

**Telecommunications Authority's Decision
on Requests for Extension of Consultation Period
- "Deregulation for Fixed-Mobile Convergence"
Second Consultation Paper issued on 14 July 2006**

Introduction

On 6 October 2006, the Telecommunications Authority ("TA") received requests from 3 network operators for an extension of the consultation period by 2 months (the "Request").

2. The reasons given for the Request were mainly that the requesting operators needed more time to consider the responses published by the TA on 26 and 28 September 2006 to questions raised by two network operators and an extension of time would facilitate commercial negotiations which are now in progress among some operators.

3. On the same date, the TA published an invitation to seek views from all the interested parties on the Request and the deadline for accepting the submissions and comments on the Request was the close of business on 10 October 2006.

4. The TA received a total number of nine submissions from the following interested parties:

- (a) China Mobile Peoples Telephone Company Limited ("Peoples");
- (b) Consumer Council ("CC");
- (c) Hong Kong Broadband Network Ltd ("HKBN");
- (d) Hong Kong Cable Television Ltd ("HKCTV");
- (e) Hong Kong CSL Ltd ("HKCSL") and the New World Mobility Group ("NWM Group");
- (f) Hutchison Telecom Hong Kong ("Hutchison");
- (g) New World Telecommunications Ltd ("NWT");
- (h) Smartone Mobile Communications Ltd ("Smartone"); and
- (i) Wharf T&T Ltd ("WT&T")

A copy of each of the above interested parties submission is posted in and can be viewed on OFTA's website (<http://www.ofta.gov.hk/>)

Reasons opposing extension

5. Three respondents to this invitation to seek views on the Request opposed to the extension of time. Their views can be summarized as follows:

- (a) According to Peoples, it did not feel any extension of the consultation period is necessary.
- (b) NWT opposed to the granting of an extension because it was not convinced as to the relevance of the reasons cited for the extension and it was concerned that an extension might set off a chain effect on other consultation on matters such as Broadband Wireless Access (BWA).
- (c) Smartone opposed to the granting of an extension because the consultation process has provided sufficient time for the industry to fully understand and respond to the issues arising from FMC and that it did not consider the reasons for extension are justified since there are always commercial negotiation in the market and it would be unthinkable that any deregulation or consultation process should be held up just because there are commercial negotiations in progress.

Reasons in support of extension

- 6. Other interested parties supported an extension for the following reasons:
 - (a) HKBN considered that the current time allowed to the interested parties is insufficient as the responses (published by OFTA on 26 September and 28 September 2006) to questions submitted by PCCW-HKT Telephone Limited and WT&T raised additional attributes for the operators to consider. HKBN would need more time to perform an in-depth analysis and an extension of two months would be essential. It also acknowledged the fact that it is currently in commercial negotiations with an operator and it believed an extension of time would facilitate a smooth and seamless regulatory transition to a new regime while avoiding unnecessary regulatory intervention.
 - (b) HKCTV supported an extension to be granted without giving any reason.
 - (c) HKCSL acting in its own capacity and on behalf of NWM Group, did not object to the extension if granted by the TA provided that such extension does not go beyond 13 December 2006 (i.e two months) and TA considers that an extension is the most efficient means to quickly progress to the finalization of his review of the fixed mobile interconnection regime. HKCSL, acting in its own capacity and on behalf of NWM Group, expressed their “no objection” must not be construed as meaning that they would agree to any further delays in the consultation process.

- (d) Hutchison supported the extension to be given as it believes it is in the interest of the industry and public to hold a moratorium of the consultation for an initial period of 3 months. It submitted further that the interconnection issues raised in the consultation paper should have been first considered within the industry by way of commercial discussions and solutions. As commercial negotiations are already in progress, the consultation process should be suspended in order to give way to the industry to fully consider the issues involved from their respective commercial points of view free from the regulatory process. After 3 months, the TA can review and assess the developments and then decide on the process to follow next.
- (e) WT&T supported an extension (of two months as requested) to be granted because it needs more time to address all the issues raised by the TA in the 2nd Consultation Paper and as commercial negotiations are underway with some operators, more time is required. WT&T also supports a suspension of the consultation proceeding to allow operators the opportunity to truly negotiate a commercial outcome without being tainted by the consultation proceeding. It proposed a suspension of at least four months with the flexibility of extension depending on the progress of commercial negotiation. In WT&T's view, a suspension would also save the Government considerable valuable resources and to focus on other perhaps more important and imminent issues and consultation exercises.
- (f) CC requested an extension until the end of October 2006 to enable one of its committees to consider the response to the consultation.

TA's Considerations

7. The TA's responses to the major reasons put forward for granting extension are as follows:

- (a) More time to consider the issues

Regarding the issue that operators need more time to consider the TA's responses published on 26 and 28 September 2006, it is true that the consultation exercise involves important issues which may have great impact to the industry. However, it is also true that throughout the entire period since the engagement of OFTA's consultants in November 2005, the interested parties in the industry had been engaged in the discussion of those issues. The consultants report was presented to the interested

parties in a briefing back in May 2006. For the current consultation exercise, OFTA has allowed for a consultation period of three months, which is substantially longer than other consultation exercises that OFTA has conducted. Since the publication of the responses to the questions do not disclose any significantly new information or materials, the TA considers that any extension of time to be granted on this ground would have to be commensurate and proportionate with the consequence of that publication. A period of extension up to two months or more are not in the TA's opinion proportionate. A more reasonable time of extension should be in the region of two weeks from 13 October 2006 given the fact that the responses were published on OFTA's website since 26 September and the interested parties will have been given a total period of nearly a month to consider the responses.

(b) Facilitating commercial negotiations

Regarding the issue on the facilitation of commercial negotiations by an extension of the consultation period or suspension/moratorium of the consultation proceedings, the TA has considered the information provided to the TA on a confidential basis on the nature of the commercial negotiations currently in progress and the operators involved. It is the TA's belief that the parties should prefer commercial negotiation in an environment with less rather than more regulatory settings and where more freedom can be enjoyed in the negotiations without the fear of regulatory intervention. In this connection, without prejudice to any submissions from the parties in the consultation proper, the proposition that the consultation exercise would prejudice commercial negotiation from being carried on is hardly convincing because the very subject matter which is now under consultation is whether the existing regulation should be withdrawn in favour of commercial agreements based on free-market negotiations. The TA considers that an earlier completion of the consultation process will better facilitate a genuine negotiation between the parties concerned when the regulatory settings become more settled and clear.

Furthermore, the TA sees no reason why the commercial negotiations cannot continue after the end of the consultation period. The TA will monitor progress of the commercial negotiations and take this into account in drawing up conclusions of the consultation exercise.

It should be made clear that nothing herein should be construed as the TA having made or being likely to make any decision as to whether to withdraw the current regulatory guidelines. Whether there will be more or

less of regulatory intervention upon the conclusion of the consultation proper are questions which are now put to the interested parties to make their comments on in the consultation exercise. No decision on these questions has been made.

(c) Public interest of not disrupting the consultation process

Finally, there is public interest reason that the consultation should continue with as little unnecessary interruptions as possible so that the views of all parties concerned can be timely and effectively gathered to enable decisions to be made as early as possible. Uncertainties in the future regulatory environment will adversely affect investment decisions. It is in the public interest for the regulatory environment to be clarified as early as it is reasonably possible. Indeed the fixed-mobile convergence regulatory review is now holding up the progress of other reviews such as the licensing of BWA. A group of operators had made submissions to the TA last year that they wished the regulatory environment for fixed-mobile convergence to be clarified first before they were in a position to consider investments in BWA technologies.

Decision

8. Having considered the submissions of the industries and having been satisfied that reasonable opportunities have been given to the interested parties to give their submissions and for the reasons set out above, the TA decides that the consultation period for the Second Consultation Paper be **extended for two weeks until 27 October 2006**. The TA is satisfied that based on all the submissions available to him that an extension of two weeks of the consultation period is reasonable and proportionate in all circumstances of the case.

Office of the Telecommunications Authority

11 October 2006