

Telecommunications Regulatory Affairs Advisory Committee

Minutes of the Fourth Meeting Held on Tuesday, 22 August 2013 at 2:30 p.m. in OFCA Conference Room, 20/F Wu Chung House

Present

Mr Danny Lau	Office of the Communications Authority (OFCA) (Chairman)
Mr Chaucer Leung	OFCA (Secretary)
Ms Agnes Tan	Wharf T&T Limited (Wharf T&T)
Mr Raymond Chan	Hong Kong Cable Television Limited
Mr Joseph Leung	Hong Kong Wireless Technology Industry Association
Dr Victor Hung	Consumer Council
Hon Charles Mok	Hong Kong Information Technology Federation
Mr Peter Lam	PCCW-HKT Telephone Limited, Hong Kong Telecommunications (HKT) Limited and Genius Brand Limited (HKT)
Mr Robert Sze To	Hong Kong Police Force
Mr T L Or	SmarTone Communications Limited and SmarTone Mobile Communications Limited (SmarTone)
Ms Juliana Wong	Hutchison Global Communications Limited and Hutchison Telephone Company Limited
Mr Vincent Lam	The Institution of Engineering and Technology Hong Kong
Mr York Mok	Ad personam
Mr Sutton Cheung	ComNet Telecom (HK) Limited (ComNet)
Mr Y H Chan	External fixed operators as a group
Mr Allen Law	Services-based operators (SBOs) as a group
Ms Christine Lee	Mobile virtual network operators (MVNOs) as a group
Ms Eva Chan	Ad personam

Mr Marcus Vass	Hong Kong Telecommunications Users Group
Mr Eric Yeung	Small and Medium Enterprises
Mr Stephen Chan	External telecommunications services (ETS) providers as a group
Mr Andrew Hung	HKC Network Limited
Mr Clifford Ho	Towngas Telecommunications Fixed Network Limited
Mr Brian Ho	TraxComm Limited
Mr Peter Wong	The Hong Kong Institution of Engineers
Mr Mike Pan	China Mobile Hong Kong Company Limited
Mr Steven Yau	Hong Kong Broadband Network Limited
Mr Desmond Young	CSL Limited
Mr Gilbert Chan	Communications Association of Hong Kong
Mr Richard Leung	New World Telecommunications Limited

In Attendance

Mr Kenneth Kwok	ComNet
Mr W H Tang	HKT
Mr Eric Lee	SmarTone
Mr Malcolm Leung	Wharf T&T
Mr T F So	OFCA
Mr Sammy Li	OFCA
Mr Sidney Tsan	OFCA
Ms Helen Lai	OFCA
Mr Kingsley Yeung	OFCA
Ms Winnie Ng	OFCA
Ms Pancy Cheng	OFCA
Ms Olive Wong	OFCA
Mr Wilson Lee	OFCA

Absent with Apologies

Mr Raymond Wong	Paging operators as a group
Ms Christy Ditchburn	Telstra International HK Limited and Telstra International Limited
Ms Fannie Cheung	Ad personam
Prof Xu Yan	Ad personam
Dr Andrew Simpson	Ad personam

The Chairman welcomed Members to the fourth meeting of the TRAAC. He said that following the retirement of Mr Y K Ha, the former Chairman, in May 2013, he had succeeded Mr Ha as the new chairman of the TRAAC. The Chairman also introduced two new members, Mr Mike Pan from China Mobile Hong Kong Company Limited as well as Mr Steven Yau from Hong Kong Broadband Network Limited, to the meeting.

Item 1 Confirmation of Minutes of Last Meeting

2. The Chairman advised that the draft meeting minutes of the third TRAAC meeting were circulated to Members for comment on 21 May 2013. As there was no comment received from Members, the minutes of the third meeting held on 24 April 2013 were confirmed without amendment.

Item 2 Matters Arising

Item 6 of the Minutes of the Second TRAAC Meeting - Restriction of Certain Mobile Terminals in respect of LTE Networks

3. The Chairman informed Members that the proceedings in respect of the application for judicial review and the appeal with the Telecommunications (Competition Provisions) Appeal Board were still on-going. As an update, the Appeal Board had issued a decision on 4 June 2013 that it had no jurisdiction to hear the appeal. Following this,

the appellant had applied to the Appeal Board, to which the Chairman of the Appeal Board accepted, to state the case to the Court of Appeal. The Chairman of the Appeal Board was now considering and would decide the terms of the case stated to the Court of Appeal, having regard to the submissions of the parties on the proposed terms.

Item 4 of the Minutes of the Third TRAAC Meeting - The New International Telecommunication Regulations (ITRs) and Impacts on the Telecommunications Regulatory Regimes in Hong Kong

4. The Chairman said that, subsequent to the last TRAAC meeting, Mr Stephen Chan had contacted OFCA expressing interest in participating in, and enquiring on the progress about, the working group which may be established for/tasked with following up the calling line identification matter. For information of Members, the concerned matter was still under consideration by OFCA and we would aim at providing an overview of the next steps in the next meeting.

Progress of the Next Generation Network Working Group (NGN WG)

5. The Chairman briefed Members that the NGN WG had convened the third NGN WG meeting on 30 April 2013 shortly after the third TRAAC meeting, and the fourth NGN WG meeting had been scheduled for 30 August 2013. The Chairman said that the NGN WG would give an update in the TRAAC when there was progress on the relevant matters.

6. The Chairman said that there was no other outstanding item in the minutes, other than the matter related to progress of the Telecommunications Numbering Working Group (TNWG) which would be discussed in the agenda item no. 3.

Item 3 Re-allocation of Number Blocks within “8x” Level for Mobile Services (TRAAC Paper No. 4/2013)

7. At the invitation of the Chairman, Mr Sidney Tsan gave a

presentation¹ on the progress of the TNWG and the proposed re-allocation of “8(4-7,9)x” for mobile services (and as a consequential amendment, release of “38(4-7,9)x” for fixed services). The Chairman pointed out that the proposal was a straightforward arrangement, with an aim to coping with the ongoing demand of numbers for mobile services. If the proposal was adopted, there would be about five million mobile numbers available which, based on the current consumption rate, would be able to support mobile subscriber growth until around April 2017.

8. In response to Ms Agnes Tan’s enquiry about the feasibility of re-allocating “7x” numbers for mobile services, Mr Sidney Tsan said that numbers prefixed with “7” (viz. “7(1-9)x”) were currently allocated for paging services. Over the years, although there was a large amount of numbers which had been returned to OFCA, there was still a material amount of numbers which were being in use by paging customers and these numbers were scattered in all “7(1-9)x” levels. Mr Tsan said that the TNWG would in due course conduct a study on how to better utilise numbers within “7(1-9)x” levels. Mr Chaucer Leung added that, in view of the need for the possible number migration in the future, care should be taken in considering whether or not another leading digit (e.g. “7x”, which might be used for 9-digit number migration) would be re-allocated for other telecommunications services.

9. For the purpose of illustration, Mr Sidney Tsan referred to Annex of the presentation slides which gave an overview of four possible number migration options, viz. (a) the “3&8” Option, (b) the “3&7” Option, (c) the “7” Option, and (d) the “33&88” Option. Under these options, one or more leading digit(s) “3”, “7” and “8” would be added to the existing 8-digit numbers to form a 9-digit or 10-digit number. Mr Tsan drew Members’ attention that should the proposal on re-allocation of “8(4-7,9)x” for mobile services be adopted, the “3&8” Option would have to be dropped. As regards future number migration plan, Mr Tsan said that neither OFCA nor the TNWG had come to a conclusive view on the way forward of the concerned matter.

10. In response to Ms Agnes Tan’s enquiry on the follow up of the

¹ The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac04_2013_p.pdf.

number migration matter, the Chairman said that the TNWG would continue to facilitate discussion on the numbering matters including the future number migration plan, and would from time to time make recommendation to the TRAAC for deliberation.

11. As Members did not have any comment on or objection to the proposal, the Chairman said that OFCA would proceed with making the necessary recommendations to the Director-General of Communications (DG Com) for endorsement. OFCA would update the numbering plan as well as other relevant documents after the approval of the DG Com.

Item 4 Radiation Safety of Mobile Phone Base Stations (TRAAC Paper No. 5/2013 - Presentation Slides)

12. Mr Sammy Li gave a presentation² on the matter related to radiation safety of mobile phone base stations, which had attracted public attention recently. Mr Li explained that the current radiation safety standard was adopted in consultation with the Department of Health, based on the recommendation by the International Commission on Non-ionising Radiation Protection (ICNIRP). The lower the radio frequency, the more stringent the ICNIRP limits would be. According to the World Health Organization (WHO), there was no convincing scientific evidence to suggest that non-ionising radiation (NIR) levels below the ICNIRP limits would cause adverse health effects.

13. The Chairman said that the “Code of Practice for the Protection of Workers and Members of Public Against Non-Ionising Radiation Hazards from Radio Transmitting Equipment” (Code of Practice) was issued by the former Telecommunications Authority in May 2000.³ Since then, there had not been any revision to the ICNIRP limits and hence amendments made to the Code of Practice. The Chairman and Mr Sammy Li pointed out that all mobile network operators (MNOs) were required to observe the Code of Practice to ensure that their radio base

² The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac05_2013_p.pdf.

³ The Code of Practice is available at http://tel_archives.ofca.gov.hk/en/code/practice/cop-radiation-hazards.pdf.

stations (RBS) should not generate an NIR level exceeding the ICNIRP limits in public areas on an overall basis. Moreover, the MNOs were required to provide OFCA with measurement reports within one month from the commencement of operation of their RBS to demonstrate compliance of NIR levels with the safety standard. OFCA would perform regular sample checks in the vicinity of the RBS sites. To address the concern of public about radiation safety, OFCA would also send inspectors to conduct on-site NIR measurements upon request of the public.

14. Drawing on the success of past publicity programmes on mobile roaming and telecommunications service contract, Mr Peter Lam suggested OFCA to do the same concerning radiation safety, as MNOs often faced with these concerns from the local community when acquiring RBS sites. He considered that media channels such as radio and television would be an effective means to deliver the radiation safety message to the mass public. In response, the Chairman said that, if OFCA was to launch mass media publicity on the subject matter, it might raise unnecessary alarm in the community. On the other hand, the Chairman considered that the present communication approach along with publication of relevant materials on OFCA's website would be sufficient and appropriate for the time being.

15. Concerning the radiation safety standards, the Chairman said that, while the ICNIRP standard was being adopted by many countries, some countries might adopt a different standard. For example, Mainland China had adopted more stringent requirements as compared with the ICNIRP standard.

16. In response to Ms Agnes Tan's enquiry on the number of public enquiries received and measurement and approval procedures, the Chairman said that OFCA conducted NIR measurements almost every working day. In addition, OFCA already planned to conduct more proactive checks on the NIR levels of RBS. Mr Sammy Li added that, according to the Code of Practice, the MNOs were required to ensure that their newly RBS should not generate an NIR level exceeding the ICNIRP limits in public areas on an overall basis. That was to say, if an MNO would like to install a new RBS at a particular site location, it had to

ensure that the overall NIR level measured in the vicinity of the particular site would still be within the ICNIRP limits after the installation, before an approval might be granted by the Communications Authority (CA).

17. Mr Brian Ho asked whether the NIR measurements would be made at street level or at rooftop in the close vicinity of the antenna. In response, Mr Sammy Li said that OFCA would perform site inspection and conduct measurements on the overall NIR level at that particular RBS site, as well as site monitoring of the NIR level at the street level. The Chairman added that the overall (or aggregate) NIR level in the vicinity of the rooftop would in general be much higher than that at the street level. While measurements would generally be made at the rooftop, depending on circumstances, OFCA would conduct measurements in public areas where they were accessible by the general public.

18. In response to Mr Brian Ho's enquiry on whether OFCA would respond to occasional study reports or newspaper stories on NIR emitted by mobile device itself, the Chairman said that the WHO should be the authority in this respect. Occasional study reports were not uncommon but their findings were not conclusive. The Chairman said that OFCA would monitor the latest development in radiation safety standards and from time to time seek the professional advice of the Department of Health in order to safeguard public health.

Item 5 Review of Carrier Licence Conditions concerning Road Opening Works (TRAAC Paper No. 6/2013 - Presentation Slides)

19. Ms Helen Lai gave a presentation⁴ on OFCA's preliminary review of the carrier licence conditions concerning road opening works. According to Ms Lai, a number of carrier licence conditions had been identified to have duplicated with the cross-sectoral regulatory regime under the Lands (Miscellaneous Provisions) Ordinance (LMPO), excavation permit (XP) and other relevant laws. Moreover, according to

⁴ The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac06_2013_p.pdf.

the Highways Department (HyD), telecommunications licensees were the only type of road openers which were regulated under both the sectoral and cross-sectoral regimes concerning road opening works. Against this background, OFCA conducted a review based on a set of criteria listed in the presentation and proposed to remove from the unified carrier licences the identified licence conditions concerning road opening works. For the avoidance of doubt, the information given in the presentation was only the preliminary view of OFCA. Public consultation would be conducted before any decision was to be made on the way forward with the identified licence conditions

20. Mr Richard Leung asked whether OFCA had a timeline for the public consultation. In response, the Chairman and Ms Helen Lai said that OFCA aimed at issuing a consultation paper around end 2013 or early 2014, subject to the endorsement of the CA.

21. In response to Ms Agnes Tan's enquiry on why the licence conditions concerning road opening works were transplanted from the Telephone Ordinance to the Fixed Telecommunication Network Services (FTNS) Licence, the Chairman said that when those licence conditions were first imposed under the Telephone Ordinance, there was no cross-sectoral control on road opening works and it was justified to introduce such sector-specific control under the telecommunications regulatory regime. When the local fixed market was liberalised in 1995, there was a need to issue FTNS Licences to the incumbent and the new entrants. Provisions concerning road opening works were transplanted from the Telephone Ordinance to the FTNS Licences so as to preserve the regulatory powers of the relevant authorities and ensure a fair regulatory treatment for the incumbent and the new entrants at that time.

22. From a practical point of view, Ms Helen Lai considered that the XP regime would be a more comprehensive and effective regulatory instrument to regulate road opening works as compared with the licence conditions, in view of the fact that the HyD had made revisions to the XP 14 times during the past 10 years and breach of conditions of the XP might be subject to criminal liability. Mr Chaucer Leung added that the approach of removing the licence conditions overlapping with the cross-sectoral regime was analogous to the repeal of section 7M of the

Telecommunications Ordinance (TO) after the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 came into effect on 19 July 2013, as it was not necessary to have both regimes on basically the same matter.

23. Mr Peter Lam queried, in the absence of the existing licence conditions, whether the Director of Lands (DL) or the Director of Highways (DH) would be able to mandate a defaulted telecommunications licensee to take remedial actions to the satisfaction of the DL/DH. In response, the Chairman said that the relevant authorities were expected to put in place appropriate provisions or measures to ensure full compliance with the LMPO and the XP by all road openers.

24. With a view to minimising damages to underground telecommunications facilities in particular optical fibre cables, Mr Peter Lam appealed for a new legislation for statutory protection of telecommunications facilities to an extent comparable to that for other public utilities such as electricity, gas and water (i.e. depending on the nature and gravity of the breach in the circumstances, defaulted contactor or personnel might be liable to a criminal offence). According to Mr Lam and Ms Agnes Tan, telecommunications licensees currently could only recover manpower and material costs of repairing the damaged facilities under the TO, and they considered that the existing provisions did not serve as a strong deterrent to civil work contractors from causing damages to the telecommunications facilities. To Mr Lam's understanding, Singapore had already had legislative provisions for statutory protection of telecommunications facilities.⁵

25. In response, the Chairman said that sections 18(1) and (2) of the TO already required that –

⁵ For example, section 32 of Singapore's Telecommunications Act (Cap 323) states that "Any person who digs, bores, trenches, grades, excavates or breaks any ground with any mechanical equipment or explosive or allows his employee or agent to do so without first ascertaining the location of any telecommunication cable belonging to or under the management or control of any telecommunication system licensee that may be interfered with shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both."

(<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId:d8c9baf0-d690-4318-9fbf-6254d27f3b47%20Depth:0%20ValidTime:01/02/2012%20TransactionTime:21/02/2012%20Status:inf orce:rec=0;whole=yes>).

“(1) Any person who proposes to carry out on any land or seabed work that may affect a telecommunications line or radiocommunications installation maintained by the Authority or a licensee in, over, upon or near the land or seabed shall give to the Authority or the licensee, as the case may be, notice in writing of his intention to carry out the work.

“(2) All reasonable precautions shall be taken in the carrying out of such work to prevent damage to any telecommunications line or radiocommunications installation maintained by the Authority or a licensee ..., and the Authority or the licensee, as the case may be, may recover from the person on whose behalf the work is carried out any expenses incurred in making good any damage to a telecommunications line or radiocommunications installation caused by a failure to take such precautions.” (emphasis added).

26. As to whether or not there should be a new legislation or amendments to the TO to impose criminal sanctions on a contractor or personnel for causing damages to telecommunications facilities, the Chairman said that OFCA had, in response to the request by HKT, offered comments to the policy bureau for its considerations. In respect of legislative proposals, Mr Charles Mok, in his capacity as the Legislative Councillor, added that he would discuss and work with the relevant departments and the industry on the subject matter, and seek inputs from OFCA on whether telecommunications infrastructure should be considered as an important utility requiring additional protection.

27. The Chairman added that, after OFCA had expressed concerns to the HyD concerning damages of telecommunications facilities, he understood that the HyD had already tightened the approval criteria for contractors. In fact, it appeared to be a general practice that telecommunications operators and large enterprises would equip themselves with redundant facilities and diversified routes to ensure their network or service resiliency.

28. Mr Gilbert Chan asked whether the Lands Department or the

HyD possessed necessary telecommunications expertise in enforcing the minimum depth requirement. The Chairman explained that the minimum depth requirement was related to the management and structural safety of public roads rather than telecommunications systems. Concerning depth measurement, he said that the measurement method was not as straightforward as it appeared to be. Even for the DH, who was the statutory authority enforcing the minimum depth requirement, the minimum depth measured had once been successfully challenged in the court on ground of merits. The Chairman and Mr Chaucer Leung added that, upon completion of the road works, telecommunications operators were required to take and submit photographs to the HyD for confirmation that they had met the relevant conditions under the XP.

29. In response to the enquiries of Mr Brian Ho and Mr Peter Lam, the Chairman and Ms Helen Lai clarified that the forthcoming public consultation, if so conducted, would focus on the carrier licence conditions and would not cover the provisions under the TO. It was worth noting that the proposed removal of the identified licence conditions concerning road opening works would not prejudice the CA's power in coordinating road opening works among telecommunications licensees.

Item 6 Fourth Generation Regulation: Driving Digital Communications Ahead (TRAAC Paper No. 7/2013 - Presentation Slides)

30. At the invitation of the Chairman, Mr Kingsley Yeung gave a presentation⁶ on the topic “Fourth Generation Regulation: Driving Digital Communications Ahead”. According to Mr Yeung, this topic was the main theme at the 13th Global Symposium for Regulators and Regulatory Associations Meeting of the International Telecommunication Union held in Poland in July 2013. Besides the main theme, there were other specific issues discussed at the symposium, including building the future digital society, looking for spectrum, migration of Internet Protocol (IP) version 4 to IP version 6, maximising the potential of universal

⁶ The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac07_2013_p.pdf.

service fund, and broadband interconnection charging. Based on Mr Yeung's observation, most of the issues discussed at the symposium were not new to Hong Kong. They confirmed that the current regulatory approach adopted in Hong Kong was in line with the international best practices.

31. In sum, the Chairman said that OFCA would continue to keep track of the latest development on various issues and matters discussed at overseas fora, and would report as necessary in the TRAAC for Members' information.

Item 6 Any Other Business

32. The next TRAAC meeting would be convened in December 2013 tentatively. If Members have any topics which might be of interest to the TRAAC or to other Members, they were invited to submit the relevant topics / papers to the Secretary for further arrangement.

33. There being no other business, the meeting was adjourned at 4:30 pm.

**Office of the Communications Authority
October 2013**