

Telecommunications Regulatory Affairs Advisory Committee

Proposal to Streamline Regulatory Arrangements for Filing and Publication of Interconnection Agreements

PURPOSE

This paper seeks Members' views on the proposal to streamline the regulatory arrangements for the filing and publication of interconnection agreements under section 36A of the Telecommunications Ordinance (Cap. 106) ("TO").

BACKGROUND

2. Pursuant to sections 36A(5A), (5B) and (5C) of the TO (see **Annex A** for a 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 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 2012¹ following a public consultation. In short, the filing requirement only applies to carrier licensees providing fixed and/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

¹ The statement is available at: https://tel_archives.ofca.gov.hk/en/tas/interconnect/ta20120302.pdf.

publication requirement is applicable only to three types of interconnections agreements, namely Type I, Type II and blockwiring interconnection agreements between carrier licensees². 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 mentioned³.

4. The above requirements on filing and publication of interconnection agreements were set to meet the following 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 obligations⁴ (“Objective A”);
- (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

² 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.

³ The Waiver is available at: <https://tel.archives.ofca.gov.hk/en/ordinance/pdf/to-20120302.pdf>.

⁴ 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.”*

prompt and efficient interconnections among incumbent operators and new entrants (“Objective B”); and

- (c) the need to ensure the continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for market surveillance and regulatory oversight by the former TA on interconnection arrangements among operators to facilitate the performance of his functions under the TO (“Objective C”).

LATEST DEVELOPMENT

5. Since the implementation of the above filing and publication requirements in 2012, over 170 interconnection agreements have been filed with and published by the CA. During the period, it is also observed that telecommunications operators could generally enter into various interconnection agreements based on commercial negotiations without the need of regulatory intervention by the CA. This demonstrates that the market mechanism has been operating well to resolve interconnection matters under a keenly competitive environment.

6. In November 2018, the Government conducted a public consultation⁵ to solicit views and comments of the industry and other interested parties on its legislative proposals pertaining to the improvement of the telecommunications regulatory framework under the TO to keep pace with the advancement in telecommunications technologies. Apart from responding to the Government’s proposals, stakeholders also submitted their views on the other aspects of the telecommunications regulatory framework. Among others, there was feedback from some major operators that the statutory requirements for the filing and publication of interconnection agreements should be removed on the grounds that such requirements were outdated and the removal of which would save the compliance costs of the industry.

⁵ The consultation paper is available at :
[https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTORReview_2\(eng\).pdf](https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTORReview_2(eng).pdf).

7. Apart from the above responses received in the context of the public consultation on the review of telecommunications regulatory framework, the Office of the Communications Authority (“OFCA”) also received views from some new operators which entered the market in recent years. They were in general of the view that access to the terms and conditions of the interconnection agreements among incumbent operators had been conducive to their establishment of new interconnection agreements.

8. OFCA has been monitoring the market developments, with a view to considering further streamlining of regulation if warranted without exerting adverse impact on the market. In the light of the above industry feedback and the market developments over the recent years, OFCA conducted a review to assess whether the existing filing and publication requirements as set out in paragraph 3 above would remain appropriate in the light of the present market environment. Whilst the objectives listed in paragraph 4 remain valid and relevant today, OFCA considers that there is room for the CA to streamline the existing requirements for filing and publication of interconnection agreements and it can be done under the current statutory framework. To this end, OFCA has formulated a proposal as detailed below with a view to striking a balance between the needs to facilitate efficient negotiation and establishment of interconnection agreements by parties including the new entrants in the market on the one hand and to minimise compliance cost of the operators on the other.

THE PROPOSAL

9. With a view to reducing the burden of filing interconnection agreements for every case of interconnection among carrier licensees, it is proposed that the existing Waiver should be revised (“Revised Waiver”) such that the obligation to file interconnection agreements made by a carrier licensee providing fixed and/or mobile services for a type of interconnection arrangement could be waived on the condition that the licensee concerned has published a reference interconnection offer (“RIO”) for that type of interconnection arrangement (“Proposal”).

10. Under the Proposal, a licensee would have the following options in regard to fulfillment of the obligation in filing of interconnection agreements with the CA under section 36A(5A) of the TO –

(A) Publication of RIO

- (i) The licensee may publish a RIO in meeting the specified condition(s) in the Revised Waiver. The RIO shall set out all the essential charges, terms and conditions for the subject interconnection arrangement in relation to the telecommunications systems or services provided by the licensee, in compliance with relevant guidelines to be issued by the CA for publication of RIOs by licensees (“Guidelines”);
- (ii) The licensee shall file a copy of RIO with the CA to demonstrate its fulfilment of the specified condition(s) in the Revised Waiver. The CA may publish the RIO at its discretion;
- (iii) The licensee shall comply with the request of any other licensees for interconnection under the charges, terms and conditions of the RIO;
- (iv) The licensee is obliged to inform the party who requests to interconnect with it the levels of charges and key terms and conditions in the interconnection agreement it has most recently entered into with other licensee(s) upon the written request of the party seeking the same or similar type of interconnection; and
- (v) To enable the CA’s continual effective performance of its functions under the TO, despite the publication of a RIO on a certain type of interconnection, the licensee is required to provide the CA with a copy of the interconnection agreement it has entered into with another party for the same or similar type of

interconnection in a timely manner if requested by the CA in writing.

(B) Filing of interconnection agreements signed

Instead of publishing a RIO, the licensee may continue with the existing practice of filing with the CA a full version of the interconnection agreements they entered into with other licensees together with a redacted version⁶ for publication by the CA as applicable.

11. The RIO would serve as a committed offer through which the licensee undertakes to interconnect with a requesting party upon the latter's acceptance of the terms and conditions therein. If the licensee has published a RIO (i.e. Option A) but fails to honor its RIO with any party seeking interconnection, in full or in part, it would mean that such RIO should no longer be deemed valid or acceptable to the CA under the Revised Waiver. Under such circumstances, the licensee shall inform the CA immediately of the invalidity of the RIO or the CA may notify the licensee of the non-acceptance of the RIO. As the specified condition in the Revised Waiver is not fulfilled, the licensee is then obliged to file copies of the relevant interconnection agreements with the CA same as the existing arrangement (i.e. Option B), and the CA may publish all or any part of such agreements.

CONSIDERATIONS OF THE PROPOSAL

12. As explained in the ensuing paragraphs, OFCA considers that the Proposal should continue to serve the objectives mentioned in paragraph 4 above.

⁶ See Footnote 2.

Objective A

13. Under Objective A, the HKSAR Government is expected to fulfil its obligations under the WTO and the GATS, including ensuring that a major supplier of telecommunications services will make publicly available either its interconnection agreements or a RIO. Given that the Proposal would require carrier licensees to file either a RIO or interconnection agreements with the CA for publication, it would continue to fulfil Objective A.

Objective B

14. Objective B focuses on transparency of market information and the establishment of prompt and efficient interconnections between incumbent operators and new entrants. The RIOS filed by the incumbent operators will be published on the websites of the operators concerned and OFCA. By making reference to the charges, terms and conditions under the respective incumbent operators' RIOS, parties requesting interconnection including new entrants should be able to establish interconnection with the incumbent operators in a prompt and efficient manner. Any requesting party is also free to negotiate better terms of interconnection with any incumbent operator making reference to interconnection agreements published on OFCA's website or information sought from an incumbent operator on the latest interconnection agreement the latter has entered into with another party for the same or similar type of interconnection. The proposed arrangement should continue to ensure reasonable transparency of information in the market to facilitate prompt and efficient interconnection for fulfilment of Objective B.

Objective C

15. Objective C is concerned about continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for market surveillance and regulatory oversight by the CA. Under the Proposal, other than the information on standard offers of interconnection arrangements given in the RIOS published by licensees, the CA reserves the right to request licensees to

furnish interconnection agreements on a case-by-case basis as and when necessary for the CA's performance of its regulatory functions as appropriate. Therefore, Objective C should continue to be served under the Proposal.

16. If the Proposal is adopted, the streamlined procedures are expected to reduce the compliance cost of the industry. By adopting the RIO option, operators can save the costs in filing the full text and preparation of a redacted version of the agreement every time when a new interconnection agreement is signed. Alternatively, operators may continue to follow the existing practice of filing interconnection agreements. Both options are in line with international practice and should continue to help maintain an effective interconnection regime for telecommunications in Hong Kong.

WAY FORWARD

17. Subject to the views and comments to be received from Members, OFCA would formulate a draft Revised Waiver under section 36A(5B) of the TO and draft Guidelines for publication of RIOs which would be accepted for application of the Revised Waiver to obviate the filing requirement. OFCA will further consult the relevant licensees on the draft Revised Waiver and Guidelines before finalising them for consideration by the CA.

VIEWS SOUGHT

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

**Office of the Communications Authority
November 2019**

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 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

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.

interconnection agreements made between holders of carrier licences 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.
