

**REVISION OF PROCEDURES FOR  
MAKING DETERMINATIONS  
ON THE TERMS AND CONDITIONS OF  
INTERCONNECTION AGREEMENTS**

**STATEMENT OF  
THE TELECOMMUNICATIONS AUTHORITY  
HONG KONG**

**27 September 2001**

**INTRODUCTION**

On 23 March 2001, the Telecommunications Authority (“TA”) issued an industry consultation paper entitled “Revision of Procedures for Making Determinations on the Terms and Conditions of Interconnection Agreements - An Industry Consultation Paper” which invited comments from licensees and other interested parties on the proposed revisions of the Procedures for Making Determinations on the Terms and Conditions of Interconnection Agreements (the “Procedures”).

2. A total of 5 submissions were received from Hutchison Global Crossing Limited (“HGC”), SmarTone Broadband Services Limited (“SBS”), Hutchison Telephone Company Limited (“HTCL”), PCCW-HKT Telephone Limited (“PCCW-HKTC”) and New T & T Hong Kong Limited (“New T&T”). The submissions have been posted on the Office of the Telecommunications Authority (“OFTA”) webpage at <http://www.ofa.gov.hk/report-paper-guide/paper/consultation/cp0424.html>.

3. Having considered the submissions received, the TA has finalized his views

on the revision of the Procedures. The views of the TA are set out in this Statement and the revised Procedures are attached in the **Annex**. The revised Procedures shall apply to the requests for determinations received after the date of issuance of this Statement.

**PROCESSING TIME**

4. In the consultation, the TA has proposed to specify the time limit for each step in the Procedures to which the parties concerned are required to adhere. Notwithstanding such specification, the TA may exercise his discretion to shorten or lengthen the time limits, where appropriate, in circumstances so justified by reference to the urgency or the complexity of the matter and duly inform the parties with reasons.

5. The time requirement for a determination request being set out in the proposed Procedures is tabulated below:

<i>Paragraph of the proposed Procedures</i>	<i>Procedures</i>	<i>Processing time without Preliminary Analysis</i>	<i>Processing time with Preliminary Analysis</i>
10	TA examines if request can be dealt with within section 36A of the Telecommunications Ordinance	2 weeks	2 weeks
10	Other party makes representation, if wish, as to why a determination should not be made	2 weeks	2 weeks
11	TA considers if request should be accepted	2 weeks	2 weeks
13	Both parties make written submissions	1 month	1 month
19	Both parties comment on other parties' submissions	1 month	1 month
21	TA issues preliminary analysis (PA)		2 months
21	Both parties comment on PA		1 month
28	TA makes determination	2 months	2 months
	<b>Total (approximate)</b>	<b>5½ months</b>	<b>8½ months</b>

6. The TA notes that all submissions generally support the specification of time limits.

### *Time Limits*

7. Both SBS and New T&T submit that the overall processing time may be too long and therefore the Procedures should be further streamlined to expedite the process. New T&T considers that, based on its experience, there is considerable overlapping in terms of materials between the Preliminary Analysis (“PA”) and Final Determination, and therefore the TA could consider shortening the time for him to issue the two documents to a combined maximum of three months. New T&T also raises the query of whether there is a gap between Stage one (consideration of request for Determination) and Stage two (the Determination proceedings), comments that there is no timeframe set for engaging consultants to provide expert opinion, and considers that there should be a clear timeframe similar to that set out by OFTEL in the UK where OFTEL aims to complete the whole determination process within 7 months upon its receipt of the request for determination.

8. On the other hand, PCCW-HKTC considers that the stated one-month response time for parties to make written submissions (after the TA has accepted proceeding with the determination and before the issue of the PA) is too short since the submission requires the parties to provide extensive relevant financial and/or technical information to substantiate the preferred position and the proposed terms and conditions for the interconnection. It suggests the stated deadline to be at least two months. It also submits that the stated one-week response time for providing additional information upon TA’s requests (paragraph 18 of proposed Procedures), and one-month response time for commenting on the PA (paragraph 21 of proposed Procedures), are both not enough. It considers that the stated response times should be two weeks and two months respectively.

9. The TA has considered the views and suggestions of SBS, New T&T and

PCCW-HKTC in respect of the time limits for individual steps in the proposed Procedures. As pointed out in the consultation paper, there may be urgent or relatively straightforward requests for determinations that merit shortening of the processing time. There may also be circumstances where complex analysis or study, with or without assistance from consultants outside of OFTA, may be required or any other factors exist that make it necessary to lengthen the steps. The time limits specified in the proposed Procedures are intended to be a benchmark which strikes a balance among cases with different levels of complexity and urgency. The purpose is to provide a degree of certainty as regards the timing required to complete the determination process. The TA expects that the benchmark would be adhered to in the majority of cases. The benchmark would also provide a basis for considering any proposed alteration of the time limits. The TA finds that the suggestions of shortening and lengthening the standard time limits for certain steps are reasonable for certain circumstances depending on the complexity and urgency of issues concerned. In any case, all parties, including the TA and the Committee, should process and handle the cases in the most efficient manner. The TA therefore decides to expedite the process by shortening the benchmark time limits for his issuing the PA and making Final Determination from two months each to one month each. The TA considers that the processing of cases with less complexity (the “normal” cases) can be further expedited by allowing only half of the time limits proposed in the consultation paper. The TA therefore decides to adopt the revised time limits to the finalized Procedures accordingly. The revised time limits of the Procedures are illustrated in the tables below:

**“Normal” Cases**

<i>Paragraph of the Procedures</i>	<i>Procedures</i>	<i>Processing time without Preliminary Analysis</i>	<i>Processing time with Preliminary Analysis</i>
10	TA examines if request can be dealt with within section 36A of the Telecommunications Ordinance	1 weeks	1 weeks

10	Other party makes representation, if wish, as to why a determination should not be made	1 weeks	1 weeks
11	TA considers if request should be accepted	1 weeks	1 weeks
13	Both parties make written submissions	1 month	1 month
19	Both parties comment on other parties' submissions	2 weeks	2 weeks
21	TA issues preliminary analysis (PA)		1 month
21	Both parties comment on PA		2 weeks
28	TA makes determination	1 month	1 month
	<b>Total (approximate)</b>	<b>3¼ months</b>	<b>4¾ months</b>

### “Complex” Cases

<b>Paragraph of the Procedures</b>	<b>Procedures</b>	<b>Processing time without Preliminary Analysis</b>	<b>Processing time with Preliminary Analysis</b>
10	TA examines if request can be dealt with within section 36A of the Telecommunications Ordinance	2 weeks	2 weeks
10	Other party makes representation, if wish, as to why a determination should not be made	2 weeks	2 weeks
11	TA considers if request should be accepted	2 weeks	2 weeks
13	Both parties make written submissions	1 month	1 month
19	Both parties comment on other parties' submissions	1 month	1 month
21	TA issues preliminary analysis (PA)		1 month
21	Both parties comment on PA		1 month
28	TA makes determination	1 month	1 month
	<b>Total (approximate)</b>	<b>4½ months</b>	<b>6½ months</b>

10. It should be noticed that good quality and sufficient information provided in a request for determination is important to the fulfillment of such efficient processing timeline, or otherwise extra time will be required for sorting out queries or obtaining additional information. Further to that, the TA has also come across a number of

occasions where extra time was spent on dealing with the requesting party on the information and/or documents that could be forwarded to the other party for making representation thereon. Therefore, besides urging the requesting party to provide good quality and sufficient information stipulated in (a) to (e) of paragraph 8 of the Procedures, the TA has stipulated that the requesting party should indicate whether or not its submission can be forwarded to the other party for making representation thereon, and if not, a proposed version that can serve the purpose should be submitted along with the request.

11. Referring to New T&T's query of whether or not there is any gap between Stage one and Stage two, if a request is accepted in whole under paragraph 13 of the Procedures, there is no gap between Stage one and Stage two of the Procedures as the TA will proceed to invite the requesting party and the other party to make submissions. However, in circumstances that only part of the request is accepted, besides informing the parties of his decision of declining the other part of the request with reasons, the TA may find it necessary to ask the requesting party if it still wishes to proceed with the determination of the accepted part of the request, before the determination process is progressed further under paragraph 13.

***Discretion to alter time limits***

12. Both HGC and HTCL put emphasis on the discretion in altering the time limits. HGC submits that rather than leaving the granting of time extension entirely to the discretion of the TA, natural justice dictates that the TA should be bound to extend the time limit as long as it is reasonable to do so, taking all relevant circumstances into consideration. It further submits that, should the TA insist on such discretion, the wording of paragraph 35 of the proposed Procedures is too rigid to allow a flexible exercise of the discretion. It should be amended to the effect that as long as the TA is reasonably satisfied that an extension is necessary whether upon operator's request or his own volition, he should exercise the discretion to make the extension, but not be tied to whether complex analysis or study is required.

13. HTCL considers that the time limits should be further revised to allow the parties involved to request for extension for all time limits which apply respectively to them. It considers that OFTA should adopt a flexible, reasonable and objective approach and take into consideration all relevant circumstances and factors but not be limited to the complexity of analysis or study required, and that OFTA should grant extension wherever the party has reasonable grounds.

14. The TA's intention under the proposed Procedures is that any party may request an alteration of the time limits for individual steps. In fact, even under the current Procedures, parties may request in writing for an extension of deadline specified by the TA for the submission of representations or information, and the approval will be subject to the discretion of the TA. The TA has been and will continue to be fair and reasonable in taking into consideration all relevant factors in exercising such discretion. Should a party involved find the alteration of time limits of any steps necessary and appropriate, it is free to make such request, with substantiation, in writing for the TA to consider on a case by case basis. Further to that, the TA has not tied himself to lengthening the steps only when complex analysis or study is required. He has stated clearly in paragraph 35 of the proposed Procedures that he may do so upon the existence of any other factors that make the lengthening necessary. For the avoidance of doubt, the TA has stated explicitly in paragraph 36 of the finalized Procedures in the Annex that parties may request alteration of time limits for TA's consideration on a case by case basis.

## **MEDIATION BY OFTA**

15. The proposed Procedures expressly refers to the distinction between the OFTA's mediation and the TA's determination, and requires that the processing of determination request should be put on hold during mediation.

16. The TA notes the general support from all submissions to OFTA's

mediation and the distinction between it with the TA's determination in the Procedures.

### ***OFTA's role in mediation***

17. New T&T considers that a proposed mediation process may be able to resolve minor differences and improve the communication channel between the concerned operators. However, it comments that, in its experience, commercial negotiations in the fixed line industry normally failed or their outcomes were unfavourable to the non-dominant operators, given the fact that the incumbent has no commercial interest for a settlement at all. It believes the role of OFTA at this stage should be more forthright in order to produce result, with a solid plan set with appropriate timeframe for both parties to follow so that the issues can be resolved prior to reaching the determination stage.

18. PCCW-HKTC submits that if TA makes a mediation offer, the parties involved may treat it as pressure, therefore *the TA* should not make such offer at any time before or during determination. However, it agrees that *the parties involved* may make the request for mediation at any time before or during the processing of the determination and the TA may proceed to mediate after receiving the request and consent of all the parties involved.

19. The TA notes New T&T's expectation of OFTA's role in mediation and OFTA would continue to use its endeavour, as it has always done, to bring about fruitful results in the mediation on an informal basis. Mediation is either made upon requests from operators or pro-actively initiated by OFTA if it envisages the opportunities to resolve disputes timely and informally via this informal process. In all circumstances, mediation is under no statutory requirement and will only be proceeded with under the common consent of all involved parties. Accordingly, the TA sees no pressure being exerted on any licensees upon OFTA's mediation offer, and therefore there is no ground to restrain OFTA from such role as proposed by PCCW-

HKTC.

***Determination being put on hold during mediation***

20. Regarding the proposed procedure of putting determination process on hold during mediation, SBS envisages that it would have a deterrent effect on the parties who wish to seek OFTA's mediation because of the concern of possible delay in the determination process. Therefore, it submits that both determination and mediation should run in parallel.

21. The TA considers that mediation serves as an alternative, in attempting to resolve interconnection related disputes via commercial negotiations, to the TA's determination under its statutory authority. Should all involved parties consent to OFTA's mediation, it is not necessary and appropriate to proceed with the determination on the same issues in parallel. The TA maintains that it is necessary to put the determination process on hold during mediation.

***Same OFTA members in mediation and determination***

22. Both HGC and HTCL have concerns on the same members from the OFTA being involved in the mediation and determination of the same issues in that the members might be tainted by the representations and submissions made only for mediation purposes and not be able to disregard them in the subsequent determination proceedings. Both companies submit that mediation and determination should be dealt with by separate officers of the OFTA to ensure that the mediation will be done without prejudice to the determination of the same case.

23. The TA emphasizes that the whole determination process is carried out with utmost fairness and transparency. All submissions and representations for determination (except those being withheld in accordance to the proposed Procedures) would be made known to all parties involved. Decisions are made under due

consideration of such submissions and representations. All parties involved are provided with analysis and reasons for the TA's decisions, and in most cases with the preliminary analysis for their comments prior to the TA making his final decision. The information and comments received from, and any suggestion made or views formed during the mediation process would be regarded as being irrelevant, unless with the consent of the parties involved. Such an open and transparent mechanism would act as safeguards against any failure to consider relevant submissions and representations of the parties concerned, or tainting the determination by irrelevant considerations. If the TA or the officers of OFTA had been tainted or biased as a result of their involvement in the mediation process, this would be exposed and readily detected by the parties through the open and transparent mechanism. Therefore, the TA considers that it is not necessary to restrain an OFTA member engaging in mediation from dealing with determination of the same issues.

## **EXCHANGE OF SUBMISSIONS**

24. The TA puts forward a streamlined process for the exchange of submissions in the proposed Procedures, in which the parties are required to copy their submissions directly to other parties when submitting their submissions to the TA.

25. The TA notes that only PCCW-HKTC and New T&T have commented on such procedures.

### ***Procedures for exchange of submissions***

26. New T&T does not fully agree with these proposed procedures for exchange of submissions between the parties. It believes that copying the whole submission directly to other parties may be prejudicial to the position of the parties in any subsequent transactions between them. It considers that the submissions may contain critical information that may set off "consequential reaction" causing the unilateral

suspension of further negotiation between the operators on other issues which is not the subject matter of the determination.

27. The TA has doubt about the concerns raised by New T&T on the “consequential reaction” in New T&T submission. However, he considers that should a party consider certain part of the submission is confidential, it may opt to withhold that part in accordance to the proposed Procedures. The proposed procedures of direct exchange of submissions would streamline the process. The TA therefore maintains the proposed procedures for requiring the parties to copy their submissions directly to the other parties when submitting their submissions to the TA.

***Indication of withheld information***

28. PCCW-HKTC submits that in order to enable the other parties to estimate how much information was withheld, any party withholding confidential information is required to indicate in the copy the number of words “[X words withheld]” or figures “[figures withheld]” being withheld for the reason of confidentiality.

29. The TA welcomes PCCW-HKTC’s idea of indicating the withheld part in a submission for it can let other parties acknowledge which part of or what information is being withheld. For the ease of implementation but with no sacrifice of effectiveness, rather than counting the number of words withheld, the TA would adopt a practice of requiring the parties to indicate the nature or context of the withheld information or figures and the place at which the relevant information or figures originally appeared in the submission. For example, in the place where some information is withheld, the party should put a statement in square brackets stating that [information in relation to contract terms and conditions withheld] for withholding information relating to some contract terms and conditions, or stating [table of figures in relation to local PNETS traffic statistics withheld] for withholding a table of figures presenting local PNETS traffic statistics.

### ***Dealing with withheld information***

30. PCCW-HKTC comments that, when considering to disclose the confidential information withheld by a party, the TA may attach more weight to the benefits of passing the information to the other party for speeding up the determination and less weight to the importance of the information in terms of commercial confidentiality to the requesting party. It considers that it is not easy for the TA to understand the importance of the confidential information to the data owner, and therefore the disclosure of the information without the data owner's agreement may have potentially harmful effects to them unknown to the TA. It submits that under no circumstances should the TA disclose to the other parties any financial and numerical information supplied by a party in confidence to the TA, and if the TA decides not to comply with the request to withhold the information after consideration, the party requesting to withhold the information should be informed and the TA must get its written confirmation before releasing any of confidential information to the objecting party.

31. The TA finds PCCW-HKTC's comment inconsistent with the existing procedure for the TA to handle confidential information supplied by the licensees (e.g. under section 7I of the Telecommunications Ordinance). In making a decision of whether or not to comply with the request to withhold the information, the TA gives due consideration of the reasons for maintaining confidentiality submitted by the requesting party. The requesting party may submit its envisaged potential adverse effects with substantiation, if any, that may be caused by disclosure of the withheld information. The TA will be able to reach a fair and reasonable decision on whether or not to comply with the request to withhold the information. Such decision is made by the TA and there is no statutory requirement for the TA to get written confirmation from the requesting party before releasing the information to the other party. However the requesting party would be duly informed. The TA sees no reason why confidential information received in the course of Determination proceedings should not be handled in a like manner.

## **OTHERS ISSUES**

### ***Raised by HTCL***

32. HTCL suggests that factors set out in section 36A(10) of the Telecommunications Ordinance should be included in paragraph 31 of the proposed Procedures for the consideration of whether to accept the request for a fresh determination submitted by a party to a determination who considers that terms of the agreement determined should be varied. In making a determination, the TA shall give regard to the factors stipulated in section 36A(10). For the avoidance of doubt, the TA would adopt HTCL's suggestion to include the factors in section 36A(10) in the finalized Procedures in the Annex (paragraph 31).

### ***Raised by PCCW-HKTC***

33. PCCW-HKTC comments that, for the transparency and fairness of the procedures for making determination, if one party is invited to present to Interconnection Determination Committee (the "Committee"), the others should be informed of the events and shall have the right to respond to any such presentation made. Under paragraph 22 of the proposed Procedures, the presentation by a party as invited by the Committee or the TA is for the purpose of facilitating thorough understanding by the members of the Committee or the TA of the party's submissions under paragraph 13 and/or 18 of the proposed Procedures (which would have been copied to the other party under paragraphs 14, 17 and/or 18) and/or comments of the preliminary analysis. As no new submissions other than those already submitted under paragraph 13 or 18 (and made known to the other party) are expected to be discussed in, or taken into account after, such presentation, it should not be necessary to mandate the other party's presence or response, unless the TA considers material facts or views unknown to the other party have been put forward in the presentation.

34. PCCW-HKTC considers that paragraphs 26 and 27 expand the scope of the

terms and conditions which the TA may determine under section 36A(3) and (3A). It comments that such unnecessary expansion may lead to the making of determinations not authorized under the Ordinance. Therefore, it submits that the phrase “and/or supply of facilities, services and information etc. for the purpose of interconnection” in paragraph 27(b) and paragraphs 27(a), (i), (j), (k) and (l) should be avoided and deleted.

35. It should be noted that under section 36A(3), the terms and conditions in a determination may include any technical, commercial and financial terms and conditions that the TA considers fair and reasonable. Section 36A(3A) lists the terms and conditions in a determination that may be included without limiting the general nature of subsection (3). It is obvious that:

- paragraphs 27(a) and (j) are for description of the facilities and networks involved and recommendation of whether or not and how the determination should be published respectively;
- paragraph 27(i) is for how the costs and expenses for making a determination should be recovered from the involved parties under section 36A(6) and does not form any part of the terms and conditions in a determination;
- the phrase “and/or supply of facilities, services and information etc. for the purpose of interconnection” in paragraph 27(b) serves to be stating clearly the purpose of charges are for; and
- paragraphs 27(k) and (l) will give full effect to section 36A(3).

36. The TA considers that paragraphs 26 and 27 have not expanded the scope of the terms and conditions in a determination that he may determine under section 36A(3). The two paragraphs will therefore be maintained.

37. PCCW-HKTC submits that in the course of determination and at any time before the promulgation of determination, parties concerned and their related companies should not be allowed to make any comments on the issues for

determination in the public so as to intervene or influence the determination made by the TA, as such intervention or influence is unfair to other party. The TA considers that he is not in a position to control what operators pronounce in the public. Nonetheless, in making a determination, the TA will not consider any comments of concerned parties made outside the Procedures.

***Raised by New T&T***

38. New T&T believes that the scope of the proposed procedures should be extended to other areas such as sharing of use of facilities where one operator requests to share the use of facilities of another operator pursuant to General Condition 31 of the FTNS licence and Section 36AA of the Ordinance. The TA welcomes New T&T's suggestion; however, he considers that the procedures for the processing of request for sharing use of facilities under section 36AA would more appropriately be stand on its own. The TA will prepare such procedures in the near future.

39. New T&T raises the query of under what criteria the TA will issue preliminary analysis. A preliminary analysis is issued for the purpose of consulting the involved parties on the TA's analysis on the submissions and representations from the involved parties, the Committee's recommendations, if any, and the considerations under section 36A(10), and, thereon, the intended determination. The TA considers that the issuance of preliminary analysis would be desirable in most circumstances. However, in circumstances which the issues involved are straightforward or not controversial, or any circumstances that justify the skipping of preliminary analysis, the TA may not issue the preliminary analysis and he will inform the involved parties of such decision with reasons.

40. New T&T submits that the TA should set rules or criteria for allocation of expenses for consultancy studies, and that where a commercial negotiation fails the access seeker should still be entitled to an immediate interconnection pending the outcome of the determination. The TA considers that the criteria for allocation of

expenses for consultancy studies would better be dealt with on a case by case basis. For the implementation of interconnection before making a determination, the TA considers that a party may make such request with reasons in its submission to him, and he may consider the matter under section 36B, where appropriate.

41. New T&T's quotation of the U.K. experience for the TA's consideration is noted.

**Office of the Telecommunications Authority**

**27 September 2001**

**Procedures for Making Determinations**  
**on the Terms and Conditions**  
**of Interconnection under Section 36A**  
**of the Telecommunications Ordinance**  
**(First Issued: October 1995**  
**Revised: 27 September 2001)**

**Preamble**

This document sets out the guidelines that the Telecommunications Authority (TA) will follow wherever possible in the course of making determinations under section 36A of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”). Should circumstances arise where, in the TA's opinion, it is either not possible or in the best interests of the regulation of telecommunications to adhere to them, the TA will give written notice to this effect to the parties concerned. In addition, the TA reserves the right to amend these guidelines.

**Legal Framework**

Section 36A of the Ordinance empowers the TA to determine the terms and conditions of interconnection of a type mentioned in section 36A(3D) which includes an arrangement among 2 or more parties for:-

- (a) interconnection to and between telecommunications systems or services including:
  - (i) those licensed or expressed as being licensed under the Ordinance, or deemed licensed under the Ordinance by virtue of section 8(3) of the Television Ordinance (Cap. 52);

- (ii) those of a description mentioned in section 8(4)(e) and (f) of the Ordinance, i.e. communal aerial broadcast distribution and closed circuit television systems; and
  - (iii) telecommunications services exempted by an order made under section 39 of the Ordinance.
- (b) access to, or interconnection with, any element of a telecommunications network, system, installation or service on an unbundled basis at any point that is technically feasible;
  - (c) the supply of a telecommunications service in connection with point (a) and (b) above.

2. According to section 36A(2) of the Ordinance, the TA may make a determination on the request of a party to the interconnection or, in the absence of a request, if he considers it is in the interest of the public to do so.

3. Without prejudice to section 36A(2) of the Ordinance, in the first instance, normally, the terms and conditions of interconnection should be resolved by commercial negotiations and agreement wherever possible. When an agreement cannot be reached, either party may request the TA to make an interconnection determination under section 36A of the Ordinance.

#### **TA May Appoint Interconnection Determination Committee**

4. The TA may appoint an Interconnection Determination Committee (Committee) composing of members from the Office of the Telecommunications Authority (OFTA) and, where necessary, other government departments or outside

experts/consultants to assist him in performing his statutory functions under section 36A.

### **Mediation by OFTA**

5. In an attempt to resolve disputes timely and informally, OFTA may offer to mediate the disputes upon the consent of the involved parties at any appropriate time before or during the processing of the determination request. During OFTA's mediation, processing of the determination would be put on hold.

6. The role of OFTA shall remain neutral in the process of mediation to resolve the matter informally. The parties are encouraged to reach commercial agreements by negotiation through OFTA's assistance. Any proposals, recommendations or views made or expressed by OFTA during the mediation will have no binding effect and be without prejudice to the exercise of the power by the TA, as and when he considers appropriate. No liability whatsoever will be assumed by OFTA as a result of acting as the mediator.

7. All representations and submissions made by any party that are solely for mediation purpose will not be used for the processing of determination request unless with the written consent of the party concerned.

### **Stage 1: Consideration of Request for Determination**

8. A party who seeks an interconnection determination from the TA should make a written request to the TA. The requesting party should:

- (a) provide details about the system(s) or service(s) the requesting party operates, any telecommunications licence held etc.;
- (b) specify the party with which the requesting party seeks to interconnect;

- (c) provide description of the proposed interconnection arrangement;
- (d) provide details of any negotiation process between the two parties including the period within which the negotiations took place, the issues discussed, and any points of agreement/disagreement; copies of the relevant records/documents of the negotiation process should also be provided;
- (e) specify the issue(s) and proposed scope of determination on which the requesting party would like the TA to determine; and
- (f) state whether or not the submission can be forwarded to the other party for making representation thereon under the procedure as specified in paragraph 10 below; if not, a proposed version that can serve the purpose should be submitted along with the request for the TA's consideration.

9. Upon receipt of the request, the TA will issue a letter of acknowledgment to the requesting party and indicate whether the request will be processed under time limits for "normal" cases or "complex" cases. The TA may, however, at his discretion to apply a different and appropriate set of time limits to process the case if it is so justified under the considerations stated in paragraphs 34 to 36.

10. The TA will examine the request to see whether it can be dealt with within the framework of section 36A as being a type of interconnection mentioned in section 36(3D) of the Ordinance. If the TA considers that the request cannot be so dealt with, he will notify the requesting party within **one week in "normal" cases, or two weeks in "complex" cases**, of the receipt of the request. If the TA considers that the request can be so dealt with, he will write to the other party, also within **one week in "normal" cases, or two weeks in "complex" cases**, of the receipt of the request, informing it of the request received and asking the other party if it wishes to make a

representation, within **one week in “normal” cases, or two weeks in “complex” cases**, of the TA’s request, as to why a determination should not be made by the TA.

11. Upon receipt of the response from the other party, the TA shall consider, within **one week in “normal” cases, or two weeks in “complex” cases**, of the receipt of the response, whether the request for an interconnection determination should be accepted and processed further by taking into account factors pursuant to section 36A(10) of the Ordinance:

- (a) the Government’s policy objectives for the telecommunications industry;
- (b) consumer interests;
- (c) encouraging efficient investment in telecommunications infrastructure;
- (d) the nature and extent of competition among the parties to the interconnection concerned and their respective abilities to compete with each other fairly;
- (e) such other matters as the TA considers appropriate in the particular circumstances of the case such as:
  - (i) the efforts made by the requesting party to secure an agreement with the other party within a reasonable time;
  - (ii) the chance for both parties to reach a commercial agreement within a reasonable time if the negotiations are to be continued;
  - (iii) the consequences should the TA so decide not to intervene; and
  - (iv) any other relevant information.

## Stage 2: The Proceedings

12. If the TA declines a request to make a determination, the requesting party will be informed of the decision and, where appropriate, the reasons.

13. If the TA decides to accept the request, both the requesting party and the other party will be invited to make written submissions to the TA before a stated deadline, which is **one month** from the date of invitation. The submission should include the following:

- (a) preferred position of the interconnection - the party should state its proposed terms and conditions for the interconnection, including financial and/or technical terms and conditions where applicable;
- (b) substantiation of the position - the party should provide all relevant financial and/or technical information to support its case;
- (c) if any part of the submission is considered confidential, the reasons for maintaining confidentiality - either party may inform the TA, with reasons, that a specific part of its submission contains confidential information and request the TA not to give a copy of that part to the other party in the course of the proceedings and/or publish that part for public information.

14. Both parties shall at the same time copy their submissions to the other parties for comments. In doing so, the part of the submission relevant to confidentiality claim as in paragraph 13(c) may be withheld. The nature or context of such withheld part and the place at which it originally appeared in the submission should be indicated. The confidentiality claim will be handled in accordance with paragraph 17.

15. Information received after the deadline specified in the invitation of submissions will be disregarded. Parties may request in writing an extension of the deadline. Approval will be subject to the discretion of the TA. The extended deadline will apply to both parties.

16. The TA may appoint the Committee referred to in paragraph 4 to assist him in the proceedings.

17. In the circumstances that a party has withheld part of its submission in pursuance of its confidentiality claims, the Secretary to the Committee (where such Committee has been appointed) or the TA, as the case may be, will inform the other party that the request for maintaining confidentiality of whole or part of a party's submission has been made and of the general nature of matters to which the relevant information relates. The other party may, within one week upon such notification, inform the TA if it has any objection to the TA complying with the request and the reasons for the objection. The TA shall decide whether to comply with the request to withhold the information after considering the request and any objection made by the other party.

18. Either party may be requested to provide additional information for clarification before a stated deadline, which is normally in one week's time. Upon submission of such information to the TA, the party shall at the same time copy the information to the other party for comments. Information received after the deadline will be disregarded. Party may request in writing an extension of the deadline. Approval will be subject to the discretion of the TA.

19. Both parties should make comments on the other parties' submissions and submit to the TA within **two weeks in "normal" cases, or one month in "complex" cases**, after the submissions are received. Comments received after the deadline will be disregarded. Parties may request in writing an extension of the deadline. Approval will be subject to the discretion of the TA. The extended deadline will apply to both

parties.

20. The Committee may, where appropriate, prepare a preliminary analysis on the issues involved for the consideration of the TA. The TA may invite each party to make written comments about the preliminary analysis.

21. The TA will issue the preliminary analysis within **one month** of the receipt of the comments on the other party's submissions referred to in paragraph 19. Both parties will be invited to make comments on the preliminary analysis within **two weeks in "normal" cases, or one month in "complex" cases**, of the issue of the preliminary analysis. Parties may request in writing an extension of the deadline. Approval will be subject to the discretion of the TA. The extended deadline will apply to both parties.

22. Each party may be invited to present to the Committee or the TA its case in relation to the determination, with or without the presence of the other party. Such proceedings will be conducted in private.

23. Either party, at any time prior to a determination being made, may make representation to the TA as to why a determination should not be made. This arrangement is to meet the requirement of section 36A(4) of the Ordinance that no determination shall be made unless the parties have been given reasonable opportunity to make representations as to why a determination should not be made.

24. Either party, at any time prior to a determination being made, may give notice to the TA of its concurrence to certain terms and conditions of interconnection for the purpose of section 36A(7) of the Ordinance.

25. The TA may engage consultants to provide expert opinion on any matters he deems necessary or appropriate. In doing so, the TA will take all reasonable steps to avoid possible conflict of interest or breach of confidentiality. If substantial expenses

are to be incurred for the engagement of the consultancy studies, the parties will be informed accordingly so that they may decide whether to proceed or not.

26. The Committee will analyse all written and oral submissions and representations and make a recommendation to the TA on whether a determination of the interconnection should be made and if yes, the terms and conditions for interconnection. Each interconnection determination shall be made on its own merits.

27. The recommendations of the Committee may include the following:

- (a) the facilities and networks involved;
- (b) the level of, and the method of calculating, the charges that any party will pay to another for interconnection and/or supply of facilities, services and information etc. for the purpose of interconnection;
- (c) the points at which interconnection is to be made;
- (d) the technical standards for interconnection;
- (e) the supply by any party to another of any element of a telecommunications network, system or installation;
- (f) the supply by any party to another of any telecommunications or ancillary service;
- (g) the supply by any party to another of any information necessary for the efficient planning and handling of services through the interconnection;
- (h) the sharing of facilities referred to in section 36AA of the Ordinance;

- (i) formula for sharing any costs or expenses for making the determination that are recoverable under section 36A(6), having taken into consideration any defence made under section 36A(7), (i.e. that a party has given written notice to the TA that it concurs with the substance of the terms and conditions as manifested in the determination 30 days before a determination notice is served);
- (j) whether the determination should be published and if so, the amount of information to be released;
- (k) the duration for which the determination will be valid and any provision for further review; and
- (l) any other relevant matters.

### **Stage 3: Promulgation of the TA's Determination**

28. In making a determination, the TA may, where a Committee is appointed, accept the recommendations of the Committee, modify its recommendations, or request the Committee to reconsider specific areas of its recommendations. Where no preliminary analysis is issued, the TA will make a determination within **one month** of the receipt of the comments on the other party's submissions referred to in paragraph 19. Where a preliminary analysis is issued, the TA will make a determination within **one month** of the receipt of the comments on the preliminary analysis referred to in paragraph 21.

29. A notice of the TA's determination shall be served personally or by registered post on both parties in accordance with the requirement in section 36A(5) of the Ordinance. The parties involved will be notified before the outcome of the

determination is published. In doing so, the TA shall have regard to issues of confidentiality and any request made under paragraph 17 above.

### **Variation of an Interconnection Determination**

30. The terms and conditions determined by the TA shall be deemed to be of the essence of any agreement for the interconnection concerned and may not be varied during the period in which the determination has effect unless the TA directs otherwise, in which case the determination may be varied pursuant to the manner as specified in the determination.

31. Where parties to a determination consider that the agreement concerned should be varied, either party may make an application to the TA to make a fresh determination. In considering whether to accept the request for a fresh determination, the TA shall consider the following:

- (a) the Government's policy objectives for the telecommunications industry;
- (b) consumer interests;
- (c) encouraging efficient investment in telecommunications infrastructure;
- (d) the nature and extent of competition among the parties to the interconnection concerned and their respective abilities to compete with each other fairly;
- (e) such other matters as the TA considers appropriate in the particular circumstances of the case such as:
  - (i) the economic and social benefit for varying the determination;

- (ii) the regulatory implications of the proposed variation;
- (iii) the efforts made by the requesting party to secure an agreement with the other party within a reasonable time;
- (iv) the chance for both parties to reach a commercial agreement within a reasonable time if the negotiations are to be continued;
- (v) the consequences should the TA so decide not to make a fresh determination;
- (vi) any other relevant information.

32. The TA may decide to accept the request or decline to make a fresh determination if he is satisfied that there is no sufficient reason why the previous determination should not continue to have effect. The procedures in paragraphs 12 to 29 (inclusive) will apply.

### **Other Procedures**

33. OFTA shall maintain a register of determinations made by the TA and the published materials on the determinations that may be made available to the public.

34. The time specified in the preceding paragraphs for the steps in the determination may be shortened at the discretion of the TA to deal with urgent or straightforward determination.

35. In circumstances where complex analysis or study, with or without assistance from consultants outside of OFTA, is required, or any other factors exist

that make it necessary to lengthen the steps in the determination process, the TA may at his discretion extend such period as appropriate and duly inform both parties with reasons.

36. Under paragraphs 34 and 35, either party may request in writing, with substantiation, to shorten or lengthen, as appropriate, the time limits of all or any of the steps of an individual request for determination for the TA to consider and decide whether to shorten or lengthen the time limits on a case by case basis.

**Office of the Telecommunications Authority**

27 September 2001

**Illustration of Revised Procedures for Making Determinations on the Terms and Conditions of Interconnection under Section 36A of the Telecommunications Ordinance**

**Note:**  
 1. This diagram is for illustration only.  
 2. Numbers in circles correspond to the paragraph numbers in the procedure document.

