

**Second Consultation Paper for  
Review of the Regulatory Policy for Type II Interconnection  
Consumer Council's Response**

1. The Council welcomes the review of the regulatory policy of Type II Interconnection and the Government's preliminary views on the possible options of the Type II Interconnection arrangement, and has pleasure in responding to this second consultation.

**Principle of Interconnection Policy**

2. Interconnection policy plays a key role in signaling to firms when to invest in the rollout of new higher capacity customer access network. Such investment will bring about long run dynamic efficiency to the economy and serve consumer interest.

3. The Council believes that a high degree of competition among networks in the supply of access, with the safeguard afforded by the competition provisions in the Telecommunications Ordinance, will result in efficient market-determined prices and service qualities and consumers can have real choices.

4. As noted in a previous submission to the Legislative Council in November 2001, the Council considers that in approaching its task in relation to interconnection, the Telecommunications Authority (TA) should work on the assumption that facility-based competition was, and still is, the best means to promote competition so as to provide choices to consumers.

**Interconnection Arrangement at Telephone Exchange Level**

5. The Council accepts that comprehensive Type II Interconnection arrangements were essential for new operators to compete with the incumbent operator in the initial years when the Government liberalized the telecommunications market, as the coverage of the new operators' access networks could not be compared with that of the incumbent operator at the time. In effect, the comprehensive Type II Interconnection arrangements were recognition of the need to apply the principles of 'essential facilities', as developed by various jurisdictions that were governed by general competition laws.

6. The network coverage of the incumbent's competitors now is different from what it was nine years ago when the competitors initially commenced network construction. The Council accepts that it is time to review the Type II Interconnection arrangement to bring it in line with the current needs and circumstances of the market. As noted in the annexure to the consultation paper 'Application of the Essential Facilities Doctrine' mandated local loop unbundling is by and large still current policy in other jurisdictions that have gone through similar telecommunications liberalization programs, although it is subjected to continual policy review. Notwithstanding the continued maintenance of local loop unbundling in other jurisdictions, the Council believes that

- a) given the high geographic residential density of Hong Kong, which delivers great advantages in terms of network economies of scope and scale; and
- b) the fact that network investment will bring about long run dynamic efficiency to the economy and serve consumer interests,

a clear signal needs to be sent to industry with regard to the need to invest in network infrastructure.

7. With a view to encouraging operators' investment in the rollout of competitive telecommunications infrastructure, which will provide choices of innovative and high capacity telecommunications services to suit the needs of consumers and maintain a fair competition environment, the Council suggests that the Government consider setting a time-table for withdrawal of Type II Interconnection obligation at Point A in all areas, not simply those which satisfy the 'alternative network' proviso in Option 3.

8. The Council recognizes that a withdrawal of the policy could have an impact on operators heavily relying on Type II Interconnection at Point A. However, as noted in the consultation paper, wireless FTNS operators licensed in 2000 and new entrants from 2003 onwards currently do not have the right to request Type II Interconnection enjoyed by the FTNS operators licensed in 1995, notwithstanding their obligations to provide Type II interconnection at the exchange level. Maintaining interconnection rights for one set of operators but not another goes against the principle of a level playing field and is a matter that should be addressed as soon as possible by applying equal treatment on all operators.

9. In moving towards the withdrawal of interconnection rights from all areas, the Council suggests that the principle found in applying a reasonable 'transitional' period followed by a 'grandfathering' period for Option 3 (noted in paragraph 157 of the paper) could be applied so as to allow operators to make plans to roll out their networks and formulate strategies to compete in the changing regulatory environment.

10. The Council also wonders whether the 3-year transitional period to be followed immediately by a 3-year grandfathering period would be too long. A lengthy transition period could

- a) induce operators to defer their investment decisions regarding high bandwidth telecommunications infrastructure; and as a result
- b) the available network may not be able to support a wide variety of services, applications and content to fulfill the needs of the community as a modern information society in the coming years.

11. The Council believes therefore that regardless of whether it accepts Option 3, the Government should consider whether the transitional and grandfathering periods could be reasonably shortened to promote network investment.

### **Residual consumer safeguards in the absence of access rights**

12. The Council recognizes that if Type II Interconnection is withdrawn from all areas, it is possible that investment would be encouraged only in areas for which it is commercially viable and technically feasible to roll out alternative customer access networks, with the result that very little choice of service will be available for consumers living in certain areas.

13. To safeguard consumer interests in these circumstances, the Council suggests that the TA should signal to conduct reviews of an operator's potentially dominant position in "relevant markets", i.e. those areas where it appears that it is commercially non-viable or technically infeasible to roll out alternative networks. In such cases, the TA should take necessary measures, such as signaling the imposition of tariff regulation, to prevent the incumbent operator from abusing its dominant position. Signaling the potential application of these provisions, not only introduces a necessary consumer

safeguard, but could also have the effect of encouraging the dominant operator

- a) not to act in a way that frustrates any potential new entrants; or
- b) promote new entry to the area, so as to deflect any regulatory impositions on its retailing pricing.

**Interconnection at Street Level (Point B) and at Individual Building Level (Point C)**

14. Given that no operators are currently using Point B for interconnection, the Council agrees with the TA's view of retaining Type II Interconnection at Point B but the situation should be reviewed when interconnection at Point B may become attractive as the means to provide higher bandwidth broadband services in future.

15. It is accepted the problem of limited space in the common parts available within buildings and that the principle of economy of scale may render installation of multiple in-building telecommunications systems undesirable. However, the availability of interconnection at individual building level plays an important part in enabling operators to provide services to the end customers. The Council therefore agrees that Type II interconnection at individual building level should be maintained.

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