

**APPLICATION FOR A DECLARATION OF NON-DOMINANCE  
IN THE INTERNATIONAL CALL SERVICES MARKET FOR  
NON-CHINA ROUTES  
BY HONG KONG TELEPHONE COMPANY LIMITED**

**INDUSTRY CONSULTATION PAPER**

**24 MAY 1999**

**1. INTRODUCTION**

- 1.1 The Telecommunications Authority (TA) has received from Hong Kong Telephone Company Limited (HKTC) a request for reconsideration of his findings and conclusions on HKTC's previous applications for a declaration of non-dominance in the international call services market for non-China routes. In response to that, the TA is inviting comments on HKTC's application in general but also views from the respondents in relation to the questions identified by the TA in this document. Comments on any related issue arising from this application are also welcomed.
- 1.2 The TA will consider the application by HKTC, as well as the comments that he will receive during the consultation period, in deciding whether he should accede to the application, whether it is possible to accede to it in part or whether he should refuse it.
- 1.3 In the interests of transparency, but also as a matter of fairness to HKTC, the TA has decided to make public the actual text of the application submitted. The TA has however removed from the published version such material that he considers to be commercially confidential in respect of HKTC itself or other licensees to whom reference is being made in the text of HKTC's submission in support of its application.
- 1.4 For the purpose of testing or verifying the assumptions and figures submitted by HKTC, the TA has supplied individual licensees, on a confidential basis, with information relating to them and which HKTC has quoted in support of its application.
- 1.5 The TA proposes to apply the same economic tests as previously applied in respect of the past applications by HKTC. However, he will give due regards to any new material or arguments that may be raised during the consultation period.

- 1.6 The consultation period will end on 15 June 1999 by which date all submissions should be received.

## **2. BACKGROUND**

- 2.1 On 28 November 1997, the TA, having considered an application from HKTC for a declaration of non-dominance in the “International Business Call Market”, issued a report entitled: “Application from Hong Kong Telephone Company Limited for a Declaration of Non-Dominance in the “International Business Call Market” – Telecommunications Authority’s Findings”. The effect of that decision, as set out in the report, was to refuse the application of HKTC for such a declaration.
- 2.2 In response to that, HKTC submitted another application again seeking a declaration of non-dominance in the “International Call Services” market. On that second application the TA consulted the industry in January 1998. On 23 May 1998 the TA published his findings in the report entitled “Application from Hong Kong Telephone Company Limited for a Declaration of Non-Dominance in the International Call Services Market - Telecommunications Authority’s Findings and Conclusions”. The application of HKTC for a declaration of non-dominance in the relevant market was again refused. (All reports mentioned above are available from OFTA’s web site at <http://www.ofta.gov.hk>.)
- 2.3 This document, as well as HKTC’s current application, must be read in conjunction with the above-mentioned documents and in particular the report issued on 23 May 1998 to which reference is extensively made in HKTC's current application.
- 2.4 The May 1998 report did set out the basis upon which the TA examined HKTC's last application, his findings and his conclusions. This application, subject to any new factors and evidence that may be submitted during the consultation process, will be examined on the same basis. Some issues are raised by the TA again - through the questions in this document - so that he can be satisfied that the approach as set out in the past is still valid and applicable to the current application.

## **3. HKTC’s APPLICATION**

- 3.1 HKTC’s application, the published version of which (after the excision of such information as the TA considers commercially confidential) is attached to this consultation paper, covers the following main areas:
- The effect of a non-dominance declaration

This is HKTC's views on what effect such a declaration would have on competition.

- **Criteria for assessing dominance**  
HKTC sets out its views as to why, under the criteria set out by the TA in the past, it should no longer be considered dominant in the relevant market.
- **Developments since the TA's findings**  
HKTC sets out the changes that have taken place since the May 1998 decision of the TA.
- **The TA's other concerns in his findings**  
HKTC responds to the other considerations that the TA had taken into account in deciding the last application of HKTC in May 1998.

#### **4. SPECIFIC ISSUES THAT THE TA IS INVITING COMMENTS UPON**

4.1 The TA is minded to apply the same tests as he had previously applied to similar applications by HKTC. However he needs to be satisfied that these tests are still valid and appropriate. He is therefore inviting comments on some specific issues. However, those responding to this consultation should not feel constrained by the issues that have been raised below. These are simply some aspects that the TA is considering and no particular weight should be attached to the fact that specific mention is made to them here.

#### **4.2 The definition of the relevant market**

The TA has in the past defined the relevant market as:

*"...the market for international call services ("International Call Services") which exclude those provided by operators of mobile services and through Self-Provided External Telecommunication Systems (SPETS) but include "international residential call services", International Simple Resale (ISR) services for fax and data and International Virtual Private Network (IVPN) services."* With the full liberalization of the external services market from 1 January 1999, the definition of the relevant market will obviously need to be expanded to cover all external telecommunication services which are close substitutes for the International Direct Dialling (IDD) services irrespective of the technology employed.

4.3 As the definition of the market could significantly affect the outcome of a dominance analysis, the TA is inviting comments on the appropriate definition of the relevant market. In particular he welcomes views on

whether he should define the market as the market for retail services for external calls originating from Hong Kong as a whole (i.e. the definition as set out in paragraph 4.2 above), or whether he should divide the market into the Mainland China and outside Mainland China sectors, or whether he should define the market on a route by route basis.

4.4 The TA is mindful of the arguments that a call to country A is not substitute for a call to country B. However, the TA has the following considerations in mind:

- (i) there are alternative mechanisms for conveying external retail services, which can be considered as substitutes or potentially substitutable for each other, thereby allowing operators the option of “hubbing” traffic (the routing of traffic via another country);
- (ii) market power over a route may overflow to other routes as the consumers may not have the inclination to carry out a route by route comparison of prices in registering with operators or before making actual external calls;
- (iii) customers are offered and may make decisions on which operator to use based on usage “packages” that can consist of discounts once a certain level of total spending irrespective of routes has been achieved, or of discounts to a group of routes.

TA is therefore inviting comments on whether defining the market on a route by route basis would be an excessively narrow way to define a market.

#### 4.5 Market information

The TA is also inviting comments and or information on the following aspects of the market:

- (i) the changing pattern of market shares over time – how do the individual players see their market share developing over time and what are their future projections;
- (ii) the degree of concentration in the market – do they still consider that the market is over concentrated or the new players in the market are succeeding in taking away market share from HKTC;
- (iii) the price history and profitability of firms in the market – does the industry see the market continuing on the current pattern of a continuous offering of very competitive prices;

- (iv) should the degree of vertical integration of HKTC with the operator of the external gateway and circuits cause the TA concern taking into account the existing safeguards for interconnecting operators in terms of accounting separation, anti-competitive provisions in HKTC's licence and non-discriminatory interconnection terms determined by the TA. If HKTC were to be declared non-dominant in the relevant market would the existing safeguards be adequate to protect competition.

## **5. INVITATION OF COMMENTS**

5.1 The TA invites comments from the telecommunications industry and interested parties on HKTC's current application in general as well as on the specific issues he has raised above. Comments on any related issue arising from HKTC's application are also welcomed.

5.2 Comments should be made in writing and should reach the Office of the Telecommunications Authority **on or before 15 June 1999**. The TA reserves the right to publish all views and comments and to disclose the identity of the source. Any part of the submission, which is considered commercially confidential, should be clearly marked. The TA would take such markings into account in making his decision as to whether to disclose such information or not.

5.3 Submissions should be addressed to:  
Office of the Telecommunications Authority  
29/F Wu Chung House  
213 Queen's Road Central  
Wanchai  
Hong Kong  
[Attn.: Mr. Andreas Avgousti]

Fax comments can be sent to: 2803 5112

**Office of the Telecommunications Authority**  
24 May 1999