

Interconnection and Related Competition Issues
Statement No. 5 (Revised)
“Exchange of Traffic between Interconnected Networks”

Statement of the Telecommunications Authority

18 March 2002

Issue

. This Statement is an update of the TA’s Statement No. 5 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. In this Statement, unless the context otherwise requires, “FTNS licence” includes “fixed carrier licence”.

2. This Statement provides guidance on the exchange of traffic between the networks of the licensees as soon as it is technically feasible to do so, pending final completion of negotiations (or a TA determination) on the interconnection agreements, including the charges to be paid, between them.

Government Policy Objectives

3. The starting point for the TA’s considerations is the Government’s telecommunications policy objectives set out in the Policy Objective booklet issued by the Information Technology and Broadcasting Bureau to accompany the Policy Address by the Chief Executive in October 2000. These are as follows -

- *“to enable Hong Kong to be recognized as a world-class telecommunications centre for doing business”;*
- *“to ensure that Hong Kong has high quality services available at competitive prices”; and*
- *“to ensure that Hong Kong has high performance in telecommunications as measured against the Organisation for Economic Co-operation and Development (OECD) economies”.*

The thrust of these policy imperatives is to promote effective competition, which would in turn maximise consumer benefits and sustain a high performance in the telecommunications sector. Further, a more competitive telecommunications market will encourage private sector investment and innovation necessary for Hong Kong to maintain its position as a world-class telecommunications centre.

4. Consistent with the Government’s “light-handed” and market driven regulatory approach, the TA would not intervene unnecessarily into matters which ought to be resolved through commercial negotiations, and the TA would not intervene until genuine effort had been made to try and resolve the interconnection terms. However, the TA would monitor that this preference for commercial settlement of interconnection disputes would not be exploited so as to hinder the development of competition. It has also been the past practice of the TA to consider intervening on an informal basis, such as through mediation, before considering initiating the formal determination process under section 36A of the Telecommunications Ordinance.

5. Once the TA has decided to intervene under section 36A, a due process is required in order to ensure that the natural justice requirements are met. The TA is mindful of the length of time required to make determinations. The TA issued a Statement entitled “Revision of Procedures for Making Determinations on the Terms and Conditions of Interconnection Agreement” on 27 September 2001. The Statement specifies the time required for each step required in the processing of determination request. This will allow the transparency and certainty to the industry of the time required for the determination proceedings.

TA's Considerations

6. The TA acknowledges that commercial negotiations, particularly those on the financial terms of interconnection, could be time consuming. The TA will closely monitor the commercial settlement of interconnection and regulatory interventions would be warranted should the progress hinder the development of competition. However in making determinations particularly on the financial terms of interconnection, he will need time to fully consider all the issues and may need additional time to investigate the actual costs involved in the networks or facilities concerned.

7. The TA is aware that many of the technical issues are capable of speedier resolution. Indeed it is possible to physically connect networks and pass traffic within a short relatively period of time despite the absence of a commercial agreement. The TA also understands that it is technically feasible for arrangements to be made so that traffic exchanged between two networks in the circumstances described above could be suitably metered and records kept by the network operators concerned.

8. Under such a scenario, there are compelling reasons to put into use immediately facilities which are ready for operation. To act otherwise would be to deny consumers the opportunity to enjoy the benefits of competition at an early date. It would also violate the basic government policy objective to ensure economic efficiency in the provision of telecommunication services if telecommunications infrastructure and facilities are left idle for non-technical or non-operational reasons.

9. The TA has considered the impact on the businesses of the FTNS operators of passing traffic before a final determination of the exact amount of the interconnection charges. The interconnection charges are most likely to be paid reciprocally by network operators to each other depending on the direction of the traffic, this will have a cancelling out effect on the amount of interconnection charges due to any one party. In the absence of a solid case being presented to the TA providing proof otherwise, the TA considers that the financial implications to the FTNS licensees in accepting a retrospective settlement of interconnect charges to be insignificant compared with the normal investment in their businesses.

TA's Views

10. Having considered the relevant issues, the TA has formed the following views:

- When two telecommunications networks are physically interconnected and it is technically feasible for traffic to be passed between the networks, the facilities should immediately be permitted by all the parties concerned to be used for the purposes of testing and the provision of commercial service to customers of both networks.
- In the case of locally originated and terminated traffic, the network operators should keep a record of the amount of traffic flowing in each direction between their networks and a retrospective payment should be made in accordance with the charging methodology once finally resolved. If the elapsed period between usage and payment exceeds three months, the paying party should also bear a market interest on the amount due in excess of three months. The TA would be prepared to determine a market interest rate if the parties could not resolve this commercially.
- In the case of international traffic exchanged between a local fixed telecommunications networks and an external network operator, the prevailing modified delivery fees/local access charges should be used immediately for settlement in the normal manner.

11. This Statement is being issued as a guideline, pursuant to section 6D of the Telecommunications Ordinance.

Office of the Telecommunications Authority
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