

DELIVERY FEES DETERMINATION

Statement by the Telecommunications Authority of Hong Kong

7 October 1998

Introduction

This Statement sets out the background and the considerations of the Telecommunications Authority (“TA”) leading to his decision to make the attached Determination.

2. On 25 September 1992, the TA published the initial delivery fee arrangement which was to apply between Hong Kong Telecom International Limited (“HKTI”) and local networks. In 1995, a review of the arrangement was conducted. It was decided that the initial delivery fee arrangement published earlier needed to be re-structured. Following an industry consultation, on 29 September 1995, the TA made a determination under section 36A of the Telecommunication Ordinance (Cap. 106) (the “Ordinance”) of the delivery fee arrangement which replaced the delivery fee arrangement published in 1992 with effect from 1 October 1995.

TA’s Considerations

3. Recently the TA has received complaints from the industry that certain local network operators have routed incoming relevant traffic in such a manner which did not appear to be compatible with the policy intent of the delivery fee arrangement determined on 29 September 1995. He has also received complaints and enquiries from individual consumers about certain misleading information presented by the Call Number Display (CND) functionality to them on their telephone instruments or mobile handsets.

4. The TA has conducted investigations into the matter. He found that there was evidence that the policy intent of the determination made on 29 September 1995 had been frustrated and that some network operators had routed

incoming external calls in such a way which generated misleading CND information to the called parties.

5. As the delivery fee arrangement carries significant financial implication to the operation of the local network operators, the TA considers it necessary to set out in specific terms the delivery fee payment arrangements for the incoming relevant traffic in a determination made under section 36A of the Ordinance so as to put the matter beyond doubt, if there is any. The TA also considers it necessary to take actions to prevent re-routing of incoming traffic for the purpose of diverting delivery fee payment in accordance with the TA's determination and further generation of misleading CND information to the consumers.

6. On 20 August 1998, the TA issued a document entitled "Invitation for Representation Made to the Telecommunications Authority under Section 36A(4) of the Telecommunication Ordinance (Cap. 106): Payment of Delivery Fee for Incoming Traffic" (the "Invitation") and invited all local network operators and HKTI to make representations on or before 28 August 1998.

7. By the deadline, the TA received a total of 5 submissions. After considering these submissions, on 14 September 1998, the TA issued a summary of the submissions, the TA's responses to those submissions and a draft determination and invited the local network operators and HKTI to submit comments on the draft on or before 22 September 1998. By the deadline, the TA received a total of 4 submissions. A summary of the submissions received by 22 September 1998 and the responses of the TA to the comments expressed in these submissions are given in Annex A.

8. Having considered the views and comments of the respondents, the TA considers that in order to implement the policy intent of the determination of 29 September 1995 and to remove uncertainties in the industry, he should make the Determination in Annex B.

9. The Determination only applies to the payment to the local network operator for the delivery of the relevant traffic from the network of HKTI. With the liberalization of the external telecommunications market beginning 1 January 1999, there may be a need for the TA to make a new determination to cater for the new regulatory environment.

**Summary of Submissions from Industry
on the Draft Determination on Payment of Delivery Fee
issued on 14 September 1998 and OFTA's Responses**

Hutchison Telecommunications (Hong Kong) Ltd.

Industry's Submission	OFTA's Response
It is proposed to amend the definition of "terminating network" to include those intermediate networks providing the personal numbering service to the called party.	As the overseas calling party dials the personal number, the definition for "terminating network" caters adequately for such a scenario.
Do not see any application of the principle of the determination to outbound indirect access traffic.	The Determination applies to inbound external traffic only.

New World Telephone Ltd.

Industry's Submission	OFTA's Response
The TA should consider the situation where a calling party has chosen to route to an intermediate network so as to gain access to the VAS [value added service] provided by that network. This should be distinguished from the re-routing of incoming calls for no useful purpose other than to divert the payment of delivery fees.	The definitions for "terminating network" and "called party" cater adequately for such a scenario, as the calling party will make a conscious decision to dial the appropriate number in order to gain access to the VAS.
The TA has not considered the VAS issue in the case of carrier pre-selection for calls from overseas.	If the calling party consciously selects a certain local network in Hong Kong, that party will dial a number operated by the chosen local network.
The confusion caused by wrong and misleading CND [calling number display] function could easily be avoided by flagging the relevant incoming calls as international calls.	This is only one of the several considerations which led to the TA to consider making this Determination. The TA would initiate discussion with all FTNS and PMRS/PCS operators on the technical feasibility of labelling and identifying external incoming calls.
The determination should not take effect before the expiry of two weeks from the date of the determination. This would enable the local network operators to make the necessary commercial arrangement with the overseas carriers.	Does not see any valid reason for such a requirement.

New T & T Hong Kong Ltd.

Industry's Submission	OFTA's Response
<p>There is insufficient public interest ground to support the proposed determination. New T&T is not aware of any customer's complaint of being confused or misled to such a degree as to warrant making the proposed determination.</p>	<p>It is upon receiving complaints from both the consumers and more than one network operator that the TA initiates the investigation. The evidence which he has collected pursuant to the investigation leads him to consider making a determination in order to clarify the grey areas, if there is any, regarding the delivery fee arrangement. The TA considers that there is sufficient public interest for him to go ahead with the current determination or else the consumers will be confused and the policy objectives set by the government will be frustrated.</p>
<p>Insufficient opportunity was given to relevant parties to consider the proposed determination.</p>	<p>The TA convened a preliminary meeting with the four FTNS licensees on 15 August 1998 to discuss the complaints he had received and to convey his intention of making a fresh determination in order to clarify the matter. The TA issued the Invitation for Representation on 20 August 1998 and gave the interested parties 8 working days to make representations. After considering the representations made by interested parties, the TA issued the draft Determination on 14 September 1998 and gave the interested parties 8 calendar days to comment on the draft text of the Determination before making the final determination. The whole consultation period was longer than one month. The TA considers that the interested parties have been given reasonable time and sufficient opportunities to consider the matter and make representations.</p>
<p>It is irrelevant that the calling or called party has not requested the direct routing of the call that he or she makes. The only relevant issue is for both the calling and the called party to make or receive a call of a certain quality at a specified tariff.</p>	<p>Disagreed. The re-routing of the incoming calls has frustrated the policy intention of the 1995 determination and caused consumer confusion. The TA has received complaints and enquiries from consumers, especially from the called parties, regarding the apparent wrong and misleading information presented by the</p>

Industry's Submission	OFTA's Response
	CND functionality.
Do not agree with the TA that there is no benefit to consumers with the re-routing. It is argued that the benefit to the consumers is in the form of lower tariffs.	It remains to be demonstrated that the re-routing of the incoming calls has resulted in lower tariffs. The over-riding concern is whether the terminating network is adequately compensated for the contribution it has made in terminating an incoming external call.
The TA to consider the impact on the industry if the proposed determination were to be made. It is New T&T's view that such action would lead to: <ul style="list-style-type: none"> • HKT being overly compensated; • competition being substantially reduced; • consumer benefit being eroded due to lack of incentive to develop more cost effective routing arrangements to reduce cost of carriage and therefore lowering tariffs. 	The TA has considered all the issues. It is his considered view that the determination, in removing any grey area which may be associated with the 1995 determination, is an economically efficient and effective mechanism for encouraging investment in the telecommunications infrastructure and it will fairly compensate the carriers which have actually invested in the infrastructure.
The TA should ensure that in establishing the principle of the operation of ISR local access charge that a pro-competition position is adopted.	The TA has all along adopted a pro-competition position.

Hong Kong Telecommunications Ltd.

Industry's Submission	OFTA's Response
Extremely concerned that the TA has chosen to state in paragraph 6 that the proposed determination will have no retrospective effect. It is proposed to delete paragraph 6 of the proposed determination; and to make it clear that (1) it is clarification of the 1995 determination, and (2) the proposed determination does not, by default, implicitly condone the abuses which have occurred.	The TA has decided that the current determination will be a new determination and will be effective from the date of the Determination. As such, the Determination will not have any retrospective effect. The relevant paragraph has been renumbered as paragraph 5 in the Determination and the specific reference to having no retrospective effect has been removed as this is self-evident.
As there is no penalty for engaging in "call hijacking" or "local refile", there is no disincentive for those who might wish to "give it a try".	Paragraph 6 (b) has been added to the Determination. If the TA finds that any licensee contravenes the terms and conditions stipulated in the Determination,

Industry's Submission	OFTA's Response
	he will take the necessary actions which he is empowered under sections 36B and 36C of Cap. 106.
HKTI would bear the burden of detecting and measuring illegal hijack traffic. Both HKTC and the legitimate operators will have no protection against their traffic being hijacked. Further, HKTI will be exposed to the potential risk of liability if local operators claim that HKTI has failed to identify hijack traffic which was intended for their respective networks.	The TA does not consider that HKTI should bear any burden of detecting illegal traffic. Paragraph 6(b) has been added to the Determination. The network operators have the obligation of not re-routing incoming traffic in such a manner that breaches the terms of the Determination. The TA also does not see any reason why HKTI should be held liable if it has acted in good faith.
The proposed determination lays a foundation for future abuse. Without strong deterrence, illegal operators will continue to flourish at the expense of legitimate operators. HKT requests that the TA reconsider his position on this matter.	Disagreed. Paragraph 6(b) has been added and the TA will exercise his powers under the Telecommunication Ordinance to tackle breaches of the terms of the Determination.
The Proposed Determination does not provide a mechanism for recovery of delivery fee paid in error.	As stated above, the Determination is a new determination. Any ground for recovery of delivery fee paid prior to the Determination should be based on regulatory instruments then issued, including the determination of 29 September 1995 and licence conditions.
Number Translation involved in "call hijacking" constitutes an offence. The TA should make it clear that number translation or "re-tagging" is an offence under section 24(a) of the Telecommunication Ordinance.	The TA has already considered the issue. In the TA's opinion, the legislative intent of section 24(a) is to prohibit an act which results in the failure of a message reaching the intended recipient promptly or in the alteration of the content of the message upon reaching the intended recipient. The number translation function in question does not cause any failure of the delivery of the message to the intended recipient nor alter the content of the message to the recipient. Rerouting of messages is a common technical function within a telecommunication network. The TA therefore concludes that section 24(a) is not intended to prohibit the number translation function in question.
The TA should take the initiative to introduce appropriate measures to prevent	The TA would monitor the situation closely and would solicit further views

Industry's Submission	OFTA's Response
abuse of outgoing delivery fee arrangements.	from the industry on this should the need arise.
To require operators and resellers to submit an account for their international traffic on a regular basis.	Noted. The TA will consider this proposal seriously in drawing up the regulatory framework for the ISR licence.

Office of the Telecommunications Authority

7 October 1998

Annex B

TELECOMMUNICATION ORDINANCE (CAP. 106)

**DETERMINATION
UNDER SECTION 36A**

Interpretations

In this determination (“the Determination”), unless the context otherwise requires:-

“call originating party” means the party who initiates a call in a territory outside the Hong Kong Special Administrative Region (“HKSAR”) to a called party in the HKSAR;

“called party” means the party in the HKSAR represented by the telephone number dialled by the call originating party;

“terminating network” means the local network operated by the operator which assigned the telephone number representing the called party at the time of the call after porting of the telephone number, if any;

“delivery fee”, “external public telephone service”, “local network”, “the parties”, “relevant traffic” have the same meaning as the determination made by the Telecommunications Authority (“TA”) under section 36A of the Telecommunication Ordinance on 29 September 1995, with the modification that from 31 March 1998, the exclusive licence of Hong Kong Telecom International Limited (HKTI) has been replaced by a Fixed Telecommunication Network Services licence jointly held by HKTI, Hong Kong Telephone Company Limited and Hong Kong Telecom CAS Limited.

2. For the avoidance of doubt, for the purposes of the Determination, the return leg of an outgoing call originated by a calling party in the HKSAR and handled by means of a call-back service platform outside the HKSAR shall be treated as incoming call initiated by the call-back service platform outside the HKSAR to the call-back service platform within the

HKSAR. The call-back service platform outside HKSAR and that within HKSAR shall be treated as the “call originating party” and the “called party” respectively.

The Determination

3. The Determination is concerned with which local network operator should be the appropriate recipient of the delivery fee for handling the relevant traffic in the incoming direction.

4. The Determination only applies to the relevant traffic in the incoming direction. The delivery fee payment arrangement for delivering the relevant traffic in the outgoing direction as determined on 29 September 1995 will not be affected by the Determination.

5. The Determination is to come into effect on the date of making the Determination.

6. The TA, in exercise of his power under section 36A of the Ordinance,

having been satisfied that the parties have been afforded reasonable opportunity in accordance with section 36A(4) to make representation to him as to why a determination should not be made;

having considered the views expressed by the parties concerning the delivery fee arrangement;

have considered the interconnection charging principles outlined in the statements made by him on 28 March 1995, 10 June 1995 and 18 November 1997 (TA Statements No. 1, No. 7 and No 7 (Revised) on Interconnection and Related Competition Issues);

hereby determines that the following terms and conditions concerning delivery fees shall form part of the terms and conditions of an agreement between HKTI and each local network operator for the interconnection between the network of HKTI and that local network:

- (a) In handling the relevant traffic in the incoming direction from the external gateway of HKTI, the operator of the terminating network shall be entitled to the payment of the delivery fee from HKTI;

- (b) In handling the relevant traffic in the incoming direction from the external gateway of HKTI, a local network operator shall not, whether or not in collaboration with any operator outside the HKSAR, perform any telephone number translation function the effect of which is that the telephone number associated with the incoming call routed through the external gateway of HKTI is different from the telephone number dialled by the call originating party so as to alter the identity of the local network operator to which the delivery fee should be paid under this Determination.

7. The Determination will be made public.

(Anthony WONG Sik-kei)
Telecommunications Authority

Date: 7 October 1998