both the signed hard copy and the electronic version. In addition, the TA has been mindful in keeping the number of licensees who are subject to the filing requirement to a minimum. As at December 2011, there are around 600 SBO licensees and 60 carrier licensees. Under the proposed updated filing arrangement, all SBO licensees and more than half of the carrier licensees will be exempted from filing their interconnection agreements with the TA. The proposed arrangement will in fact release many of the licensees, in particular those external fixed carriers not operating cable landing stations, who have been subject to the filing arrangement since 2001, from such a requirement in future. The TA considers that the proposed updates to the filing arrangement are reasonable and appropriate, and the updated arrangement is proportionate and would not impose undue administrative burdens on those licensees that will be subject to the filing requirement.

20. In respect of Pacnet’s submission that it should be exempted from the filing requirement, the TA is unable to accede because the proposed filing arrangement does not only apply to Type I or Type II interconnection. Furthermore, Pacnet is an external carrier licensee as well as a cable landing station operator in Hong Kong. Given the limited number of submarine cable landing stations in Hong Kong, the TA considers that it is necessary to monitor interconnection arrangements of external fixed carrier licensees who operate submarine cable landing stations in Hong Kong, including their back-haul interconnection arrangements with the local fixed network operators.

The TA’s conclusion

21. Based on the above considerations, **the TA affirms his view that the updated filing requirement for carrier licensee as described in paragraph 13 above should be implemented. All carrier licensees for fixed or mobile services are required to file an electronic copy (in PDF or other popular formats with searchable function) of their interconnection agreements with the TA within 14 days after the agreement is made. However, the filing requirement will be waived if (a) all the interconnecting parties are external fixed carriers who do not maintain or operate any submarine cable landing stations in Hong Kong or (b) any one of the interconnecting parties is a space station carrier.** Table 1 below provides a summary of licensees’ obligations under the updated filing arrangement.

Table 1: Updated filing arrangement

| Parties to Interconnection Agreements | Carrier Licensee for Fixed Services ^{Note 1} | Carrier Licensee for Mobile Services ^{Note 2} | SBO Licensee |
|--|---|--|---------------------|
| Carrier Licensee for Fixed Services ^{Note 1} | <i>Filing Required</i> ^{Note 3} | <i>Filing Required</i> | Filing not Required |
| Carrier Licensee for Mobile Services ^{Note 2} | <i>Filing Required</i> | <i>Filing Required</i> | Filing not Required |
| SBO Licensee | Filing not Required | Filing not Required | Filing not Required |

Note 1: For the purpose of the above table, carrier licensees for fixed services include holders of UCL, Fixed Carrier Licence, Fixed Carrier (Restricted) Licence or Fixed Telecommunication Network Services Licence.

Note 2: For the purpose of the above table, carrier licensees for mobile services include holders of UCL, Mobile Carrier Licence or Mobile Carrier (Restricted) Licence.

Note 3: The obligation of filing interconnection agreement is waived if –

- (a) all the parties who entered into the interconnection agreement are external fixed carriers who do not maintain or operate any submarine cable landing stations in Hong Kong; or
- (b) any one of the parties who entered into the interconnection agreement is a space station carrier.

Proposed changes to current publication arrangement

22. In the Consultation Paper, the TA pointed out that the existing arrangement where only the interconnection agreements of PCCW-HKT are published is no longer appropriate in today's competitive market environment. The TA proposed that the same publication arrangement should be equally applied to the interconnection agreements of all fixed and mobile carrier licensees. Further, the scope and the manner of publication should remain unchanged. That is to say, similar to the existing arrangement, the TA would only publish three kinds of carrier-to-carrier interconnection agreements, namely Type I, Type II and blockwiring interconnections, and the following information would be withheld from publication –

- (a) the name of the licensees involved in the interconnection agreement; and
- (b) information which is specific or proprietary to any particular operator and which is of no relevance to third parties.

23. The TA invited views and comments from the industry on the proposed updates to the arrangement for the publication of interconnection agreements, and asked the following question –

Question 2: Do you agree with the proposed update to the existing arrangement for the publication of interconnection agreements? Do you have any other views or suggestions?

Views and comments received

24. CSL, HKT, Hutchison, SmarTone and Wharf objected to the proposed publication arrangement. Hutchison and Wharf submitted that the terms and conditions of interconnection agreements are commercially sensitive and private information to the contracting parties, so such information should not be disclosed to third parties or the public. CSL and HKT disagreed that the publication of interconnection agreement facilitates the establishment of prompt and efficient interconnection among operators. CSL further commented that the existing interconnection agreements were concluded many years ago. As they could not reflect the latest technical arrangement and market conditions, the publication of them would not benefit new entrant or parties engaged in interconnection negotiations. HKT and Wharf also argued that the publication of interconnection agreements would encourage homogeneity, which by its nature is anti-competitive.

25. CSL, HKT, Pacnet, SmarTone, and Wharf commented that the TA had over-read the requirement of Reference Paper on Basic Telecommunications issued by WTO under the GATS¹⁰ as the obligation should apply only to the “major supplier”, which should either be roughly equivalent to a dominant licensee or not exist in the current level of facilities-based competition in Hong Kong. HKT further submitted that the obligation imposed under the GATS could also be satisfied either by making available the redacted interconnection agreements or reference interconnection offers by operators.

26. However, HKT commented that if the publication of interconnection agreements has to continue, it agrees with the TA’s proposal to extend the publication requirement to cover all fixed and mobile carriers. HKT also suggested that no information in the interconnection agreements regarding in-building systems should be withheld from publication. In HKT’s opinion, it is necessary to enhance the transparency because some telecommunications operators are affiliated with property developers or building management

¹⁰ Please refer to footnote 7 above.

companies. The transparency of full information can enable other operators to get access to the building facilities on an equal basis.

The TA's considerations

Publication of interconnection agreements

27. The TA would like to point out that the publication requirement as set out in the Consultation Paper was not proposed solely for satisfying the requirement of Reference Paper on Basic Telecommunications issued by WTO under the GATS. Indeed, a reasonable and objective reader of the Consultation Paper would agree that the document did not make any such assertion or inference. Rather, it was clearly explained in the Consultation Paper that the proposed publication of the interconnection agreements, if implemented, would not only satisfy the requirements of the Reference Paper but would also enhance the transparency of market information, which would serve to promote prompt and efficient interconnection among operators. In this regard, the TA notes that no respondent disagrees that the publication of interconnection agreements can promote transparency, and as pointed out by HKT in the preceding paragraph, it is necessary to enhance transparency in certain market situations.

28. With the publication of information regarding the existence and essential terms and conditions of important interconnection agreements among fixed and mobile carrier licensees, this will help facilitate commercial negotiations and agreement on interconnection in a prompt and efficient manner for fulfilment of their relevant licence obligation, and will reduce the occurrence of protracted negotiations causing delay in the provision of services to customers.

29. Regarding the view that some information shown in the published interconnection agreements may not reflect the latest technical arrangement and market conditions, the TA considers that licensees have always been making use of historical market information to make business decisions. The information to be made available by the published interconnection agreements will help new market entrants formulate, based on their commercial considerations, their own proposal for negotiation with the incumbent carriers they intend to interconnect with. Further, under the proposed publication arrangement, the relevant interconnection agreements (which remains in force) of all fixed and mobile carriers will be published. Once the mechanism is established, these

interconnection agreements will provide useful references and updated benchmarks for the industry. The TA believes that publication of interconnection agreements will expedite the negotiations process and facilitate the carriers to reach agreements on network interconnection.

30. As regards the view that the publication of interconnection agreements would encourage homogeneity, the TA considers that the claim has not been substantiated by facts given the history of publication of interconnection agreements. With the publication of interconnection agreements, new market entrants will have the chance to access to historical information regarding the interconnection agreements in the market. While such information is of referential or benchmarking value, a new market entrant is free to vary or propose any new terms based on its own requirements, the latest market situation and their business strategies or bargaining power. There is no evidence that the publication of interconnection agreements would encourage homogeneity.

31. Compared with a decade ago when the current arrangement for publication of interconnection agreements was first introduced, there is more effective facility-based competition in the local fixed service market. The state of competition in the mobile service market remains healthy and vibrant, and there is also more cross-platform competition between the fixed and mobile network operators due to the advent of FMC. With effective competition and transparency of interconnection information in place, each carrier will utilize its competitive advantage to differentiate itself from others. As a result, there are hardly two completely identical interconnection services in the market and the view that publication would encourage homogeneity therefore does not stand.

32. The TA notes that there are diverse views on how much information is to be published. Some respondents expressed concern about the disclosure of commercially sensitive information in the interconnection agreements, but there is another view that certain kind of interconnection agreement (i.e. interconnection to an in-building system) should be fully disclosed. The TA is of the view that the objective for publishing interconnection agreements is to provide new entrants or interested parties with information about the kind of interconnection agreements that have been made in the market and the essential terms and conditions. Strictly speaking, if all the terms and conditions of any interconnection agreement are treated as commercially sensitive and to be kept confidential, that will defeat the purpose of section 36A(5C) of the Ordinance,

which gives the TA the power to publish interconnection agreements based on public interest ground. In particular, the pricing and associated information (such as quantity, volume or locations) to put the pricing information into context and the technical information of the arrangements for interconnection, such as network configuration requirement, interface technical specifications, specification and location of the point of interconnection and point of access (if applicable) and co-location arrangement (if applicable) should be disclosed so as to provide the necessary information to enable market participants, in particular the new entrants to promptly and efficiently negotiate both commercial and technical terms and conditions of interconnection and prepare their system for interconnection. Notwithstanding this, the TA agrees that certain kinds of commercially confidential information in the interconnection agreement, which is of no relevance to other operators, should not be subject to the disclosure requirement. The TA is of the view that the existing arrangement (i.e. he only publishes the redacted version of interconnection agreements without showing the names and the information which is specific or proprietary to the interconnecting parties) is appropriate, and has struck a proper balance between the need for reasonable disclosure and the need for protection of interconnecting parties' commercial confidential information.

Alternative to publication of interconnection agreements

33. There are views that the transparency objective can be met by operators providing reference interconnection offers ("RIOs") to any person who makes a request for interconnection. Such a view was in fact first raised by the industry in response to the TA's consultation on the publication arrangement in 2002. Basically, a RIO is a means through which a telecommunications operator (normally a dominant one) makes known the charges, terms and conditions on which it is prepared to provide interconnection services upon request to another telecommunications operator who is eligible to have access to those services. The RIO is normally subject to the prior approval of the regulator in other jurisdictions. Such a regime for RIO has not been used in Hong Kong before.

34. As indicated in the 2002 Statement, the TA is open to the publication of RIO as an alternative to publication of the relevant interconnection agreements by individual operator. If any operator is interested to use the RIO mechanism as an alternative of publishing its interconnection agreements, the TA would be pleased to take forward this commitment of the concerned operator. Parties interested in the implementation of RIO are welcome to make a detailed

proposal to the TA. However, the existence of any such proposals will NOT exempt the relevant parties from their obligations to comply with the filing and publication requirements as set out in this Statement with effect from the implementation date.

The TA's conclusion

35. To conclude, the TA affirms his view that publication of interconnection information will serve to facilitate interconnection negotiations and the conclusion of interconnection deals. **The TA considers that it is in the interest of the public to continue the publication requirement on carrier licensees as set out in paragraph 22. For the publication of interconnection agreements, the concerned carrier licensees will submit a redacted version of the interconnection agreements to the TA. The TA will have the final discretion on what information should be redacted for the purpose of publication.**

Implementation of the updated arrangements

36. In the Consultation Paper, the TA stated that for implementation of the updated arrangements, he would issue a new waiver under section 36A(5B) of the Ordinance to supersede the 2001 Waiver. The TA proposed that the updated filing and publication arrangements would be applicable to all relevant interconnection agreements which are in force, irrespective of whether they have been made before or after the revised arrangements have come into effect. In addition, the TA also stated that he might require certain kinds of interconnection agreements (e.g. the replacement interconnection agreements for FMIC after its de-regulation in April 2009) to be filed with the TA. It was proposed in the Consultation Paper that the TA would publish the interconnection agreements which are in force whether or not it was made before or after the revised arrangements have come into operation in accordance with the updated publication arrangement. The TA asked the following question -

Question 3: Do you have any comments on the implementation of the updated filing and publication arrangements for interconnection agreements as proposed in this consultation paper?

Views and comments received

37. Hutchison and HKT objected to the proposed implementation arrangement. HGC considers that there is no justifiable ground for the TA to introduce a policy with retrospective effect. HKT commented that it is not reasonable for the TA to require the operator to file the interconnection agreements which were signed before the revised arrangements have come into effect.

The TA's considerations

38. The TA would like to clarify that the licensees who are subject to the updated arrangements are only required to file their interconnection agreements which are still in force. That is to say, it is not necessary for the concerned operators to file interconnection agreements which have been terminated or ceased to have effect. This would enable the TA to have a complete set of interconnection agreements, and the industry to have access to the salient information of those interconnection agreements which are not subject to the waiver of the statutory filing obligation. As the TA has waived the filing obligation for most of the licensees (i.e. SBOs and external fixed carrier licensees who do not maintain or operate any submarine cable landing stations in Hong Kong etc.) under the proposed updated arrangements, the burden of licensees in the filing of interconnection agreements has been kept to the minimum.

The TA's conclusion

39. The TA affirms his view that the proposed implementation arrangements are reasonable and appropriate. **The TA decides that the updated filing and publication arrangements will be implemented as per paragraph 36 above. The waiver as given in Annex 1 is issued on the same day of this Statement.**

40. The TA would also like to emphasize that any general waiver to be issued section 36A(5B) shall not affect in any way the power and rights of the TA under sections 7I, 35A or 36D of the Ordinance or the relevant licence conditions for furnishing the relevant information. The TA may in writing

require a party at any time after 14 days of an interconnection agreement being made by that party to file a copy of that interconnection agreement within a specified period. As an example, the TA foresees that most of the fixed, mobile and SBO licensees will have to negotiate replacement hosting agreements after the promulgation of a new regulatory regime for LAC by the TA in December 2011. The TA may require the concerned parties to file such kind of hosting agreements as and when the need arises.

41. Taking into account the preparation work required of the licensees to comply with the updated arrangements, the concerned carrier licensees should complete the filing of the relevant interconnection agreements with the TA, and submit a redacted version of the interconnection agreements to the TA for publication before 3 September 2012 (i.e. six months from the date of this Statement).

42. OFTA will update its website for the publication of interconnection information in due course. Information to be published (see sample layout in Annex 2) will include the type of interconnection, year of the agreement, the title and the redacted version of the filed interconnection agreement. OFTA will update the website with the latest interconnection information from time to time.

Office of the Telecommunications Authority
2 March 2012

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.

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.

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

Sample Website for Publication of Interconnection Information

Interconnection Agreements established among carriers

■ Type I Interconnection

| | Publication Number | Date | Title | Revision/ Supplement |
|------------------|--------------------|-------------|--|----------------------|
| Fixed-to-Fixed | FF-1/1994 | 26-Sep-1994 | Pre-provisioning Agreement [202] | |
| | FF-1/1995 | 11-May-1995 | Transmission Network Establishment Agreement [202] | |
| | FF-2/1995 | 29-Jun-1995 | The Supplement to Transmission Network Establishment Agreement [202] | FF-1/1995 |
| | FF-3/1995 | 1-Aug-1995 | POI Establishment Agreement [202] | |
| | FF-4/1995 | 27-Sep-1995 | Local Delivery Agreement [202] | |
| | FF-1/1997 | 28-Feb-1997 | POI Establishment, New Schedule 1A (Lot 2) [202] | FF-3/1995 |
| | FF-1/1998 | 5-May-1998 | The Second Supplement to the Network Establishment Agreement [202] | FF-2/1995 |
| | FF-1/2001 | 31-Jan-2001 | Domestic Connectivity Agreement, Amendment Agreement [202] | |
| | FF-2/2001 | 16-Jul-2001 | Local Interconnection Agreement [202] | |
| | FF-3/2001 | 30-Jul-2001 | In-span Fibre Point of Interconnection Amendment Agreement [202] | |
| | FF-1/2002 | 5-Mar-2002 | In-Span Fibre Point of Interconnect Agreement [202] | FF-2/1995 |
| | FF-1/2003 | 2-May-2003 | Local Interconnection Agreement [202] | |
| | FF-2/2003 | 1-Dec-2003 | Amendment Agreement [202] | FF-2/2001 |
| | | | | |
| | | | | |
| Fixed-to-Mobile | FM-1/1997 | 4-Apr-1997 | Interconnect Agreement and Billing & Settlement Procedures [202] | |
| | FM-1/1999 | 9-Jan-1999 | Interconnection Agreement between X and Y [202] | |
| | FM-1/2001 | 8-Aug-2001 | Indirect Interconnection Agreement [202] | |
| | FM-1/2005 | 9-Sep-2005 | Extended Package Agreement for Interconnect Capacity [202] | FM-1/1999 |
| | | | | |
| Mobile-to-Mobile | MM-1/1999 | 1-Jan-1999 | Interconnection charges for Mobile-to-Mobile transit traffic [202] | |
| | MM-1/2001 | 1-Jan-2001 | Letter of Agreement for Direct Interconnection [202] | |
| | MM-x/yyyy | dd-mm-yyyy | XXXXXX [202] | |
| | | | | |
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■ Type II Interconnection

| | Publication Number | Date | Title | Revision/ Supplement |
|-------------------------|--------------------|-------------|--|----------------------|
| Type II Interconnection | II-1/1996 | 1-May-1996 | Exchange Co-location and Local Access Link Agreement [202] | |
| | II-1/2001 | 1-Jan-2001 | Self Build Fibre into Colocation Exchange Agreement [202] | |
| | II-1/2005 | 11-Dec-2005 | Agreement for Broadband Copper Local Loop [202] | |
| | | | | |
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■ Blockwiring

| | Publication Number | Date | Title | Revision/ Supplement |
|-------------|--------------------|------------|--|----------------------|
| Blockwiring | BW-1/1996 | 8-Jan-1996 | Blockwiring Agreement [202] | |
| | BW-1/2001 | 1-Jul-2000 | Agreement for the Leasing of Blockwiring [202] | |
| | BW-x/yyyy | dd-mm-yyyy | XXXXXX [202] | |
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