

Telecommunications Regulatory Affairs Advisory Committee

Minutes of the Eleventh Meeting Held on Thursday, 23 June 2016 at 2:30 p.m. in OFCA Conference Room, 20/F Wu Chung House

Present

Mr Chaucer Leung	Office of the Communications Authority (OFCA) (Chairman)
Mr Sanda Cheuk	OFCA (Secretary)
Ms Agnes Tan	Wharf T&T Limited (Wharf T&T)
Mr Raymond Chan	Hong Kong Cable Television Limited
Mr Gilbert Chan	Communications Association of Hong Kong
Mr Peter Lam	PCCW-HKT Telephone Limited, Hong Kong Telecommunications (HKT) Limited and Genius Brand Limited (PCCW)
Mr Brian Ho	TraxComm Limited
Mr TL Or	SmarTone Communications Limited and SmarTone Mobile Communications Limited (SmarTone)
Mr Kelvin Ma	The Institution of Engineering and Technology Hong Kong
Ms Jacqueline Leung	Towngas Telecommunications Fixed Network Limited
Mr York Mok	Ad personam
Mr Allen Law	Services-based operators (SBOs) as a group
Mr Sutton Cheung	ComNet Telecom (HK) Limited (ComNet)
Ms Eva Chan	Ad personam
Mr Karson Ng	China Telecom Global Limited
Mr Donald Chan	NTT Com Asia Limited
Prof Xu Yan	Ad personam
Mr Brian Chan	21 ViaNet Group Limited
Mr Andrew Hung	HKC Network Limited
Dr Andrew Simpson	Ad personam

Ms Juliana Wong	Hutchison Global Communications Limited and Hutchison Telephone Company Limited
Ir Andy Lam	The Hong Kong Institution of Engineers
Mr Indarto Nata	Mobile virtual network operators (MVNOs) as a group
Dr Victor Hung	Consumer Council
Mr Richard Leung	Hong Kong Broadband Network Limited / New World Telecommunications Limited

In Attendance

Mr Malcolm Leong	Wharf T&T
Mr WH Tang	PCCW
Mr Kevin Chu	PCCW
Mr Eric Lee	SmarTone
Mr Kenneth Kwok	ComNet
Ms Elaine Hui	OFCA
Mr SK Yiu	OFCA
Mr Kingsley Yeung	OFCA
Ms Linda Yu	OFCA
Mr Eddy Ng	OFCA
Mr WK Luk	OFCA
Mr Alvin Li	OFCA
Mr John Wong	OFCA
Ms Karen Kwan	OFCA
Ms Sharis Tam	OFCA
Ms Tara Ng	OFCA
Ms Maggie Fung	OFCA

Absent with Apologies

Mr Alex Cheng	China Mobile Hong Kong Company Limited / China Mobile Hong Kong Corporation Limited
Mr Raphael Ho	Equinix Hong Kong Limited
Mr Fred Lam	Hong Kong Police Force
Mr Ken Yiu	Hong Kong Mobile Television Network Limited

Mr Billy Yeung	Hong Kong Wireless Technology Industry Association
Mr Stephen Chan	External Telecommunications Services (ETS) operators as a group
Mr Raymond Wong	Paging operators as a group
Mr Eric Yeung	Small and Medium Enterprises
Mr Paul Abfalter	Telstra International HK Limited and Telstra International Limited, and External fixed operators as a group
Ms Fannie Cheung	Ad personam

The Chairman welcomed Members to the Telecommunications Regulatory Affairs Advisory Committee (TRAAC) meeting.

Item 1 Confirmation of Minutes of Last Meeting

2. The Chairman advised that the draft minutes of last meeting had been circulated to Members for comment on 31 March 2016. As there was no comment received from Members, the minutes of the tenth meeting held on 21 January 2016 were confirmed without amendment.

Item 2 Matters Arising

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

3. At the invitation of the Chairman, the Secretary updated Members that OFCA and network operators had been working on a set of NGN development indicators. Based on the updates of NGN indicators provided by operators by the end of March 2016, OFCA had compiled the results and distributed to the concerned operators. In respect of discussion in the NGN WG on adding a new item, “fibre to the home (FTTH) penetration” to the NGN development indicators report, OFCA would prepare a proposal and seek comments from operators. In addition, OFCA proposed to establish a new Technical Regulatory

Working Group (TRWG) and subsume all the existing matters handled by the NGNWG under the new TRWG, which would be discussed in the agenda item 6 of this meeting.

Item 3 Further Discussion on Intrinsic Benefits in Universal Service Provisioning (TRAAC Paper No. 4/2016)

4. The Chairman advised that this item was a follow-up to the discussion at the last TRAAC meeting, with OFCA having made enquiries with the relevant regulators in Europe about their calculation methodologies on intrinsic benefits in universal service provisioning, and Members having provided written comments as agreed in the last meeting to facilitate further discussion on the subject.

5. The Chairman invited declaration of interest by Members with reference to the principles laid down in the guidelines entitled “*Declaration of Interests by Members of Public Sector Advisory and Statutory Bodies - Guidelines for a One-tier Reporting System*”¹.

6. Dr Andrew Simpson declared that he had been engaged by PCCW as an independent consultant to undertake research on the matter, and the research conclusion reflected his own opinion as well. Since the TRAAC had an advisory function and did not have a role of decision-making on the subject, the Chairman was inclined to allow Dr Simpson to join the discussion. Members did not raise any objection. Mr Brian Ho suggested treating the comments of Dr Simpson and PCCW as one single source of comments. The Chairman took note of the suggestion.

7. Mr Kingsley Yeung gave a presentation summarising the results of enquiries with the relevant regulators in Europe and the comments received from Members. If the initiative was to be further pursued,

¹ According to the guidelines, if a member (including the chairman) has any direct personal or pecuniary interest in any matter under consideration by the committee, he must, as soon as practicable after he has become aware of it, disclose to the chairman prior to the discussion of the item. The chairman (or committee) shall decide whether the member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.

there might be a need to first carry out a consumer survey to assess the presence and if so, the significance of intrinsic benefits in the local context. The survey, if conducted, would be funded by the Special Revenue Pool (SRP).

8. Mr Peter Lam said that the environment in Hong Kong was quite different from those countries adopting intrinsic benefits. Not many people in Hong Kong were even aware of the concept of universal service obligation (USO) and PCCW did not advertise itself as the universal service provider (USP). There was also no marketing benefit to PCCW because commercial advertisement on public payphones kiosks was prohibited according to the block licence issued by the Lands Department.

9. Ms Agnes Tan considered that since PCCW's logo was prominently displayed on the public payphones kiosks, it was arguable that PCCW had gained some marketing benefits in operating public payphones. She suggested reviewing the number of public payphones as a large portion of USO cost was attributable to uneconomic payphones. She also reiterated the need to have a comprehensive review of the current universal service contribution (USC) arrangement and to reduce the financial burden to licensees in paying USC.

10. The Chairman said that there were no universal formulae in the calculation of intrinsic benefits and a lot of assumptions were involved. He would like to seek Members' views on whether to go ahead with a local survey to assess general public's awareness of the concepts of USO and USC, and whether customers' choice of PCCW's services was influenced by the role of PCCW as the USP.

11. Dr Andrew Simpson considered that there was no demonstrated need to assess any intrinsic benefits in universal service provisioning in Hong Kong. According to his research, agencies that had given consideration to intrinsic benefits had explicitly recognised that quantification was a fundamentally difficult task. A lot of estimations and assumptions were involved in the calculation. The validity of these estimations and assumptions could not be taken for granted under Hong Kong circumstances, and there were costs involved in collecting the data.

Unless there was evidence that the industry itself or consumer welfare was suffering from the lack of intrinsic benefits assessment, it was not in the public interest to pursue the matter.

12. Mr Peter Lam said that SRP fund should be spent wisely because the fund belonged to industry players. He suggested that if there was a need to conduct a local survey, it should also address the more fundamental needs of the general public, such as whether the scope of universal service should be expanded to cover broadband service. The Chairman advised that intrinsic benefits and the scope of universal service were separate matters. Whether the scope of universal service should be expanded was indeed a public policy which was outside the ambit of the Communications Authority (CA) as a telecommunications regulator.

13. Ms Agnes Tan doubted who would be the targets of the survey and what could be achieved from the public when they were not aware of the concepts of USO and USC. She also considered that the survey should be funded out of the OFCA Trading Fund. The Chairman replied that, as a matter of principle and standing practice, the local survey should be funded by the SRP. Mr Kingsley Yeung supplemented that the SPR had been used for funding USC related activities, such as the updating of the USC costing model due to revised methodology in 2007. The SRP had also been used for reducing the USC payable by USC contributing parties since 2010.

14. Mr Richard Leung asked whether there was fund available under the SRP since the last CA statement on USC levels stated that the SRP balance was reduced to zero after funding the USC for 2012 and 2013. The Chairman advised that there was recurrent income to the SRP so long as PCCW continued to make use of public payphones kiosks for deployment of Wi-Fi services. Mr Kingsley Yeung supplemented that more than \$2 million per year would be paid to the SRP as a result.

15. Ms Juliana Wong asked whether OFCA had any detailed plan on the survey if it should be conducted. The Chairman replied that while the survey could be carried out by a local institution with sampling on some telecommunications users about their views on the matter, he would

like to seek Members' views whether it was worthwhile to conduct the survey in the first place. Miss Elaine Hui elaborated that OFCA was not taking the position that a survey should be conducted but this might be a practical way forward if Members wished to take the matter of intrinsic benefits further.

16. Ms Juliana Wong enquired about the status of reviewing the number of public payphones eligible for USC. Mr Kingsley Yeung replied that OFCA had been reviewing the number of eligible payphones from time to time. He said that, based on the criteria stipulated in the USC regulatory framework in 2007, about 300 out of 3,600 public payphones would be excluded from USC calculation for 2014. Ms Agnes Tan asked whether the criteria included consideration of payphone usage. Mr Yeung explained that the criteria were established in the 2007 review and they did not include consideration of payphone usage level.

17. Mr Brian Ho suggested that the four types of intrinsic benefits (viz. enhanced brand recognition benefit, ubiquity benefit, marketing benefit and life-cycle benefit) could be considered separately for Members to decide whether they were applicable to the Hong Kong environment. If Members' responses were positive, then OFCA should proceed to design the survey details.

18. The Chairman explained that the purpose of the survey was only to assess whether or not intrinsic benefits were relevant to the local context. If the survey results supported the relevance, the next step would be to examine the calculation formulae and there would be additional costs to gather relevant data on customers which might be huge and expensive to obtain. Further, the calculation of intrinsic benefits would become a recurrent exercise and would drive additional cost to the USC calculation process. He noticed that some jurisdictions had not adopted intrinsic benefits because the cost of calculation might exceed the amount of intrinsic benefits.

19. Dr Andrew Simpson considered that there would be technical problems to fit intrinsic benefits into the USC costing model in Hong Kong. For example, the costing model was based on aggregation of lines at distribution point level rather than by individual customers. If

Members who favoured intrinsic benefits could not show how the calculation could be integrated into the costing model, he suggested that the matter should be put aside.

20. The Secretary commented that Members might consider whether it was a matter of priority and urgency to pursue the subject of intrinsic benefits. If not, it might be kept in view and in the mean time OFCA might look into other areas of USC, such as to review the calculation of USC for public payphones.

21. Ms Agnes Tan asked what would be the way forward for reviewing the USC for public payphones. The Chairman advised that OFCA was contemplating a review on the reasonable number of public payphones eligible for USC. He said that more information in this regard could be shared at the next TRAAC meeting.

22. The Chairman concluded that having regard to the discussion in the meeting, the issue of intrinsic benefits was considered not to be a priority matter for further discussion in the TRAAC. Instead, OFCA agreed to focus on the review on the reasonable number of public payphones as it should have more material impact on the level of USC.

Item 4 Handover between Access Points for Public Wi-Fi Service (TRAAC Paper No. 5/2016)

23. At the invitation of the Chairman, Ms Linda Yu gave a presentation² on the existing licensing framework for the provision of public Wi-Fi service, followed by the updated licensing arrangement where the restriction on handover between access points (APs) was removed in keeping pace with technology developments. The Chairman supplemented that before the implementation of the unified carrier licensing regime in 2008, fixed network operators (FNOs) and mobile network operators (MNOs) were licensed separately. Under the Unified Carrier Licence (UCL), handover between APs was no longer an issue of concern from licensing perspective for both FNOs and MNOs.

² The presentation slides are available at:
http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac5_2016_p.pdf

24. Mr Brian Ho enquired why LTE in unlicensed spectrum (LTE-U) service could not co-exist with public Wi-Fi service in the unlicensed frequency bands. The Chairman explained that the quality of service offered using the unlicensed bands could not be guaranteed, and the technical feasibility of accommodating LTE-U service in the bands was still under study by various standardisation bodies. MNOs who were interested in exploring the provision of LTE-U service could approach OFCA for discussion. The Secretary added that for deployment of the LTE-U technology, there was a need to take into account the possible impacts on the operation of the existing services using the concerned frequency bands such as public Wi-Fi service.

25. Mr Peter Lam asked whether the provision of LTE-U service using the unlicensed bands would be allowed on the basis of the technology-neutral principle, in particular with the possibility of LTE-U and Wi-Fi supported by the same piece of equipment in the future. In response, the Chairman agreed that technology-neutrality was one of the policy objectives of the CA, but it was necessary to consider spectrum compatibility issues, as otherwise the radio interference thus created would harm rather than benefit the community. The Secretary added that the licensing matter had to be considered in a careful and holistic manner, including whether the provision of public Wi-Fi service and LTE-U service should be subject to different licence fees and obligations.

26. Mr T L Or opined that interference in the unlicensed bands should be a well accepted matter and should not affect the introduction of LTE-U service in these bands. The Chairman explained that although protection from interference in the unlicensed bands was limited, OFCA still had to consider the possible impacts on the operation of the public Wi-Fi service due to the presence of any new service such as LTE-U in those unlicensed bands. Prior to the introduction of any newly co-existed services, there would be a need to set out the relevant technical specifications.

27. In response to Ms Agnes Tan's enquiries, the Secretary affirmed that the existing licensing arrangement for the Class Licence for Provision of Public Wireless Local Area Network Service (Class Licence)

would not be affected, and OFCA would amend the guidelines for UCL application to reflect the updated arrangements. Circular letters would also be issued to operators to inform them about the updated arrangements. The Chairman added that FNOs which were currently authorised to provide public Wi-Fi service were welcomed to return their UCLs for amendment if they wished to provide the service without the restriction on handover between APs.

28. In response to questions from Ms Juliana Wong and Ms Agnes Tan about the method for calculating licence fee payable, Ms Linda Yu replied that OFCA would update the document for reporting of items for calculation of licence fee including the fee for customer connections.

29. Mr Brian Ho enquired whether MVNOs could resell public Wi-Fi service. The Secretary explained that MVNOs could in fact provide public Wi-Fi service in indoor areas under a Class Licence. But if the service was provided at public streets or unleased Government land, MVNOs would have to partner with a MNO/FNO to resell the latter's service. In response to Mr Indarto Nata's question, the Secretary clarified that in the case of MVNOs reselling the public Wi-Fi service of MNO/FNO, the latter would be responsible for the licence fee payable.

30. There being no further comments, Members noted the content of the Paper.

Item 5 Update on Developments in Network Neutrality (TRAAC Paper No. 6/2016)

31. At the invitation of the Chairman, Mr Alvin Li briefed members the potential issues of network neutrality and the latest development of network neutrality regimes in selected overseas jurisdictions³.

32. The Chairman remarked that with the emergence of over-the-top (OTT) content service providers in the market, it was observed that some of the network service providers (NSPs) pledged support to certain OTT

³ The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac6_2016_p.pdf

content service providers but not others. He invited comments from members as to whether any form of regulation should be considered on this subject matter.

33. Ms Agnes Tan enquired whether OFCA received any complaints in relation to network neutrality so far. The Secretary replied that OFCA had not received any complaints in recent years. The Chairman supplemented that in face of the facilities-based competition, NSPs needed to deliver traffic diligently to fulfil expectation of their customers. OFCA was not aware of any illegitimate traffic management or systemic problem that gave rise to network neutrality concern for the time being. Ms Agnes Tan considered that no regulatory intervention seemed necessary at this juncture as the market could operate effectively.

34. Dr Victor Wong opined that it was difficult for consumers to determine whether the degradation of service was due to technical issues or discriminatory practices implemented by the NSPs. He suggested that OFCA should play an active role to monitor any actual problem of traffic discrimination. The Chairman thanked for his comments and replied that OFCA in fact was implementing a scheme to monitor the performance of access to certain OTT content service providers via different broadband NSPs.

35. There being no further comments, the Chairman concluded that OFCA would keep in view the latest development of network neutrality and would refrain from any regulatory intervention at this juncture.

Item 6 Establishment of the Technical Regulatory Working Group (TRAAC Paper No. 7/2016)

36. At the invitation of the Chairman, Mr WK Luk gave a presentation on OFCA's proposal of the establishment of the TRWG⁴ under the TRAAC. The Chairman said that the new TRWG would provide a platform for discussions on a wider scope of technical regulatory issues related to the telecommunications networks, systems

⁴ The presentation slides are available at http://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac7_2016_p.pdf

and services in addition to the NGN issues. The existing NGN WG would be subsumed under the TRWG.

37. Mr Brian Ho asked whether OFCA would continue to operate the advisory committee on technical standards and how to differentiate the scopes of work of the TRWG and the above-mentioned advisory committee. The Chairman replied that the Radio Spectrum and Technical Standards Advisory Committee had been handling the issues related to the planning of radio spectrum as well as the establishment and maintenance of technical standards. The TRWG would be a platform for discussing the technical regulatory issues related to telecommunications networks, systems and services in Hong Kong, and monitoring the development of telecommunications technologies and technical regulations. An example was insertion of the “+” sign for identification of incoming external calls. The Chairman referred Members to paragraph 6 of the TRAAC paper which set out the terms of reference of the TRWG.

38. In response to Mr Peter Lam's enquiry about the arrangement for the establishment of TRWG, the Chairman said that as the existing term of the TRAAC membership would expire at the end of July 2016, OFCA would invite nomination of representatives to participate in the TRWG after recruitment of TRAAC Members for the new term.

Item 7 Any Other Business

39. Ms Agnes Tan suggested having a definite meeting schedule for the future TRAAC meetings. In response, the Chairman and the Secretary explained that the schedule of the TRAAC meetings would depend on a number of factors including the urgency of the issues, the number of agenda items, inputs from the Members as well as the progress of OFCA's work. OFCA would intend to hold two to three TRAAC meetings per year without fixing the meeting dates in advance. Mr Peter Lam expressed his support to the current arrangement. He added that Members could send the alternate representative to attend the meeting in case of unavailability of the ordinary one. The Chairman said that if Members had any topics which might be of interest to the TRAAC or to

other Members, they were invited to submit the relevant topics / papers to OFCA for further arrangement.

40. Ms Agnes Tan urged OFCA to remove the filing and publication requirement for tariffs and interconnection agreements and to review the licence fee. The Chairman said that OFCA would consider a review of the concerned regulatory matters in due course and would be minded to update Members when there was any progress about them. He also said that OFCA had been reviewing the licence fee on a regular basis and pending the outcome of the appeal in the Court of Final Appeal for the relevant judicial review, would consult the industry should there be any room for adjustment.

41. In concluding the meeting, the Chairman said that the next TRAAC meeting would be convened in late 2016 tentatively.

42. As this was the last TRAAC meeting in the current term, the Chairman expressed gratitude to all Members for their participation and contributions in this Committee.

43. There being no other business, the meeting adjourned at 5:15 pm.

Office of the Communications Authority
August 2016