

10 May 2004

The Honourable Sin Chung Kai  
Legislative Councilor  
Chairman, Panel on Information, Technology and Broadcasting  
Legislative Council  
c/o 601, 6th Floor  
Citibank Tower  
3 Garden Road  
Central  
Hong Kong

Dear Mr. Chairman,

**Guidelines to Regulate Merger and Acquisition Activity in the Hong Kong  
Telecommunications Market (“the Merger Guidelines”)**

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We refer to the Merger Guidelines that the Office of Telecommunications Authority promulgated to be effective as of its Statement dated 3 May 2004.

As we have pointed out before, most parts of the Merger Guidelines are general explanations and discussions of the principles that would be adopted in reviewing merger transactions. However, as this merger review regime is the first of its kind in Hong Kong and is designed for the telecom sector only, the industry is therefore looking forward to the TA promulgating a set of guidelines which would specifically address how the relevant principles will be applied to the local telecoms market. We are of the opinion that the Merger Guidelines fall short of this expectation.

We note that the opinions provided by Professor Whish have not addressed as to how adequate the Merger Guidelines are in addressing the special features of the telecoms industry and in particular, those of the Hong Kong telecoms market.

We note that many parts of the Merger Guidelines are repeated verbatim in the “Draft Telecommunications Authority Guidelines on Anti-competitive Conduct in Hong Kong Telecommunications Markets”, which the TA is now seeking to implement for the purpose of interpreting and applying the anti-competition conduct provisions (i.e. Section 7K, 7L & 7N) of the Telecommunications Ordinance.

As the Merger Guidelines may become a precedent for the TA to follow in other guidelines concerning competition analysis (such as the above-mentioned competition guidelines), it is legitimate for the industry to expect that the possible flaws or ambiguities in the Merger Guidelines be fully and satisfactorily resolved.

In light of the above, we would urge that the above outstanding issues be dealt with properly before the Merger Guidelines are endorsed to take effect and the Telecommunications (Amendments) Ordinance 2003 comes into effect.

Yours faithfully,  
For and on behalf of  
Hutchison Telecommunications  
(Hong Kong) Limited

For and on behalf of  
SmarTone Mobile Communications  
Limited

Oswald Kwok  
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cc: Ms. Polly Yeung, Clerk to IT Panel (Fax No. 2121 0420)