

Telecommunications Regulatory Affairs Advisory Committee

Revised Proposal for Streamlining the Arrangements for Filing and Publication of Interconnection Agreements

PURPOSE

This paper seeks Members' comments on a revised proposal for streamlining the regulatory arrangements for the filing and publication of interconnection agreements under section 36A of the Telecommunications Ordinance (Cap. 106) ("TO"). The revised proposal is prepared taking into account Members' comments on an initial proposal¹ discussed at the TRAAC meeting on 27 November 2019.

BACKGROUND

2. Pursuant to sections 36A(5A), (5B) and (5C) of the TO (see **Annex A** for the full text), parties to an interconnection agreement shall file a copy of the agreement with the Communications Authority ("CA") within 14 days of it being made unless the obligation of filing is waived by the CA, and the CA may publish all or any part of an interconnection agreement.

3. The current arrangements for the filing and publication of interconnection agreements ("Current Arrangement") are set out in the statement of the former Telecommunications Authority ("TA") entitled "*Update of the Existing Arrangements for the Filing and Publication of Interconnection Agreements*" issued on 2 March 2012² following a public consultation. In short, the filing requirement only applies to carrier

¹ For details, please refer to TRAAC Paper No. 4/2019, which is available at: https://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac4_2019.pdf.

² The statement is available at: https://tel_archives.ofca.gov.hk/en/tas/interconnect/ta20120302.pdf.

licensees providing fixed or mobile services and such requirement will be waived if (a) all the interconnecting parties are external fixed carriers who do not maintain or operate any submarine cable landing stations in Hong Kong or (b) any one of the interconnecting parties is a space station carrier licensee. The publication requirement is applicable only to three types of interconnections agreements, namely Type I, Type II and blockwiring interconnection agreements between carrier licensees³. The “*Waiver under Section 36A(5B)*” was published on the same date (“*Waiver*”) (see **Annex B**) as the instrument for waiving the filing requirement as mentioned⁴.

4. The above requirements on filing and publication of interconnection agreements were set to meet the following objectives (“*Objectives*”) –

- (a) the Hong Kong Special Administrative Region (“*HKSAR*”) Government, as a member of the World Trade Organisation (“*WTO*”) and a signatory to the agreement on basic telecommunications services under the auspices of the General Agreement on Trade in Services (“*GATS*”), has to continue to fulfil its obligations⁵;

³ In the published interconnection agreements, the name of the licensees involved in the interconnection agreement and the information which is specific or proprietary to any particular operator and which is of no relevance to third parties are redacted.

⁴ The Waiver is available at: https://tel_archives.ofca.gov.hk/en/ordinance/pdf/to-20120302.pdf.

⁵ In paragraph 2.4 of the WTO GATS Reference Paper on Basic Telecommunications, it is stated that: “*2.4 Transparency of interconnection arrangements*
It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.”

The definition of “major supplier” is given as:

“A supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:
(a) control over essential facilities; or
(b) use of its position in the market.”

The definition of “essential facilities” is given as:

“Facilities of a public telecommunications transport network or service that
(a) are exclusively or predominantly provided by a single or limited number of suppliers; and
(b) cannot feasibly be economically or technically substituted in order to provide a service.”

- (b) the need to preserve the existing transparency of information relating to interconnection arrangements (as regards the types of interconnection services and supporting facilities available, the technical terms and commercial terms under the concluded agreements) for the purpose of establishing prompt and efficient interconnections among incumbent operators and new entrants; and
- (c) the need to ensure the continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for reference by the market and regulatory oversight by the former TA on interconnection arrangements among operators to facilitate the performance of his functions under the TO.

PROPOSAL FOR STREAMLINING THE EXISTING ARRANGEMENT

5. To streamline the Current Arrangement with a view to reducing compliance cost of the network operators, OFCA formulated an initial proposal as set out in TRAAC Paper No. 4/2019 and consulted Members at the TRAAC meeting on 27 November 2019. Under the initial proposal, a licensee would be given the option of publishing a reference interconnection offer (“RIO”) as an alternative to filing interconnection agreements pursuant to the Current Arrangement. Whilst there were general support among Members to further streamline the Current Arrangement, some network operators expressed reservation on the RIO proposal as they doubted whether it could indeed reduce their compliance cost.

6. Taking into account the views from Members, OFCA has further assessed the need of information in the interconnection agreements by potential users and reviewed the interconnection agreements filed by network operators in recent years⁶. Among others,

⁶ Please refer to:
https://www.ofca.gov.hk/en/industry_focus/telecommunications/interconnection_agreement/index.html.

it is noted that most of them were for renewing their existing interconnection arrangements, rather than for new interconnection arrangements. Taking into account the initial feedback given by Members on the subject and having regard to the need of achieving the Objectives which remain relevant and valid today, OFCA has developed a revised proposal in the following.

THE REVISED PROPOSAL

7. With a view to reducing the burden of filing agreements for every case of interconnection among carrier licensees while ensuring that the Objectives would continue to be served, it is proposed that under the existing statutory framework, **the existing Waiver should be revised to cover all interconnection agreements signed among carrier licensees, except interconnection agreements involving any network(s), system(s), installation(s) and/or service(s) which is/are of a new type or contain(s) substantive element(s) which is/are new to anyone of the interconnecting parties (“Revised Waiver”)**.

8. Under the Revised Waiver proposed in the above, potential cases required for filing shall include –

- (a) agreements for interconnection of a new telecommunications service (e.g. 5G services) where interconnection agreements covering the same (or similar) services have not been filed by anyone of the interconnecting parties before; and
- (b) agreements for a new type of interconnection (e.g. those involving the use of new technologies) or an existing type of interconnection with substantively new element(s) (e.g. those involving substantively new terms and technical arrangements) which have not been filed by anyone of the interconnecting parties before.

9. The above types of interconnection agreements which are not waived under the Revised Waiver shall continue to be subject to section 36A(5A) of the TO whereby interconnecting parties shall file a copy of

the agreement with the CA within 14 days of it being made. OFCA will then arrange publication of the agreements filed taking into account any redaction proposed by the interconnecting parties.

10. With a view to ensuring that the Objectives would continue to be served in light of market and regulatory developments, the CA will continue to reserve the power as stated in the existing Waiver to require the carrier licensees to file the interconnection agreements upon making a written request to an interconnecting party. The CA may exercise the reserve power under circumstances such as the following –

- (a) to facilitate transparency and prompt and efficient interconnections among licensees;
- (b) to carry out its functions, such as market surveillance and regulatory oversight; and/or
- (c) to fulfil HKSAR's international obligations, such as those under the WTO and GATS.

11. It is considered that network operators should be able to save significant compliance cost under the revised proposal, given that most of the interconnection agreements filed in recent years were primarily for renewing their existing interconnection arrangements as mentioned in paragraph 6, and similar agreements in the future would be waived from the filing requirement under the proposed Revised Waiver.

12. As for the interconnection agreements which are of a type or contain substantive elements that is/are new, OFCA considers that the filing requirement would enable network operators, whether incumbent or new entrants, to have access to innovative interconnection arrangements for reference. This would in turn facilitate more prompt and efficient interconnections thus promoting effective development and competition in the market. Overall speaking, it is considered that the revised proposal in paragraph 7 should strike a balance between reducing compliance cost of operators and ensuring the Objectives be met in an effective manner.

WAY FORWARD

13. Subject to any comments from Members on the revised proposal in paragraph 7, OFCA would formulate a draft Revised Waiver pursuant to section 36A(5B) of the TO. OFCA will consult the relevant licensees on the draft Revised Waiver before finalising them for consideration and approval by the CA.

VIEWS SOUGHT

14. Members are invited to give their views and comments on the proposal given in this paper.

**Office of the Communications Authority
June 2020**

Annex A

Section 36(A) of TO

36A. Authority may determine terms of interconnection

- (1) The Authority may determine the terms and conditions of interconnection of the type mentioned in subsection (3D).
(Replaced 36 of 2000 s. 20)
- (2) The Authority may make a determination on the request of a party to the interconnection or, in the absence of a request, if it considers it is in the interest of the public to do so. *(Replaced 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (3) The terms and conditions in a determination may include any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable.
(Replaced 36 of 2000 s. 20)
- (3A) Without limiting the general nature of subsection (3), the terms and conditions in a determination may include –
 - (a) the level of, and the method of calculating, the charges that any party will pay to another;
 - (b) the points at which interconnection is to be made;
 - (c) the technical standards for interconnection;
 - (d) the supply by any party to another of any element of a telecommunications network, system or installation;
 - (e) the supply by any party to another of any telecommunications or ancillary service;
 - (f) the supply by any party to another of any information necessary for the efficient planning and handling of services through the interconnection;
 - (g) the sharing of facilities referred to in section 36AA.
(Added 36 of 2000 s. 20)

- (3B) The charges in a determination shall be based on the relevant reasonable costs attributable to interconnection and, in determining the level, or method of calculation, of the relevant reasonable costs attributable to interconnection, the Authority may select from among alternative costing methods what it considers to be a fair and reasonable costing method. *(Added 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (3C) The terms and conditions in a determination –
- (a) are deemed to be of the essence of any agreement for the interconnection to which the determination is made unless the Authority otherwise directs for any particular term or condition; and
 - (b) override a different intention arising from the provisions of the agreement. *(Added 36 of 2000 s. 20)*
- (3D) The type of interconnection includes an arrangement among 2 or more parties for –
- (a) interconnection to and between telecommunications systems or services including –
 - (i) those licensed under section 7, expressed as being licensed under section 7 or 34 or deemed licensed by the Chief Executive in Council under this Ordinance under section 8(3) of the Television Ordinance (Cap. 52);
 - (ii) those of a description mentioned in section 8(4) (e) and (f);
 - (iii) telecommunications services that are the subject of an order made under section 39;
 - (b) access to, or interconnection with, any element of a telecommunications network, system, installation or service on an unbundled basis at any point that is technically feasible;
 - (c) the supply of a telecommunications service in connection with paragraph (a) or (b). *(Added 36 of 2000 s. 20)*

- (3E) In this section –
- element* (元件) means any cable, component, unit, equipment, hardware or software used to provide a telecommunications service and includes the facilities referred to in section 36AA;
 - interconnection* (互連) means any connection between systems or services or elements of systems or services for the delivery of any communication, message or signal over the connection and, without limiting the generality of the foregoing, includes interconnection to a system, to a service, between systems, between services and between a system and a service;
 - service* (服務) includes elements of a service;
 - system* (系統) includes elements of a system. (*Added 36 of 2000 s. 20*)
- (4) No determination shall be made under subsection (1) unless the Authority is satisfied that the parties to any arrangement for interconnection of the type mentioned in subsection (3D) have been afforded reasonable opportunity to make representations to it as to why a determination should not be made and the Authority has considered representations made before it decides whether or not to make such a determination. (*Amended 36 of 2000 s. 20; 17 of 2011 s. 28*)
- (5) Written notice of a determination, or of the completion or adjournment of a determination process commenced, under subsection (1) shall be served personally or by registered post on the parties to the arrangement for interconnection or, in the absence of a concluded arrangement, the parties who in the Authority's opinion would have been parties to the interconnection arrangement had it been concluded. (*Replaced 36 of 2000 s. 20*)

- (5A) Subject to subsection (5B), parties to an interconnection agreement shall ensure a copy of the agreement is filed with the Authority within 14 days of it being made.
(Added 36 of 2000 s. 20)
- (5B) The obligation to file a copy of an interconnection agreement under subsection (5A) may be waived by the Authority in relation to a particular interconnection agreement or interconnection agreements of a certain kind.
(Added 36 of 2000 s. 20)
- (5C) The Authority may publish all or any part of an interconnection agreement if it – *(Amended 17 of 2011 s. 28)*
- (a) considers it is in the interest of the public to do so;
 - (b) has first given the parties an opportunity to make representations on which parts of the interconnection agreement should not be published; and
 - (c) has considered such representations received within the time specified by it. *(Added 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (5D) A determination takes effect even though it is under review unless stayed by a court of competent jurisdiction.
(Added 36 of 2000 s. 20)
- (6) The amount of any costs or expenses incurred, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Office of the Communications Authority Trading Fund in respect of a determination or determination process under subsection (1) is a debt due to the Government, and is on service of a notice under subsection (5), recoverable from a person on whom notice has been served. *(Replaced 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (7) It shall be a defence for any person against whom an action is brought under subsection (6) to satisfy the

District Court that he or it concurred with the substance of the terms and conditions as manifested in the determination and had given notice in writing of that fact to the Authority not less than 30 days before the service on him or it of a notice under subsection (5).

- (8) *(Repealed 36 of 2000 s. 20)*
- (9) The Authority may, after consultation with the parties to an interconnection agreement, issue codes of practice -
- (a) relating to the efficient and reliable provision of interconnection; and
 - (b) which shall be observed by the parties. *(Added 36 of 2000 s. 20)*
- (10) In making a determination under subsection (1), the Authority shall give regard to –
- (a) the Government's policy objectives for the telecommunications industry;
 - (b) consumer interests;
 - (c) encouraging efficient investment in telecommunications infrastructure;
 - (d) the nature and extent of competition among the parties to the interconnection concerned and their respective abilities to compete with each other fairly; and
 - (e) such other matters as the Authority considers appropriate in the particular circumstances of the case. *(Added 36 of 2000 s. 20)*

(Added 38 of 1993 s. 7)

Annex B

**TELECOMMUNICATIONS ORDINANCE
(CHAPTER 106)
Waiver under Section 36A(5B)**

Interpretations

1. In this Waiver, unless the context otherwise requires,

“Authority” means the Telecommunications Authority;

“Ordinance” means the Telecommunications Ordinance (Cap. 106); and

“2001 Waiver” means the waiver issued by the Authority on 20 March 2001 pursuant to section 36A(5B) of the Ordinance,

and except as hereinbefore provided or unless the context otherwise requires, words or expressions herein shall have the meanings assigned to them in the Ordinance or subsidiary legislation enacted under the Ordinance (including any statutory modification or re-enactment thereof for the time being in force) and words and expressions in the singular include the plural and *vice versa*.

The Waiver

2. The Authority, in exercise of his power under section 36A(5B) of the Ordinance, having regard to such relevant considerations including the following :

- (a) the previous arrangements for the filing of interconnection agreements which were subject to the 2001 Waiver;
- (b) the market developments and changes since the issue of the 2001 Waiver;

- (c) the availability and accessibility of the most up-to-date information concerning interconnection arrangements being an important element for the better performance of the functions of the Authority under the Ordinance and for facilitating more effective monitoring and regulatory oversight on interconnection arrangements between different network operators;
- (d) the obligation of the HKSAR Government under the World Trade Organisation Agreement on Basic Telecommunications (WTO Agreement) to ensure that a major supplier⁷ will make publicly available either its interconnection agreements or a reference interconnection offer; and
- (e) generally, the kinds of interconnection agreements for which the requirement of filing to be hereby waived under section 36A(5B) are not of such a nature as to require close monitoring by the Authority or may affect the fulfilment of the Government's obligation under the WTO Agreement. Where the circumstances so warrant or the public interest so requires, the Authority may resort to his powers under the Ordinance including sections 7I, 35A or 36D for copies of the relevant interconnection agreements or other information;

HEREBY waives generally a party to an interconnection agreement the obligation to file a copy of an interconnection agreement with the Authority within 14 days of it being made save and except for those interconnection agreements of the kinds as described in Schedule 1.

3. Notwithstanding Schedule 1, the obligation to file those interconnection agreements made between holders of carrier licences

⁷ A major supplier is defined in the WTO Agreement as a supplier, which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

described in Schedule 2 is also waived.

4. Notwithstanding this Waiver, the Authority may in writing require a party at any time after 14 days of an interconnection agreement being made by that party to that interconnection agreement to file a copy thereof within a specified period.

5. For the avoidance of doubt, nothing in this Waiver shall have the effect of amending, altering, varying, abrogating or in any way affecting the power and rights of the Authority under the Ordinance or the relevant licences each provision of which other than those affected by this Waiver shall remain operative and as effectual as though this Waiver had not been granted.

6. The Authority may withdraw, modify or replace this Waiver and/or the Schedule in whole or in part in relation to a particular interconnection agreement or interconnection agreements of a certain kind that is covered by this Waiver and/or introduce additional terms and conditions of this Waiver from time to time.

7. This Waiver supersedes the 2001 Waiver and shall become effective from the date hereof and shall continue in force until withdrawn, modified or replaced by the Authority.

8. This Waiver shall be made public.

(Miss Eliza Lee)
Telecommunications Authority
2 March 2012

SCHEDULE 1

Interconnection Agreements subject to filing requirement

1. Interconnection agreements made between holders of carrier licences in relation to telecommunications systems or services provided under licence.

SCHEDULE 2

**Interconnection Agreements not subject to filing requirement under
Schedule 1**

2. Notwithstanding Schedule 1, where:
 - (a) all the parties to the interconnection agreement are external fixed carriers and none of them maintains or operates any submarine cable landing stations in Hong Kong; or
 - (b) any one of the parties to the interconnection agreement is a space station carrier;

the filing of the said interconnection agreements is not required.

3. In Schedules 1 and 2:

“carrier licence” has the meaning as defined in section 2 of the Ordinance;

“external fixed carrier” means a holder of a carrier licence for the provision of external telecommunications services only. For the avoidance of doubt, a carrier licensee who is authorized to provide both internal and external telecommunications services is not considered as an external fixed carrier for the purpose of this Waiver;

“interconnection agreement” means any agreement which is in force irrespective of whether it is made before or after the date of this Waiver for interconnection to and between

telecommunications systems or services of which the type includes those as defined in section 36A(3D) of the Ordinance;

“space station carrier” means a holder of space station carrier licence or telemetry, tracking, command and monitoring licence which is issued for the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications.
