

**Overview of
the Regulatory Regime for the Telecommunications Industry in Hong Kong and
Role of the Office of the Telecommunications Authority**

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Unless otherwise stated, a section number refers to that of a section under the Telecommunications Ordinance (Cap. 106). Similarly, “the Ordinance” refers to the Telecommunications Ordinance. “TA” means “Telecommunications Authority”. “OFTA” means the “Office of the Telecommunications Authority”.

What is Telecommunications

1. “Telecommunications” is defined in section 2 of the Telecommunications Ordinance (the Ordinance) to mean “any transmission, emission or reception of communication by means of guided or unguided electromagnetic energy or both, other than any transmission or emission intended to be received or perceived directly by the human eye”.

2. “Communication” includes any communication
 - between persons and persons
 - between things and things (e.g. between computers)
 - between persons and things (e.g. between human and computer)whether in the form of speech, music or other sounds, or text, or visual images whether or not animated, or signals in any other form or combination of forms. Therefore, the term “communication” is intended to be exhaustive, catching all types of messages, information or intelligence including voice, text, data, still images (e.g. facsimile, still pictures) or moving images (e.g. moving video) that are envisaged to be carried over a distance by means of “telecommunications”.

3. “Guided electromagnetic energy” means energy guided along physical media including copper cables (including copper pairs, coaxial cables), optical fibre cables and waveguides.

4. “Unguided electromagnetic energy” means energy not guided by any physical medium, i.e. transmitted through space as radio waves (electromagnetic energy of frequencies up to 3,000 Giga Hertz or GHz in accordance with the definition

for “radio waves” under the Ordinance, and any electromagnetic energy of higher frequencies (i.e. infrared rays, light, laser, etc.).

5. By virtue of the phrase “other than any transmission or emission intended to be received or perceived directly by the human eye”, “telecommunications” includes transmission using infra-red or optical or laser transmission in an optical fibre, or over free space, but excludes signalling using flags or spot lights which is to be received directly by human eye.
6. “Broadcasting” is a subset of “telecommunications” because “broadcasting” is the transmission, by guided (e.g. cable television) or unguided electromagnetic energy (e.g. wireless television, satellite television and radio sound broadcasting), for general reception or on a point-to-multipoint basis, of sound programmes or television programmes which are also a form of “communication”. The “transmission” and the provision of television programme services are regulated under the Telecommunications Ordinance and the Broadcasting Ordinance respectively. For reason of legacy, the transmission and the provision of sound broadcasting services are both regulated under the Telecommunications Ordinance (Part IIIA). This part of the Ordinance is however administered by the Broadcasting Authority rather than the Telecommunications Authority (TA).

Why is the Telecommunications Industry Regulated?

7. The regulation under the Telecommunications Ordinance is applicable to activities in the telecommunications industry. It is often referred to as a form of “sector-specific regulation”.
8. ***To address market imperfection.*** Economic theories say that the best outcome for economic welfare is achieved through the guidance of market forces generated by competition. However, when competition in the market has not fully developed, there is a need for sector-specific regulation to act as a surrogate to market forces. However, regulation is often regarded as an inferior surrogate to market forces. Therefore regulation is also aimed at fostering the development of competition in the market. As competition in the market develops, the level of sector-specific regulation should be progressively lowered.

9. ***To protect competition.*** As competition would achieve the best economic outcome, it would be necessary to protect competition once developed. Protecting competition involves safeguards against anti-competitive conduct and emergence of market structure not conducive to effective competition. In Hong Kong, there is not yet general competition law. The protection of competition is part of the sector-specific regulation for the telecommunications industry.
10. ***To achieve some social policy objectives.*** There are some social policy objectives that may not be achieved through market forces alone. For example, if the coverage of a telecommunications service is determined purely by market forces, some users in remote (high cost) locations or some low income users may not get the service because it might be economically not viable to serve those customers. In this case, regulation is required to achieve the social objective of “universal service”.
11. ***To manage scarce community resources.*** The radio-frequency spectrum, or “radio spectrum” in short, like land, is a limited resource and needs to be managed so that it will be used in an efficient manner and different users can use the spectrum for their respective purposes without unacceptable interference.
12. Similarly, telecommunications numbers are also limited resources and need to be managed properly. Space underneath public streets (normally under the pedestrian pavements) for cable ducts would also be limited. Road opening activities need to be managed in order to avoid unnecessary disruption to traffic and detriments to the environment.
13. ***To ensure compatibility and interoperability between systems and to avoid interference and safety hazards.*** For these purposes, it is necessary to have technical standards to be complied with by systems, networks, services and customer equipment.

Law and Regulatory Documents

14. A list of the telecommunications legislation can be found on OFTA’s website (<http://www.ofta.gov>). The OFTA website also contains all the regulatory documents that the TA has issued since 1995.

Primary Legislation

15. The principal primary legislation concerning the regulation of the telecommunications industry is the Telecommunications Ordinance (Cap. 106). To prepare for the liberalization of the fixed telecommunications market, the Ordinance was amended in 1993. Since then, a number of amendments were made in 2000, 2001 and 2003. See Annex for details.
16. Related primary legislation includes
 - Trading Funds Ordinance (Cap. 430) - This concerns the establishment of the Office of Telecommunications Authority (OFTA) as a Trading Fund Department
 - Broadcasting Ordinance (Cap. 562) - This concerns the regulation of television broadcasting services.

Subsidiary Legislation

17. These include regulations made by the Chief Executive in Council in exercise of the power under section 37, or regulations made by the Secretary (Secretary for Commerce, Industry and Technology) under various provisions in the Ordinance, including, for example, section 7(2) (carrier licence), section 7G (price control), section 32I(2) (level of spectrum utilization fee), etc.
18. These also include Exemption Orders made by the Chief Executive in Council under section 39 of the Ordinance.
19. These also include orders made by the TA under certain provisions of the Ordinance (e.g. section 32E(e) (certification requirements for equipment), section 32I (designation of frequency bands subject to payment of spectrum utilization fees), section 32K (examination of operating personnel for radio stations)).

Licences

20. *Individual licences* - Before the 2000 amendments to the Ordinance, the TA was

empowered to issue only the licences prescribed under the Telecommunications Regulations made by the Chief Executive in Council. Since the amendments 2000 amendments, the Secretary is empowered to prescribe by regulation the general conditions of a carrier licence (section 7(2)) while the TA is empowered to add special conditions and issue the carrier licence. The TA is empowered to prescribe and issue all licences other than exclusive and carrier licences (section 7(6)). There are at present 27 types of different licences prescribed by the TA. The licences issued before the 2000 amendments were licences prescribed under the Telecommunications Regulations while those after the 2000 amendments are licences prescribed by the TA. The names of the licences and the general conditions can be found on OFTA's website under "Legislation".

21. *Class licences* - Class licensing was introduced by the 2000 amendments to the Ordinance (section 7B to 7D). So far two class licences have been issued:
 - In-building telecommunications systems – This is a class licence to regulate in-building telecommunications systems owned and operated by building developers, managers and landlords. The main purpose of the regulation is to ensure that the systems will be open to interconnection by network operators outside the building so that the network operators can reach the residents and occupiers in the building and provide telecommunications services to them. There is no registration requirement under this class licence.
 - Public wireless local area network services (public wireless LAN services) – This a class licence to authorize the provision of public telecommunications services using wireless LAN equipment. The class licensees need to be registered with the TA.

Guidelines

22. Under section 6D, the TA may issue guidelines for the purpose of providing practical guidance in respect of any provisions of the Ordinance.
23. The Ordinance however prescribes that the TA must issue guidelines on certain matters. Section 6D provides that the TA shall issue guidelines:
 - for the determination of applications for licences
 - on the application of principles for the determination by an arbitrator of terms and conditions for access to land under an authorization granted under

section 14(1A)

- (when Telecommunications (Amendment) Ordinance 2003 becomes effective) on the matters that the TA shall take into account before forming any opinion under section 7P that a merger or acquisition has, or is likely to have, the effect of substantially lessening competition in a telecommunications market.

24. Guidelines are not binding on the TA, but if the TA should deviate from the guidelines issued under section 6D, he must give reasons for the departure (section 6A(3)).

Codes of Practice

25. In general, codes of practice are not binding on the licensees, but deviation from the codes may be considered by the TA in deciding whether a licensee has observed the provisions in the Ordinance or a licence condition.

26. Certain codes of practice are issued under provisions in the Ordinance. For example, codes of practice may be issued by the TA under section 32F(3) relating to the use of telecommunications numbers and codes and the implementation of number portability. Some codes of practice are expressly referred to in licence conditions. The TA considers that these codes of practice are binding on the licensee.

27. Some of the codes of practice issued by the TA are voluntary in nature (e.g. Code of Practice on the Procedures for Handling Complaints against Senders of Unsolicited Fax Advertisements). Some are issued by the industry themselves (e.g. anti-spamming code issued by the Hong Kong Internet Service Providers Association).

Specifications

28. These are specifications issued under section 32D setting out the technical standards to be complied with by telecommunications systems, installations and equipment. Licence conditions and regulatory instruments issued by the TA may make reference to these specifications.

TA Statements

29. TA Statements not legally binding on the licensees, but are statements of policy intentions of the TA. For example, a series of TA Statements (e.g. ten TA Statements on “Interconnection and Related Competition Issues” last updated on 18 March 2002) elaborate on the principles and costing methodologies that the TA would adopt in the making of determinations on terms and conditions for interconnections. Therefore such TA Statements would significantly influence how the operators negotiate interconnection agreements among themselves on a commercial basis, knowing that if the matter is brought to the TA for determination, the TA will most likely apply those principles and methodologies. If the TA should deviate from the positions stated in TA Statements, he must give reasons for the departure, otherwise he would be susceptible to judicial review. Similarly, the reasons given for the departure could form the basis for a judicial review.

Decisions of the TA

30. Decisions of the TA include
- Determinations under section 36A - terms and conditions for interconnection
 - Directions under section 36B
 - Notice (for penalty) under section 36C
 - Warnings
 - Authorizations under sections 14(1) and 14(1A)
 - Approval or disapproval of tariffs applications submitted by the dominant licensee under General Conditions 21 - 23 of Fixed Telecommunications Network Services Licence (a decision on disapproval is not published but may be brought into the public domain if the licensee lodges an appeal to the Telecommunications (Competition Provisions) Appeal Board
 - Findings and decisions of investigations under sections 7K - 7N (published in Competition Bulletins and Complaint Cases of Consumer Interest of OFTA’s website)
 - (when the Telecommunications (Amendment) Ordinance 2003 enter into force) opinion, direction or decision formed or made under section 7P

Decisions of the Appeal Board

31. See Annex

Judicial Decisions

32. See Annex

Policies

Full liberalization

33. All sectors of the telecommunications market have been fully liberalized from 1 January 2003 - there will not be any prescribed limit on the number of licences in any sector except where there are physical constraints, such as spectrum availability, limiting the number of licences. This policy reflects the Government's intention to use the vehicle of competition to promote consumer interest and belief that the number of players in the market should be determined by market forces rather than by administrative means unless there are physical constraints limiting the number of operators.

Maximum reliance on market forces

34. Apart from the number of operators, the types of services, their prices, quality of service and technology used should be decided by market forces, except where an effectively competitive market has not developed. (For example, where there is still a dominant operator in the market, the tariffs of that operator are regulated.)

Full privatization

35. The Government does not invest in telecommunications industry. The Government's role is to create and maintain an environment conducive to the investment in and operation of telecommunications services.

No foreign ownership restriction.

36. There is no foreign ownership restriction over any type of telecommunications

operators, including network operators and service providers.

Technology neutrality

37. This means that the licence for a particular service will not restrict the use of a particular technology for the provision of the service. For example, in the provision of international telephone services, a number of technologies may be employed, circuit-switched technology or packet-switched technology based on the Internet Protocol (IP). The licences for international telephone services do not specify the technology to be used. No approval is required under the licence conditions for the change of technology. Like services will be regulated under like conditions regardless of technology.

Licensing

38. Regulation of telecommunications activities is effected by requiring those activities to be licensed.

39. Section 8(1) of the Ordinance prohibits certain activities in Hong Kong, or on board any ship, aircraft or space object that is registered or licensed in Hong Kong unless these activities are licensed. The prohibited activities are

- to establish or maintain any means of telecommunications
- to possess or use any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding the apparatus is not intended for radiocommunications (e.g. industrial heating appliances, thermal therapy equipment for medical purposes)
- to deal in the course of trade or business in apparatus or material for radiocommunications or in any component part of any such apparatus or in any apparatus that generates and emits radio waves whether or not the apparatus is intended or capable of being used for radiocommunications
- to demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunications
- (when section 8(1)(aa) enters into force) to offer in the course of business a

telecommunications service (section 8(1)(aa) has not entered into force to date.). Section 8(1)(aa) is intended to catch activities like the operation of telephone card services or resale of telecommunications services which do not involve the establishment or maintenance of means of telecommunications. The detailed definition for “offering a telecommunications service” is given in section 8(1A).

40. There are certain activities excluded from the licensing requirement altogether. These include:
- possession and use of receivers for receiving sound broadcast and television broadcast (section 8(4)(a) to (c))
 - the establishment and maintenance of communal antenna distribution systems for receiving local television broadcasting services (section 8(4)(e)) and closed-circuit television systems (section 8(4)(f)) for security or information purposes within buildings
41. The Government is also not bound by the licensing requirement under section 8 (section 3).

Exemption order

42. There are certain activities which are exempted from the licensing requirements under section 8. Under section 39 of the Ordinance, the Chief Executive in Council may exempt activities defined in the order from licensing. The exemption order may contain conditions for exemption.
43. The telecommunications apparatus used by consumers and business users for their own communications (i.e. not for the provision of a public telecommunications service), including telephone sets, Private Automatic Branch Exchanges, facsimile terminals, cellular handsets, etc. are exempted from licensing. So are many “low power devices” such as cordless telephones, wireless LAN cards, personal walkie-talkies, remote control transmitters, etc. provided that they conform to the specifications given in the exemption orders.

Individual licences

44. Telecommunications activities caught by section 8 are either licensed on an individual basis or on a class licence basis.
45. Individual licences include
 - exclusive licence granted by the Chief Executive in Council (section 7(1)) - Because of the pro-competition policy of the Government, such exclusive licence has not been issued and is not expected to be issued in the future.
 - individual licences granted by the TA. These include carrier licences prescribed by the Secretary by regulation (section 7(2)) and other licences prescribed by the TA (section 7(6)).

Class licences

46. Under section 7B, the TA may issue a class licence to cover activities specified in the class licence. Before issuing the class licence, the TA has a statutory obligation to consult the public (section 7B(3)). The consultation period may not be less than 21 days. Similar consultation requirements apply if the TA wishes to modify a class licence already issued (section 7C).
47. The main aim of classing licensing instead of individual licensing is to avoid unnecessary administrative burden on the TA as well as the operators and members of the public. Class licensees may be subject to the registration requirement under section 7D.

Permits

48. Permits may be issued by the TA under section 7E for a period not exceeding 6 months. Permits are normally for field tests, demonstration, activities in connection with an event (e.g. an exhibition) or other purposes determined by the TA.

Carriers and Non-Carriers

49. In accordance the definition of “carrier licence” under section 2 of the

Ordinance, a “carrier licensee” or a “carrier” is an operator establishing or maintaining a telecommunications network for carrying communications between locations separated by unleased land. Therefore operators of networks for carriage of communications within the boundary of leased land (e.g. within a building) are not “carriers”. There are also a number of exclusions set out in Schedule 1 to the Ordinance even though the carriage crosses unleased land. For example, the operator of a radio paging network, a trunked radio network or a network for the relay of radio/television broadcasting services and a network for the carriage of hotel television services are not treated as carriers. The reason for distinguishing between carriers and those that are not carriers is that carriers are licensed under carrier licences that generally have more stringent conditions compared with non-carrier licences.

50. Carriers may be classified as “fixed carriers” or “mobile carriers”. A fixed carrier carries communications between fixed locations. (In this context, “fixed location” include the location of portable terminals with limited mobility, such as a cordless telephone or a wireless LAN card.) A “mobile carrier” carries communications between mobile locations (mobile-to-mobile calls), or between a mobile location and a fixed location (mobile-to-fixed calls). Carriers are sometimes referred to as “facilities-based” operators.
51. An important class of licensees that are not carriers is service providers which provides services to customers using the transmission facilities operated by a carrier. For example, a service provider for international telephone service leases international circuits from an external carrier, operates the international services over these circuits and delivers the services to customers using the facilities (e.g. the Public Switched Telephone Network, PSTN) provided by a local carrier. In this context, a service provider is a customer of the carrier and use the services provided by the carrier for the provision of a public telecommunications service. Service providers are commonly licensed under the Public Non-Exclusive Telecommunications Service Licence (PNETS Licence). Service providers are sometimes referred to as “service-based” operators.
52. Further details of telecommunications licensing will be given in Lecture Four.

Interconnection

53. “Interconnection” includes interconnection with, and access to, a system, a network, a service, or elements of systems, networks or services. It should be noted that “interconnection” as defined in section 36A has a broader meaning than “interconnection” defined in the law of some other jurisdictions or some documents issued by international/regional organizations.
54. Regulation on “interconnection” is probably the most important, and potentially controversial, part of the regulatory framework. Such regulation is necessary in the transition from a monopoly to a fully competitive market. Unless interconnection is done promptly and on fair terms, competition in the market would probably not develop. Commercial settlement of interconnection terms may not be possible because of asymmetry in negotiating power during the transition period.
55. The policy is to encourage operators to agree among themselves on a commercial basis terms and conditions for interconnection. When agreement cannot be reached, upon the request by either interconnecting party, or on the initiative of the TA on public interest grounds (section 36A(2)), the terms and conditions may be determined by the TA under section 36A of the Ordinance.
56. In practice, OFTA, before the initiation of formal proceedings for the determinations under section 36A, frequently conduct mediation with a view to resolving inter-operator disputes relating to interconnection.
57. Terms and conditions determined by the TA shall be deemed to be of the essence of the agreement between the parties to the determination (section 36A(3C)). The TA’s determination is however not binding on the other licensees in the market which are not parties to the determination. However, a TA determination is of reference value to other licensees for interconnections of similar types.
58. Section 36A(3B) specifically provides that the charges in a determination shall be based on the relevant reasonable cost attributable to interconnection. The provision also gives the TA discretion in the choice of alternative costing methods to determine the relevant reasonable costs. The TA has set out the principles and methodologies that he will apply in making determinations in a

series of TA Statements published on OFTA's website.

59. Under section 36B, the TA may issue directions to secure interconnection between telecommunications systems and services. Such directions are binding on the licensees to which the directions are addressed.
60. Details of interconnection will be given in Lecture Six.

Sharing of Facilities

61. Some facilities used for the provision of telecommunications services may not be easily duplicated. For example, there is a policy to minimize the number of hilltop sites for radio stations in order to protect the environment. Therefore licensees may be required to share hilltop sites for telecommunications. Certain ducts laid across public streets may need to be shared as it might not be possible to lay another set of ducts along the same route or find alternative routes without causing unacceptable disruption to the traffic. Ducts, risers and equipment rooms within buildings may need to be shared because it might not be physically viable to duplicate or expand the ducts or equipment rooms (e.g. there being no space or the work would cause unacceptable disturbance to residents or occupiers).
62. Section 36AA provides for the regulatory framework for sharing of facilities.
63. The TA has power to direct a licensee to share the any of any facilities owned or used by it only if it is in the public interest to do so. Section 36AA(3) provides for the factors to be considered by the TA in deciding whether it is in the public interest for a facility to be shared. The first factor is whether the facility is a "bottleneck" facility. Normally, it will mean a facility without the sharing of which, the provision of a telecommunications service would be seriously impeded. Where a licensee requests another licensee for a facility to be shared, the latter licensee should endeavour to come to an agreement with the requesting party (section 36A(4)). If an agreement cannot be reached within a reasonable time, the TA may determine the terms and conditions for the shared use of the facilities (section 36A(6)).

Access to Land

64. To roll out a telecommunications network, access to land is essential. In this context, “land” includes buildings.
65. In the case of a wired network, the cables need to be laid across unleased land and public streets, routed into and installed within buildings to reach the customers and users. In the case of a building with multiple occupiers, the cables are normally routed through the “common parts” of a buildings and then into the areas exclusively occupied by the residents or occupiers of the buildings. Modern telecommunications networks require equipment installed in the buildings where customers are located. Such equipment is installed in common (shared by all operators) equipment rooms or cabinets in the buildings which are “common parts” of the buildings. The term “common parts” is defined in section 19A (and is the same as that defined in the Building Management Ordinance (Cap. 344)).
66. In the case of a wireless network, access to sites on the rooftop of buildings or other types of land, e.g. tunnels, hilltops is required for the radio stations.
67. Telecommunications Ordinance provides for two different regulatory frameworks under section 14 for access to land for the construction of wired and wireless networks.
68. For *wired networks*, section 14(1) empowers the TA to authorize a licensee to gain access to land for the “placement and maintenance” of network and other activities for or incidental to the “placement and maintenance” of network. This section is now commonly invoked to enable a fixed network operator to enter the “common parts” of buildings for the rollout of its network. As a matter of policy, the TA has only authorized local fixed telecommunications network services licensees or local fixed carrier licensees under section 14(1) to gain access to “common parts” of buildings for the rollout of their fixed networks.
69. A licensee authorized by the TA under section 14(1) is not required to pay any rent or access fee for entry into the land concerned for the rollout of the telecommunications network. However, the licensee must give reasonable notice to the owner of the land and do as little damage as possible and pay full

compensation for the damage done section 14(2).

70. Section 14(10) exclude any land for the exclusive occupation or use of a person from the scope of “land” into which access may be authorized by the TA under section 14.
71. In practice, the TA will authorizes under section 14(1) access into a building for the installation of equipment and cables for serving the residents and occupiers inside the building only. If the equipment (e.g. a telephone exchange) is for serving a particular district or region, it would be not be justifiable to authorize the licensee to gain entry for such purposes. The licensee will have to gain access to the land under a commercial agreement (e.g. a lease).
72. An alternative approach of reaching the customers in a building is by interconnection with the in-building wiring systems already installed by other licensees or the developer, manager or landlords of the buildings. In such an approach, section 36A rather than section 14(1) applies.
73. For *wireless networks*, section 14(1A) empowers the TA to gain access to land for the purpose of providing a radiocommunications service to a public place (e.g. to provide coverage for public cellular services). Before an authorization may be made under section 14(1A), the TA has to be satisfied that the authorization is in the public interest and the TA has to take into account a number of factors set out in section 14(1B)(b). In effect, normally only sites in shielded areas like tunnels or a large building complex which cannot be penetrated by radio signals from sites outside the tunnels or building complex can satisfy the criteria set out in section 14(1B)(b). Access to land in shielded areas is the principal policy intent in enacting section 14(1A) in 2000. Rooftop sites for radio stations to cover a district, or region, or “cell” is unlikely to be able to fulfil the criteria set out in section 14(1B)(b) and the TA is unlikely to intervene in the acquisition of rooftop sites. Such sites are acquired by the operators on the market on a commercial basis.
74. Contrary to the arrangement for an authorization under section 14(1), the licensee exercising the right of access under an authorization under section 14(1A) is required to pay a fee which is “fair and reasonable in all the circumstances of the case” (section 14(6)). When the landowner and the licensee cannot reach an agreement on the terms and conditions of access,

including the fee to be paid by the licensee, the terms and conditions may be determined by an arbitrator (not the TA) (section 14(5)), although the TA may determine an interim fee, which will be offset by the final fee determined by the arbitrator (section 14(8)). In making the determination, the arbitrator has to have regard to the guidelines issued by the TA on the application of the principles that the fee to be paid shall be fair and reasonable in all the circumstances of the case (section 14(6)).

Access to Services of Choice

75. It is Government policy that the residents or occupiers in a multi-storey building should have access to telecommunications and broadcasting services of his choice, without such access being unreasonable restricted by terms in the deeds of mutual covenant or other commercial contracts, such as a contract between the building manager and a telecommunications service provider that restrict access to residents in a building by other service providers. It is with this policy intent that section 19B was enacted.
76. Section 19B provides that any term in a commercial agreement (including a deed of mutual covenant) that “unreasonably restricts the right of a resident or occupier, or deprives a resident or occupier of the right, to have access to the public telecommunications services of his choice, is void to the extent that it imposes such restriction.
77. As “telecommunications service” includes broadcasting service, section 19B would apply to unreasonable restrictions or deprivation of right to have access to the broadcasting service of the resident or occupier’s choice. For example, a resident in a multi-storey should have the right of access to satellite television and cable television services at the same time if it is his wish to receive both types of television services.

Tariffs

78. In general, where the market for a particular type of telecommunications services is sufficiently competitive, the TA does not regulate the tariffs or the prices. The prices are to be regulated by the market.
79. When the market is not sufficiently competitive, there may be a need to regulate

- prices. For example, when the local and international telephone services were operated as monopolies, the prices of these services were regulated. Since the introduction of competition, the only services subject to price regulation are local fixed telecommunications services provided by the licensee in a dominant position in the relevant market.
80. The source of law for the regulation of tariffs is sections 7F and 7G of the Ordinance and licence conditions in carrier licences.
 81. For the protection of consumers and users, a carrier licence contains conditions requiring the licensee to publish its tariffs and the licensee may not charge more than the price specified in the published tariffs. The “tariffs” include not only the prices of the service, but also necessary terms and conditions (section 7F(2)).
 82. In addition, the licence conditions provide that where a licence is dominant in a telecommunications market, the tariffs shall be subject to prior approval of the TA (General Conditions 20 - 23 of a Fixed Telecommunications Network Services Licence). The criterion for approval is whether the proposed tariffs would prevent or substantially restrict competition in a telecommunications market. After approval, apart from the requirement to publish the tariffs as for a non-dominant licensee, the dominant licensee may not charge more or less than its published tariffs. Section 7G (b) backs up such a licence condition providing for this obligation of the dominant licensee.
 83. Under General Condition 44 of a Fixed Telecommunications Network Services Licence, the TA may waive the application of certain licence conditions, in whole or in part, including the conditions on tariff regulation, to a licensee if the TA forms the opinion that the licensee is not dominant in a telecommunications market. To be relieved of the obligations of a dominant operator in tariffs regulation, the licensee may submit an application for a declaration of non-dominance in the relevant market to the TA for consideration.
 84. Section 7G(a) empowers the Secretary to make regulation on the price control to be applied to a *fixed* carrier licensee who is in a dominant position in a telecommunications market. No such regulation has been made to date. In fact, the last price control arrangement (being a “price cap” arrangement based on CPI - X%) applied to the then Hong Kong Telephone Company Limited was terminated as from 1 July 1998. It should also be noted that no price control

regulation may be made on a mobile carrier licensee.

Competition and Fair Trading

85. At present, there is no general competition law in Hong Kong. The competition law applicable to the telecommunications industry is provided in the Telecommunications Ordinance and the TA is responsible for the enforcement of such law.
86. There are four provisions (sections 7K to 7N) under the Ordinance related to fair competition and fair trading. Telecommunications (Amendment) Ordinance 2003, which has not yet entered into effect, adds section 7P for the regulation of mergers and acquisitions in the telecommunications industry.
87. **Section 7K** - This provision prohibits a licensee's conduct that, in the opinion of the TA, has the purpose or effect of preventing, or substantially restricting competition in a telecommunications market.
88. **Section 7L** - This provision prohibits a licensee that is in a dominant position in a telecommunications market from abusing its position. A licensee is in a dominant position when it is able to act without significant competitive restraint from its competitors and customers. Matters to be considered by the TA in assess the market position of a licensee are given in section 7L(4). A licensee that is in a dominant position is deemed to have abused its position when it has engaged in conduct that has the purpose or effect of preventing, or substantially restricting competition in a telecommunications market.
89. **Section 7M** - This provision prohibits a licensee's conduct which, in the opinion of the TA, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services. This provision is related to fair competition because misleading or deceptive conduct would distort the competitive process.
90. **Section 7N** - This provision prohibits discrimination by
- a licensee who is in a dominant position between different customers
 - an exclusive licensee or a carrier licensee between a customer that is a provider of public telecommunications service and another customer that is an end-user.

However, this provision applies only to discrimination that has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

91. There are the equivalents of section 7K and 7L in the licence conditions of Fixed Telecommunications Network Services Licences issued before the provisions of sections 7K - 7N were enacted in 2000.
92. The TA has issued guidelines to provide guidance for the interpretation and enforcement of the licence conditions equivalent to section 7K and section 7L. These guidelines are planned to be updated within 2004.
93. The TA has also issued guidelines for the interpretation and enforcement of section 7M. These guidelines replace a voluntary code of practice previously issued by the TA on advertising practices in the telecommunications industry.
94. Under Telecommunications (Amendment) Ordinance 2003, a regulatory framework is established for mergers and acquisitions in the telecommunications sector. The purpose of this legislation is to ensure a market structure which is able to maintain effective competition in the telecommunications market.
95. This regulatory framework just applies to “carriers”.
96. Essentially, the Telecommunications (Amendment) Ordinance 2003 regulates “changes” to the ownership or control of a carrier licensee. There is no obligation for parties to seek the TA’s prior consent to changes. However, after the change has taken place, within the time limit (two weeks from the “change” being known by the TA) specified in section 7P(2), the TA may initiate an investigation (section 7P(1)).
97. If the TA forms the opinion that the change has, or is likely to have the effect of substantially lessening competition in a telecommunications market, and that the benefit to the public arising from the change is, or is unlikely to be, sufficient to offset the detriment to the public arising from the substantially lessened competition, then the TA may direct the parties to take action to eliminate or avoid the effect of substantially lessened competition (section 7P(1)).

98. The Ordinance also provides for a mechanism whereby the parties to the change may seek prior consent from the TA for the proposed change (section 7P(6)). The TA may take certain decisions under section 7P(7) in relation to the applications.
99. The TA is required to have regard to matters set out in guidelines (the Mergers and Acquisition Guidelines) issued by him under section 6D in forming any opinion under section 7P(1) or (7)(a) or (b). As of the date of this lecture, the Mergers and Acquisition Guidelines are under consultation with the industry and the Telecommunications (Amendment) Ordinance 2003 will be brought into operation once the Mergers and Acquisition Guidelines are finalized and issued.
100. Decisions of the TA related to the provisions of sections 7K to 7N, and 7P(1), (6) and (14) when the Telecommunications (Amendment) Ordinance 2003 enters into effect, may be appealed against in the Telecommunications (Competition Provisions) Appeal Board (the Appeal Board).
101. The Chairman, Deputy Chairman and members of the Appeal Board are appointed by the Chief Executive. The Chairman and the Deputy Chairman must be a person eligible to be appointed as a judge of the High Court under section 9 of the High Court Ordinance. The detailed scope of jurisdiction, composition, rules of procedures, powers of the Appeal Board are given in Part VC of the Ordinance. The Appeal Board is empowered to examine not only the procedural aspects, but also the merits, of the TA's decisions. The decision of the Appeal Board is final, apart from a question of law which may be referred by the Appeal Board to the Court of Appeal by way of a case stated.
102. Documents of the Appeal Board, including the list of past and current cases, past decisions, are published on the website of the Commerce, Industry and Technology Bureau :
http://www.info.gov.hk/citb/ctb/english/telecom/index_n.htm (click "Relevant Government Departments and Other Organisations")
103. Details of competition law in telecommunications will be given in Lecture Eight.

Numbering

104. The powers of the TA to manage telecommunications numbers as a limited community resource are provided for under section 32F of the Ordinance. Essentially, the TA prepares a numbering plan which divide all usable numbers into blocks of codes and numbers (codes are normally shorter numbers for rapid access to telecommunications services). The TA may allocate, assign, lease or sell the right to use a code, a block of codes, a number or a block of numbers, or delegate this power to any person. In practice, the TA allocates and assigns most of the codes and blocks of numbers to licensees, and licensees, under delegated authority, assigns individual numbers to their customers.
105. Under section 32F(5), the Secretary may by regulation provides for the amount of fee to be paid for the use of codes, blocks of codes, numbers or blocks of numbers. This may be applied to special numbers. No such regulation has to date been made.
106. Since the introduction of competition in local fixed network services, numbers in fixed networks are portable among local fixed network operators (operator number portability, as distinguished from “geographic number portability” which means the function to maintain the same telephone number as a customer moves his home or office without changing network supplier). Customers need not change their telephone numbers when they change network suppliers. This significantly lowers the barrier to switch suppliers and enhances competition in the market. Since 1 March 1999, numbers for mobile services are also portable among mobile network operators (mobile number portability). Numbers at present cannot be ported between fixed and mobile networks. Number portability is implemented under licence conditions.

Universal Service

107. Universal service obligation means the obligation to provide “basic service” as defined to customers upon request at any location within the territory of Hong Kong at the same prices as those applicable to customers at other locations. The policy objective is to ensure that everyone is able to have access to “basic service” at the same price irrespective of his location, and therefore the cost of serving him. If there were no such obligation, the remote or high cost customer might not receive the service, or might receive the service at a much

- higher price compared with the rest of the territory.
108. Universal service obligation is provided for under licence conditions of the Fixed Telecommunications Network Services Licences or fixed carrier licences. These licence conditions have the backing of section 35B of the Ordinance.
 109. At present, the universal service obligation is imposed on the incumbent operator (PCCW-HKT Telephone Limited) of the local fixed network market.
 110. “Basic service” is defined in the licence conditions, but briefly, it covers a public switched telephone service and a reasonable number of public payphones and some other relatively minor services. Broadband services are at present not part of the “basic service”, but the “basic service” should enable narrowband dialled-up access to the Internet. The detailed scope of “basic service” is given in the special conditions of Fixed Telecommunications Network Services Licences or fixed carrier licences.
 111. The cost incurred by the operator in fulfilling the universal service obligation (“universal service cost”) is calculated every year by the TA based on a methodology set out by the TA in TA Statements. The universal service cost is shared by all operators of external telephone services in proportion to the volume of international telephone traffic handled by each operator. The levels of universal service contribution in the year 2001 (which are also the current provisional levels) were 0.6 cent per minute and 2.3 cents per minute of external traffic for competitive routes and non-competitive routes respectively. (“Competitive routes” are those routes over which there is sufficient competition. These are referred to in the industry as “Category A” routes. The rest of the routes are non-competitive or “Category B” routes. At present, no routes are in the Category B.)
 112. Under section 35B of the Ordinance, the TA may establish and manage a fund for the purpose of holding the universal service contribution and paying the carrier licensee with the universal service obligation. No such fund has been established to date.
 113. There is no universal service obligation for mobile services. Extension of the coverage of mobile networks is governed by market forces.

Quality of Service

114. There are no explicit provisions in the Ordinance empowering the TA to regulate quality of service. However, the TA is empowered to prescribe licence conditions for all licences except exclusive and carrier licences (section 7(6)). In addition, the TA may attach special conditions, consistent with the Ordinance, and not inconsistent with general conditions, to a licence he is empowered to issue (section 7A). Therefore the TA may attach special conditions to a carrier licence (the general conditions of which are prescribed by the Secretary by regulation). Licence conditions may be used to regulate quality of service.
115. In practice, because of the policy of relying on market forces to determine the level of quality of service, the TA has not set minimum standards for quality of services. However, the TA considers that in order for market forces to work effectively to maintain or enhance quality of service, it is necessary for the consumers and users to be adequately informed of the quality of service provided by licensees. This policy objective is to be attained through a combination of licence obligations and, where feasible and effective, industry self-regulation.
116. There are licence conditions which oblige the licensee to operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the TA (e.g. General Condition 10 of a Fixed Telecommunications Network Services Licence). Under licence conditions (e.g. General Condition 18 of a Fixed Telecommunications Network Services Licence), the TA may request licensees to supply information reasonably required for the performance of his functions, and this may include information on the quality of service provided by the licensees. The TA may publish the information if he considers that it is in the public interest to do so after considering representations from the licensees in accordance with the procedures prescribed in the relevant licence conditions.
117. A subset of quality of service is “metering” accuracy - accuracy of the licensee’s facilities to measure the volume of usage of customers for billing purposes. There are licence conditions obliging the licensees to ensure accuracy and integrity of their metering and billing systems (e.g. General Condition 24 of a Fixed Telecommunications Network Services Licence). The TA has established a Billing and Metering Integrity Scheme and issued a code of

practice for the compliance with the Scheme.

Spectrum

118. The TA may plan the use of the radio spectrum. By planning, the radio spectrum is divided into different parts called “bands” and “channels” and one or more purposes are given for each band or channel (section 32H(2)(a) and (b)). The TA must consult the telecommunications industry and other persons affected by such planning prior to decisions on planning.
119. The TA may assign individual bands or channels to individual users (section 32H(2)(c)). Such assignments are normally done by authorization given under a licence for radiocommunications installations.
120. The assignment of some parts of the spectrum may be subject to the payment of “spectrum utilization fee” (section 32I). For example, the spectrum for the operation of the third-generation (3G) mobile services is subject to the payment of the spectrum utilization fee. The spectrum utilization fee is supposed to represent the economic value of the radio spectrum as a scarce community resource.
121. To require the payment of spectrum utilization fee, the TA must specify by order the band subjected to such fee (section 32I(1)). The level of the fee or the method for determining the level of the fee, may be prescribed by the Secretary by regulation (section 32I(2)). For example, the Secretary prescribed that the spectrum utilization fee for the 3G bands was determined by spectrum auctioning.
122. To ensure that the spectrum may be operated without unacceptable interference, section 32J provides for the power of the TA to specify the limits of interference that may be emitted by an apparatus and give various powers to the TA, or officer authorized by him, to trace and eliminate sources of interference.
123. Improper or incompetent operation of radio equipment, particularly over channels used for safety of ships and aircraft, could cause serious disruption to the operation of the channels. Therefore section 32K empowers the TA to examine and certify the competence of operating personnel and authorize such competent personnel to operate radio installations.

Standards

124. Section 32N and section 32E are the empowering section for the work of the TA on technical standards. The TA may prescribe standards, test and certify telecommunications equipment against those standards, prescribe the labels to be affixed to equipment complying with those standards and by order prescribed that the equipment may not be offered for sale unless they comply with the prescribed standards or bear the prescribed label.

Offences

125. Sections 20 - 32C of the Telecommunications Ordinance provides for a series of offences with maximum penalty of, on summary conviction, fine up to \$50,000 and imprisonment for up to 2 years, and on conviction on indictment, fine up to \$100,000 and imprisonment up to 5 years.

126. An important category of offences is for management of the radio spectrum. Examples of such offences are contravention of section 8 (section 20) (e.g. possession or use of radio apparatus without a licence), use of unauthorized frequencies (section 32A), unauthorized dealing in radio transmitters (section 32B) and unauthorized modifications of radio transmitters (section 32C). In practice, most prosecutions made by the TA are for this category of offences.

127. Another category of offences is to ensure the integrity of telecommunications, such as the prohibition of destruction, secretion or alteration of telecommunications messages (section 24 - 25), damaging telecommunications installation with intent (section 27), etc.

128. Section 27A is an offence on unauthorized access to computer by telecommunications. This section is enforced by the Police to deal with computer crimes involving the unauthorized access to computers, e.g. hacking.

Enforcement

129. The enforcement of the Ordinance is normally through the following means:

- Direction under section 36B

- Penalty under section 36C
- Suspension or cancellation of licence under section 34
- Prosecution of offences under sections 20 - 32C.

130. Public officers authorized in writing by the TA has powers of arrest, search, seizure, removal and detention of apparatus or other things under section 35 of the Ordinance.

Information

131. The TA may request from a *licensee* under section 7I information that the TA may reasonably require to perform his functions, or exercise his powers, in order to ensure the person's compliance with the provisions of the Ordinance, licence conditions, and the determinations and directions of the TA.

132. The TA also has power under licence conditions to obtain information reasonably required for the performance of his functions under the Telecommunications Ordinance.

133. The TA has the obligation of maintaining confidentiality of the information received from licensees under section 7I or licence conditions. Before disclosure of the information received, the TA is required to follow the procedures specified in section 7I or licence conditions, to consider representations from the licensee that supplied the information.

134. If the TA wishes to obtain information from a *non-licensee*, he has to follow a more complicated procedure provided for under section 36D. Essentially, the TA needs to serve a notice in writing on the person, specifying the information requested and inviting him to make representation as to why the person cannot or does not wish to comply with that request. After considering the representation of the person and if the TA still wishes to proceed with the request, the TA may apply to a magistrate for an order to require the person to provide the information requested.

Accounting Separation

135. To enable the TA to monitor cross-subsidization between services, the TA may require carrier licensees to report separately accounts for different activities of

the same company in accordance with an Accounting Manual issued by the TA. Such “regulatory accounting” is an obligation outside the reporting requirements under the Companies Ordinance.

136. The fixed carrier licensee in a dominant position in the market may have more detailed accounting separation requirements compared with other carrier licensees. For example, the dominant licensee is required to separately report different segments of the regulated services, as well as non-regulated services. Non-dominant licensees are required to report separately the accounts for regulated and non-regulated activities.
137. The accounting separation requirements are provided for under licence conditions. The obligation is triggered by a direction by the TA under the conditions. Section 7H added in the 2000 amendments to the Ordinance provides backing for such accounting separation requirements.

Inspection

138. Under section 35A, the TA has the power to inspect records, documents and accounts of a licensee for the purpose of performing the TA’s functions or exercising his powers under the Ordinance in order to ensure the licensee’s compliance with the Ordinance or licence conditions.
139. Under section 7J(1), the TA also has the power to inspect offices, premises and places where the licensee has installed facilities or used for providing services for the purpose of verifying that the licensee is complying with licence conditions. The TA may also require the licensee to conduct tests to verify that a telecommunications installation complies with the Ordinance (section 7J(4)). The licensee must provide adequate testing instruments and operating staff for the purpose of conducting the tests (section 7J(5)).

Direction

140. If a licensee is found to have breached the Ordinance or licence conditions, the TA may consider issuing a direction under section 36B requiring it so take as action as the TA consider necessary in order for the licensee to cease the breach.

Penalty

141. If a licensee is found to have breached the Ordinance, or licence conditions, or a direction issued under section 36B, the TA may by notice
- impose on the licensee a financial penalty up to the level of
 - \$200,000 for the first occasion on which the penalty is so imposed;
 - \$500,000 for the second occasion on which the penalty is so imposed;
 - \$1,000,000 for any subsequent occasion on which the penalty is so imposed:
 - upon application to the court, \$10,000,000, or 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, whichever is the higher
 - require the licensee to disclose to the public or a particular person or class of persons specified information (section 36C(3A)(a))
 - require the licensee to publish a corrective advertisement (section 36C(3A)(b))

Suspension or Revocation of Licences

142. Under section 34(4), the TA may cancel a licence, or suspend a licence for a period not exceeding 12 months, in the event of contravention of the Ordinance.
143. Under section 34(4), the Chief Executive in Council may cancel or suspend a licence on public interest ground.

Damages

144. Under section 39A, a person suffering loss or damage from a breach of any of the fair competition provisions (sections 7K to 7N) may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee in breach.

Office of the Telecommunications Authority

145. The Telecommunications Authority (TA) is a public officer appointed by the Chief Executive under section 5 of the Telecommunications Ordinance (the Ordinance) to administer the Ordinance.

146. The Office of the Telecommunications Authority (OFTA) is the government department supporting the TA in the performance of his functions under the Ordinance. The Director-General of Telecommunications is the head of OFTA as a government department.
147. OFTA was established on 1 July 1993. Before that, the Telecommunications Branch of Post Office supported the TA in the performance of his functions under the Ordinance.
148. Ever since OFTA was established, the Director-General of Telecommunications has always been appointed by the Chief Executive to be the TA. Prior the establishment of OFTA, the Postmaster General, head of the Post Office, was appointed as the TA.
149. The Telecommunications Authority in Hong Kong is therefore a public officer. There are views in the industry as to whether the Telecommunications Authority should more appropriately be a commission or body. There are pros and cons for such an arrangement. This is discussed in the papers listed as items 4 and 5 of the Reading List.
150. As a result of “convergence”, there are also views as to whether there should be a merger between the Telecommunications Authority and the Broadcasting Authority so as to create a single regulatory body for “communications”. This was raised by the Commerce, Industry and Technology Bureau in a public consultation paper on “2004 Digital 21 Strategy” issued in October 2003. Precedence for the replacement of separate regulatory bodies with one regulatory body can be found in the establishment of the Office of Communications (Ofcom) in the UK which formally took over regulatory powers as from 29 December 2003.
151. At present, OFTA regulates the “conveyance” of all types of services, and manages the radio spectrum for all types of services, irrespective of whether the services are telecommunications services or broadcasting services. There is no more distinction between a network for “telecommunications services” or one for “broadcasting services”. A fixed carrier may carry under its licence signals for telecommunications and broadcasting. (Several local fixed networks licensed under Fixed Telecommunications Network Services Licence and fixed

carrier licences are now carrying voice, data and pay television services.) On the other hand, the Broadcasting Authority regulates the content of programme services. In this manner, the convergence of conveyance for telecommunications services and broadcasting services has been addressed under the division of responsibilities between the TA and the Broadcasting Authority.

152. OFTA at present operates as a “trading fund”. A “trading fund” department provides a specified range of services and is funded from revenue received from the provision of these services (mainly licence fees). OFTA commenced trading fund operation by virtue of a resolution of the Legislative Council under the Trading Funds Ordinance on 10 May 1995. The functions of the OFTA are set out in Schedule 1 to the resolution of the Legislative Council setting up the OFTA Trading Fund (Cap 430D).
153. OFTA is a government department under the responsibility of Commerce, Industry and Technology Bureau, headed by the Secretary for Commerce, Industry and Technology (SCIT). SCIT is the “Secretary” as defined in section 2 of the Telecommunications Ordinance and referred to in section 6A of the Ordinance.
154. The Secretary is responsible for formulating telecommunications policy while the TA is responsible for implementing the policy and exercising the powers of the TA under the Ordinance. As the TA is dealing with the industry direct and is aware of the problems and issues in the industry, the TA advises the Secretary and makes recommendations on the policy and the legislation necessary to implement the policy for the telecommunications sector.
155. The TA is subject to the following checks and balances in the exercise of his powers under the Ordinance:
 - Judicial review for all administrative actions taken under the Ordinance
 - Appeals lodged with the Telecommunications (Competition Provisions) Appeals Board for any administrative actions of the TA relating to sections 7K - 7N or any licence condition relating to any such section (fair competition provisions), and after entry into force of the Telecommunications (Amendment) Ordinance, section 7P relating to

mergers and acquisitions (section 32N of the Ordinance)

- Supervision by the Legislative Council
- Complaints lodged with the Office of the Ombudsman
- Public opinion expressed in the media

156. More details on how OFTA works are given in the paper listed as item 4 on the Reading List.

Prepared: January 2004

List of Legislation

Ordinances

1. Telecommunications Ordinance (Cap. 106)
2. Telecommunication (Amendment) Ordinance 2000 (an extensive amendment covering fair competition provisions, setting up the Telecommunications (Competition Provisions) Appeal Board, expansion of interconnection provisions, sharing of facilities, expanding the scope of section 14 for access to land, etc.)
3. Telecommunications (Amendment) Ordinance 2001 (mainly to introduce the power to determine the level of spectrum utilization fees)
4. Telecommunications (Amendment) Ordinance 2003 (to introduce the provisions for the regulation of mergers and acquisitions in the telecommunications sector)

Regulations

1. Telecommunications Regulations (providing for, for examples, licences that may be issued by the TA. Some sections in the regulation relating to interference control and examination/certification of personnel have been incorporated into the Telecommunications Ordinance under the 2000 amendments)
2. Telecommunications (Control of Interference) Regulations (providing for the limits of interference levels which may be generated by non-radiocommunications apparatus)
3. Telecommunications (Carrier Licences) Regulation
4. Telecommunications (Carrier Licences) (Amendment) Regulation 2003
5. Telecommunications (Method for Determining Spectrum Utilization Fees)

(Third Generation Mobile Services) Regulation

Exemption Orders

1. Telecommunications (Essential Services Corps Fuel Oil Unit) (Exemption) Order
2. Telecommunications (China Light and Power Company Limited)(Exemption from Licensing) Order
3. Telecommunications (Possession and Export of Radiocommunications Apparatus by Visitors)(Exemption) Order
4. Telecommunications (Radio Receivers)(Exemption from Licensing) Order
5. Telecommunications (APSTAR-1)(Exemption from Licensing) Order
6. Telecommunications (APSTAR-IA)(Exemption from Licensing) Order
7. Telecommunications (APSTAR-IIR)(Exemption from Licensing) Order

Orders

1. Telecommunications (Examination, Certification and Authorization of Radiocommunications Personnel) Order
2. Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) Order
3. Resolution of the Legislative Council on Telecommunications (Method for Determining Spectrum Utilization Fees)(Third Generation Mobile Services) Regulation
4. Telecommunications (Telecommunications Apparatus)(Exemption from Licensing) Order

List of Cases

Judicial Decisions

Date of Judgement	Case	Main Issues
22 March 1999	Uniglobe Telecom (Far East) Limited v HKSAR (Final Appeal No. 5 of 1998 (Criminal) on appeal from CACC No. 104 of 1998)	“means of telecommunications” and “strict liability” of an offence of contravention of section 8(1)(a)

Decisions of the Telecommunications (Competition Provisions) Appeal Board

Date of Judgement	Case	Main Issues
5 August 2003	Appeal No. 4: PCCW-HKT Telephone Limited v TA	Discounted tariffs for residential telephone line services for fourteen new building estates

Suggested Reading List

1. The Telecommunications Ordinance (Cap. 106)
2. Fixed Telecommunications Network Service Licence issued to PCCW-HKT Telephone Limited
http://www.ofta.gov.hk/frameset/documents_index_eng.html(click “telecom licences” and then “FTNS and Fixed Carrier Licences”)
3. Public Radiocommunications Service Licence issued to PCS Operator (The six licences are identical in content. Reading one of them is sufficient.)
http://www.ofta.gov.hk/frameset/documents_index_eng.html (click “Telecom Licences” and then “PCS Licences”)
4. “What Regulators Require of Utility Markets”, presentation by Mr M H Au, Senior Assistant Director (Regulatory) to International Training Program on Utility Regulation and Strategy in January 2000
http://www.ofta.gov.hk/frameset/aboutus_index_eng.html (click “speeches and presentations” and then locate the speech in January 2000)

5. Module 1 of “Telecommunications Regulation Handbook” - “Overview of Telecommunications Regulation”, published by the Information for Development Program in 2000

<http://www.infodev.org/projects/314regulationhandbook/module1.pdf>

6. Reference Paper on regulatory framework of basic telecommunications services, World Trade Organization, 24 April 1996

http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm

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