

**Presentation by Mr Jack C K So,
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**on the Second Consultation Paper on the
Review of the Regulatory Policy for Type II Interconnection
at the Meeting of the Panel on Information Technology & Broadcasting
on 25 February 2004**

Honorable Members,

I am honored to meet with you today in my capacity as PCCW's representative.

Since joining the company some six months ago, I have strived to improve its financial position. Under intense competition, PCCW has launched new products and continued to improve its customer service. Our new services include New Generation Fixed-line Service and now Broadband TV, which are not only popular but also technologically innovative. These trend-setting innovations are something Hong Kong can be proud of, and are in line with the Government's aspiration of making Hong Kong a digital and optic-fibre city in the 21st century.

At the same time, I have also tried hard to attain a level playing field for the company, and to persuade the Government to remove as soon as possible outdated and unfair restrictions on PCCW's marketplace activities. Although there has yet to be any positive outcome, the community and the media have become more concerned about these issues. We welcome the fact that the Government, in its preliminary conclusions on Type II interconnection policy, has found that compulsory Type II interconnections (or "unbundling of local loops" (ULL)) deters investment incentives and discourages innovation; and therefore decided that the outdated policy should be abolished. The Government's conclusion is absolutely correct. After nine years of liberalization, basically all barriers to entry into the telecommunications market, including access to essential bottleneck facilities, no longer exist. Alternative networks have been built and the majority of consumers have three to four alternate networks to choose from.

Although they are heading in the right direction, OFTA's specific phase out proposals will, in our opinion, create many problems and need to be revised in order for the Government to achieve its objectives.

The first issue is the "three years plus three years" arrangement. Despite concluding in its review that the present policy is inconsistent with public interests, OFTA is proposing a "transitional period" that simply maintains the status quo for another three years. Added on to these three years are another three years "grandfathering period". Maintaining the status quo for six more years is inconsistent with the Government's overall policy decision. The extent of alternative network rollouts, including that of HKCTV which is capable of providing narrowband services, negates any need for any "transitional period".

Secondly, the Government has proposed to implement the six year plan building-by-building. This will not only require a lot of unnecessary manpower and resources from OFTA, but will also lead to disputes and litigation between the Government and telecom operators; and end up harming the interests of both consumers and taxpayers.

At the same time, under the proposed arrangements, the compulsory Type II interconnection policy will not be abolished for existing buildings without two or more self-built networks or for new buildings built in future. This is equivalent to perpetuating the outdated policy forever.

The implementation of OFTA's new proposals will give rise to the aforesaid problems including procrastination, resource wastage, disputes and litigation. In these circumstances the telecom industry will be unable to progress in the direction being advocated by the Government. That is to say, the implementation proposals work against the Government's preliminary conclusions.

On a separate issue, it is incomprehensible that OFTA would propose to extend the controversial policy of mandatory unbundling to the broadband market. The market has totally changed since the adoption of the broadband ULL policy in 2000, a time when Hong Kong only had one territory-wide broadband network built by PCCW. Dramatic progress has been made in the past four years and the broadband market has now become facilities-based, with services offered by six separate networks. Accordingly, the rationale for broadband ULL no longer exists.

In making this proposal, OFTA appears to ignore that PCCW is already providing wholesale products in the broadband market via commercial negotiations. OFTA also appears to ignore the fact that Hong Kong already has multiple alternative broadband networks, of which HKCTV has the second largest broadband network in Hong Kong while HKBN's wireless network is growing very fast. In a market with several very strong and extensive alternative broadband networks, we see little justification for OFTA to force PCCW to unbundle its broadband network to subsidize its competitors.

Indeed, the narrowband and broadband markets are two distinctly separate markets, and are at different stages of development. The two need to be looked at separately. There is no reason why the same unbundling arrangement should be applied to two very different markets.

Today, Hong Kong's broadband market has the lowest prices in the world, and provides the best quality of service to consumers, with the world's second highest market penetration rate. Operating under a free business environment with fair competition and little OFTA intervention, the broadband market is facilities-based and is delivering world leading consumer benefits via investment and innovation. Any Government decision to force new regulation upon the market will only disrupt the orderly market operation and put existing user benefits at risk. More public money will be spent to deal with the inevitable disputes and lawsuits. Instead of benefits, this immediately will damage consumers and operators. In the long run, this will discourage investments and

innovation. If the Government has decided to abolish compulsory ULL in narrowband, what rationale does it have to introduce compulsory ULL in broadband? There is no justification for this move which contravenes the principles of “commercial autonomy” and “positive non-intervention.”

That said, we wonder if OFTA, when proposing those problematic measures and arrangements, was concerned that PCCW would shortly close down the wholesale market and consequently customer services might be affected by a sudden abolition of compulsory Type II interconnection.

If that was the case, such worries are unwarranted because it is in our business interests to ensure that all operators and consumers relying on Type II interconnection will continue to be provided with the service. They need not have any fear about their service being cut or sudden rate increases. ULL charges for narrowband will remain at the current level for a reasonable period of time. Upon abolition of the compulsory unbundling and restoration of the principle of commercial negotiation, ULL charges will be fixed according to contract volume and duration. This arrangement covers all lines, all users, all buildings and all carriers. As regards the broadband market, the existing, successful wholesale approach will be maintained, but only if it is not undermined by compulsory and non-commercial tariff determinations.

PCCW’s proposals are made with a view to removing the concerns and worries of the Government, the consumers and the industry. The outcome will be a “triple win” situation for users, Government and service providers and ultimately returning to commercial freedom.

On the subject of commercial freedom, I am mindful of our Chief Executive’s frank remarks in this year’s Policy Address: “Over the years our regulatory regime in some areas has become excessively tight and detailed, leading to frustration among business people.” Here, I would like to share with you some of PCCW’s bad experiences. As you all know, while our competitor in the industry can freely provide retail discounts or packages to users, PCCW must apply for OFTA’s prior approval in each and every case. One example was PCCW’s application for the “buy four get one free” offer the year before. When our application was rejected, we had no choice but to appeal to the Competition Appeals Board. More than 10 months later, we won our case. But by then we had lost the business.

Three recent examples were even more baffling. The KCRC, Fire Services Department and Immigration Department each invited tenders for some of their telecom services. PCCW, as it must, requested OFTA’s approval to bid. All our applications were rejected and we were denied the opportunity of competing in the intensively competitive tender market.

No doubt, we can appeal against the decision, but such legal disputes could have been avoided.

More damagingly, OFTA’s decision has deprived three public bodies of the opportunity

of enjoying PCCW's inexpensive and high quality services. Being forced into using more expensive services is unfair to both consumers and taxpayers.

In view of such unreasonable regulation in the fixed-line market, we have therefore separately applied for a declaration of market non-dominance status. With our market share having fallen below the benchmark level, as previously prescribed by OFTA, PCCW no longer has market power to dictate prices. We can pledge here and now not to increase prices only to reduce them, is it necessary or fair to continue handcuffing PCCW under the "dominant player" label?

Finally, I would like to emphasize that only when unreasonable regulations are removed will the SAR Government truly practise the philosophy of "big market, small government". Only by so doing can we protect the long term interest of the community at large; promote Hong Kong's telecom industry; strengthen Hong Kong's leading position in the development of the Pearl River Delta region; ensure Hong Kong's status as the Asian telecom hub; and best utilise the opportunities for Hong Kong as it moves into the digital 21st century.

We hope that the Government will grasp the opportunities presented by this Review and work towards the improvement of Hong Kong's telecommunications policy.