

Interconnection and Related Competition Issues
Statement No. 4 (Revised)
“Carrier-to-Carrier Relationship”

Statement of the Telecommunications Authority

18 March 2002

Issue

This Statement is an update of the Telecommunications Authority (TA)'s Statement No. 4 issued on 20 May 1995 on the same subject. On 11 September 2001, the TA commenced a review, in consultation with the industry, on whether and how the interconnection framework and the charging principles set out in the TA's Statements No. 4, 5, 6, 7 (Revised) and 8 should be revised to reflect the evolving competition environment in Hong Kong, and to address new and related interconnection issues that have arisen since the issue of Fixed Telecommunications Network Services (FTNS) licences in 1995. The results of this review have been incorporated into this Statement and the detailed considerations and conclusions of the TA during the review are stated in the TA's Statement entitled "Review of the Telecommunications Authority's Statement No. 4, 5, 6, 7 (Revised) and 8 on Interconnection and Related Competition Issues" issued on 18 March 2002. It needs to be pointed out that this Statement focuses on the "carrier-to-carrier" relationships among fixed services licensees only - it is not directed at others who may be considered as carriers in Hong Kong, for example, public mobile radiotelephone services (PMRS) and personal communications services (PCS) licensees. In this Statement, unless the context otherwise requires, "FTNS Licence" includes "fixed carrier licence" and an "FTNS operator" or "FTNS licensee" includes a "fixed carrier licensee". Where a condition under the FTNS Licence is referred to, the corresponding condition under the fixed carrier licence applies to the fixed carrier licensee.

Status of FTNS Licensees

2. Each FTNS operator is issued with an FTNS Licence or a fixed carrier licence under regulations made pursuant to the Telecommunications Ordinance.

The licence authorises the licensee to

- ♦ provide a public fixed telecommunication network service (“the Service”) - this effectively means any or all telecommunications services between fixed points in Hong Kong, or between fixed points in Hong Kong and fixed points outside Hong Kong;
- ♦ establish and maintain a telecommunications network to provide the Service - this allows the installation and maintenance of telecommunications facilities and lines between fixed points within Hong Kong, or between fixed points in Hong Kong and fixed points outside Hong Kong;
- ♦ possess and use telecommunications installation for radiocommunications to provide the Service;
- ♦ deal in, import and demonstrate radiocommunications customer apparatus to supply the Service.

3. It is the intention of the Government that the FTNS licensees are the primary providers of the network infrastructure in Hong Kong for fixed telecommunications. FTNS licensees are also intended to be the primary suppliers of Hong Kong’s fixed telecommunications services. Accordingly, the FTNS licensees have the status of a “carrier” which means that they establish and maintain telecommunications facilities and lines for the conveyance of messages between places in Hong Kong separated by unleased land or public streets. Telecommunications operators which are not licensed as “carriers” do not operate telecommunications facilities or lines for such conveyance of messages and rely on “carriers” to supply the conveyance facilities. “Carriers” which are FTNS licensees are granted the “utility” status and, where authorized by the TA, have the right of access to land to place and maintain telecommunications lines under section 14 of the Telecommunications Ordinance. The regulatory distinction between FTNS licensees and other service providers in Hong Kong is developed further in the TA Statement, Interconnection and Related Competition, Statement No. 3 - 19 May 1995, “Resale”.

Relationship between FTNS Licensees

4. The FTNS Licence contains conditions governing the manner in which the Service is provided by the licensee to its customers. It is clear from General Condition 10(2) that the “customers” under a FTNS Licence may include the end-users of the Service as well as customers who utilize the Service provided by the FTNS licensee for the provision of a licensed telecommunication service. Thus customers may include resellers, service providers and carriers.

5. The charge made to a customer for the Service must be in accordance with the tariffs published in accordance with the FTNS Licence (General Condition 20(1)) and an FTNS licensee in a dominant position may not offer discounts to its published tariffs (General Condition 20(4)).

6. By virtue of these FTNS licence conditions, an FTNS licensee can acquire services from another FTNS licensee on a “customer” basis. Thus an FTNS licensee can acquire services, for example, leased lines from another licensee at no more than the published tariff, which may be a tariff available to large customers and should this published tariff contain discounts, for example, based on volume usage, then such discounts must be available to carriers on a non-discriminatory basis. However, Government does not intend that the “carrier-to-customer” relationship is the only basis, or indeed the primary basis, whereby FTNS licensees can deal with each other. Since the FTNS licensees occupy a distinct position as the primary providers of fixed telecommunications infrastructure and services in Hong Kong, their primary relationship to each other may be described as “carrier-to-carrier”.

7. The Telecommunications Ordinance has provided for a regime for the dealings between carriers on a “carrier-to-carrier” basis. Section 36A of the Telecommunications Ordinance provides for the power of the TA to determine the terms and conditions of interconnection agreement between FTNS networks and services. Interconnection agreements between carriers are not expected to be based upon the published customer tariffs. A carrier is entitled to negotiate an interconnection agreement with another carrier. Under General Condition 13 of the FTNS licence, each FTNS licensee is obligated to interconnect with other licensees and shall interconnect at charges which are based on reasonable relevant costs incurred so as to fairly compensate for the

costs incurred. The TA has confirmed on a number of occasions that when the TA is called upon to make determinations on the interconnection charge, the charge will be based on the reasonable relevant costs, including the cost of capital. Clearly this means the TA will not consider the customer, or retail, tariffs as being the starting point for his determinations; rather the essence will be on charges that are cost-based. The TA's Statement No. 7 (Second Revision) deals with interconnection charging principles in detail.

8. General Condition 31 of the FTNS Licence provides for the possibility of sharing of facilities among FTNS licensees. This condition empowers the TA to determine the terms and conditions for the sharing of facilities. There is no corresponding obligation for an FTNS licensee to make available its facilities for sharing with a customer. All services offered to customers have to be based on the published tariffs. In the interests of both minimizing environmental disruption and ensuring that the benefits of competition flow to all sectors of the community as quickly as possible, the Government wishes to see sharing of infrastructure, on a fair and economically rational basis. Thus the Government intends that FTNS licensees deal with each other on a "carrier-to-carrier" basis in the sharing of facilities, in accordance with General Condition 31.

9. The FTNS Licence contains other conditions which require the FTNS licensee to cooperate with other FTNS licensees in matters such as road opening and the provision of the printed directory and the telephonic directory service. Taken together the various particular features of the Hong Kong environment, for example, road-opening restrictions, land reclamation conditions and congestion in space and buildings generally, dictate a regulatory policy emphasis on maximising co-operation among FTNS licensees in the provision of infrastructure in common and the provision of interconnection services to one another to ensure rational and efficient supply of facilities and services.

10. The following principles flow from the policy and legal considerations explained above.

Principle No. 1: In the dealings among FTNS licensees and between FTNS licensees, each licensee is entitled to be dealt with on a "carrier-to-carrier" basis.

Principle No. 2: An FTNS licensee is entitled to negotiate with another FTNS licensee for the provision of services or facilities not included in the published customer tariffs, or on terms and conditions not based on the published customer tariffs, but based on the fair compensation for the reasonable relevant costs incurred in the provision of the services or facilities.

Principle No. 3: An FTNS licensee is entitled to negotiate with another FTNS licensee for the provision of services or facilities on an unbundled basis.

Principle No. 4: Where carriers cannot agree terms for the provision of services or facilities to one another, they are entitled to seek regulatory intervention pursuant to the provisions in the Telecommunications Ordinance and the FTNS licence conditions.

Principle No. 5: An FTNS licensee may choose to acquire services from another FTNS licensee under the supplying licensee's standard retail tariffs. Such a voluntary entering into a "customer-to-carrier" relationship would be without prejudice to any rights the licensee may have to acquire the same or similar services under "carrier-to-carrier" arrangements.

Non-Discrimination

11. It is Government policy to promote fair and effective competition among the FTNS licensees. The Government wishes to ensure that the FTNS licensees are treated on a non-discriminatory basis in matters such as access to land for the installation and maintenance of telecommunications lines and the arrangement for access to customers. The Government expects the FTNS licensees to deal with each other on a non-discriminatory basis. Likewise the Government expects FTNS licensees to deal with PMRS and PCS licensees on a non-discriminatory basis.

12. It is the Government's policy that the benefits of competition should reach all sections of the community as rapidly as possible, with telephone users able to access the full range of services on the market, not just those offered by

the network from which they rent their exchange line connection. Clearly consumers expect to receive incremental benefits from competition even if they maintain their existing telecommunications capacities.

13. A number of principles flow from these policies.

Principle No. 6: The FTNS licensees have equal legal status and commercial arrangements among them must reflect this standing as equals.

Principle No. 7: Any customer of any FTNS licensee should be able to call any other customer of another FTNS licensee on a non-discriminatory basis, i.e. the “any to any” principle of symmetrical interworking. Further, to the extent possible, call progression between and within networks should be “transparent” and “seamless” to both the calling and called parties.

Principle No. 8: Each FTNS licensee should have equal opportunity to supply services to customers of other FTNS licensees on a basis which is economically and technically efficient and non-discriminatory as between the licensees in terms of functionality, quality and performance.

Principle No. 9: Each FTNS licensee should treat each other FTNS licensee and its customers on a basis which is non-discriminatory and no less favourable than that it grants to its own operation and customers.

Principle No. 10: To the extent technically feasible, each FTNS licensee should treat each other FTNS licensee and its own operation on a non-discriminatory basis in relation to the technical and operational quality of services provided (including, but not limited to, quality, availability and time of provision).

Exchange of Information between Carriers

14. Forward planning of the network facilities is essential to ensure that a satisfactory quality of service is maintained by each FTNS licensee in the provision of its service to its customers as well as the provision of services or facilities to other FTNS licensees in interconnection and sharing of facilities. It is reasonable for the necessary information to be exchanged among the FTNS licensees for the purposes of planning and operating facilities and services to ensure a satisfactory quality of service. For the reasons stated in paragraphs 8 and 9 above there are also policy imperatives in the specific circumstances of Hong Kong which demand particular care in the establishment of common infrastructure and rational choices being taken in the network development of each FTNS operator. A climate of unfair asymmetry in information flows would not be conducive to meeting the Government's policy intentions. Accordingly the following principles flow from these policy considerations.

Principle No. 11: Carriers should exchange such information as may reasonably be required by each party, including technical, traffic and other essential information, in order to enable each party to plan, establish and maintain its networks, facilities, business and services.

Principle No. 12: Information which is to be exchanged should include that information reasonably necessary to establish interconnection and other related agreements among carriers.

Principle No. 13: All information exchanged is to be kept confidential to the parties, in particular where this information relates to consumer data such as CLI or billing information. This principle does not preclude release of information pursuant to regulatory requirements, or by agreement or when authorized by consumers concerned.

TA's Use of Carrier-to-Carrier Principle

15. The TA expects to see these "carrier-to-carrier" principles adopted both in letter and in spirit in the commercial arrangements among FTNS licensees in Hong Kong. These principles provide a reference framework

regarding the relationships among the FTNS licensees as a result of the particular legal and policy considerations under which competition is being introduced in local fixed telecommunications network services in Hong Kong. Where FTNS licensees do not resolve matters among themselves in a satisfactory manner and the TA intervenes, he will draw upon these “carrier-to-carrier” principles in his consideration of the relevant issues and they may be expected to be incorporated, as relevant, in the TA’s final determinations.

16. The principles are also likely to form a factor in the TA’s analysis of other issues arising from the implementation of fixed telecommunications network services in Hong Kong. Examples may relate to judgements the TA needs to take from time to time on whether particular conduct in the market is anti-competitive or an abuse of dominance or, indeed, whether a carrier retains a dominant position or a carrier acquires dominance. These judgements are often finely balanced and a close examination of the manner in which the “carrier-to-carrier” principles have been implemented, and the extent to which they have been adhered to, are clearly matters which, *a priori*, the TA would have to consider in forming opinions and making judgements.

Office of the Telecommunications Authority
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