

**HKTUG's Response to Telecommunications (Amendment) Bill 2002 on
Merger & Acquisition regulation – dated 20 Feb 2003**

Greeting from the HK Telecommunications Users Group (HKTUG).

With reference to your letter on 7 January inviting submission of written views, the HKTUG would like to comment on the principles of the bill before responding to the consultation areas of the guidelines. Overall, HKTUG welcomes the policy objectives of the proposed regulation in order to ensure consumer interest while allowing M&A as usual business activities.

1. Competition

The HKTUG has been advocating the liberalization of the telecommunication since our inception before the establishment of OFTA. As such HKTUG is pro-competition and pro-consumer. We believe that an effective competition regime will benefit all players in our industry. Many in the telecom industry believed that the competition has benefited only consumers to the detriment of the industry. We believed that this is inaccurate. Since the opening of the telecom market in Hong Kong in 1995, all telecom users, both consumers and businesses have benefited immensely from improved services and pricing reductions, all these could not have happened without competition. However, it is not only the users or the demand side that have benefited, the telecom sector itself has grown and has created many more employment opportunities for both carrier and non-carrier service providers.

Undeniably building a telecom infrastructure is capital intensive and time consuming with an initial investment period spanning at least 3 to 4 years. However, once these infrastructures are in place, the reward and returns on investment could be substantial for the coming years. And we would like to point out that very few telecom companies in the industry have been bankrupted despite investment that is inherently not risk free.

While the investors and operators should know the risk involved, the government has not changed the regulatory policy since the telecom liberalization. We believed that the proposed M&A Bill aims to preserve the pro competition stance of the policy and would not adversely affect investors' opportunities to make reasonable returns.

On the contrary, pro-competition can be argued to allow a level playing field for new entrants or investors who perceived unexploited opportunities which have not been developed by current players.

As over 80% of Hong Kong's economy is service based oriented, low telecommunication cost is a countervailing factor for those other perceived or actual high cost of doing business in Hong Kong. A highly competitive and competent telecommunication industry has become a crucial supporting infrastructure for Hong Kong's economical survival.

With hindsight, we are extremely glad that the government has opened the market and adopted the pro-competition stance early on and have created a vibrant telecom market than many of our competitors in the region and the world.

As M&A activities have the effect of reducing the number of players and consolidating market forces to create a less competitive environment, we feel that the proposed M&A Bill is relevant and necessary to safe-guard the improvements and benefits created by the opening the telecom market. Furthermore, the public has paid billions of dollars to compensate the former monopoly for early opening of the telecom market we feel that if the pro-competition stance is weakened then those billions spent would have been squandered.

2. Sector Specific regulation on M&A activities

We certainly believed as a long term direction, Hong Kong would benefit from having a general anti-trust legislation, particularly in many sectors of our economy where presently it is dominated by a couple of large firms. However, in view of the long lead-time required to prepare the public and industries of such reforms, we should not let the slower developments of these sectors drag the development of the telecom sector that our economy is dependent on today.

Further, telecommunication is a specialized industry that we believe that it should be regulated by experts with special training and knowledge. We are of the opinion that those resource-constraint services such as those relying on spectrum and access to building/road should be regulated while the value-added services should be left to market force. OFTA is best placed to take on this role in the regulation of M&A activities of telecom sector with its pool of experts and the government backing. This is more or less in line with the regulatory framework of many developed economies overseas.

Now we can turn to respond to specific issues in the guideline.

Arrangement for TA to receive representation

1. Users' Consultation

In deciding whether a certain M&A should proceed or not and whether certain products/services are real substitutes of other products/services, we believe that no other industry groups are more appropriate than the users of these services in providing feedback and comments regarding these issues. We would like to propose that the government would, in addition to the

involved parties, hear the users' view in the form of a public hearing or submission of opinions for pending cases.

2. Continuity and level of services after the M&A

Besides sufficient competition as described in the consultation paper, the key concern of the HKTUG as an user community is the continuity and level of services caused as a result of such M&A activities. It is therefore appropriate to highlight this aspect in the Guideline document.

Wish the Legco a fruitful meeting.