

Public Non-Confidential Version

27 June 2025

**Response by HGC Global Communications Limited
to the Notice of 29 May 2025 to Seek Representations regarding the Communications
Authority’s Intended Acceptance of Commitments Offered by China Mobile Hong Kong
Limited in relation to the Proposed Acquisition of HKBN Ltd.**

This response is provided on a strictly confidential basis as it contains information relating to the identity of and the commercial activities of HGC Global Communications Limited (“HGC”) that are of a confidential nature and are therefore “confidential information” within the meaning of ss.123(1)(a), (c) and s.123(2) of the Competition Ordinance. If any such information is published or otherwise divulged, the business interests of HGC would be harmed, especially if such information is disclosed to competitors of HGC or customers of HGC.¹

We refer to the Notice issued by the Communications Authority regarding its intended acceptance of certain commitments (“Proposed Commitments”) offered by China Mobile Hong Kong Company Limited (“CMHK”) in relation to the proposed acquisition of HKBN Ltd. (the “Proposed Transaction”).

HGC’s response² sets out our preliminary views³ on the Proposed Commitments. Specifically:

- *Concerns relating to the timing and evidential basis of OFCA reaching its conclusions.*
- *The practical limitations in the Proposed Commitments that, if left unaddressed, materially undermine the ability of those remedies to keep markets open and competitive.*

[§<]

1. PRELIMINARY COMMENTS – PREMATURE CONSULTATION

1) HGC has concerns as to the speed and timing of this consultation. To date, there has been limited engagement with operators to gather evidence.

1.1 Premature Consultation

2) The Notice comes at a time where there is a lack of certainty regarding the Proposed Transaction. In particular:

- HKBN has made comments regarding their lack of support and doubts as to the valuation of the Proposed Transaction.⁴

¹ Should OFCA wish to disclose any information contained in this response, HGC requests OFCA to give HGC reasonable prior notice and sufficient time to redact the confidential information therein and provide a non-confidential version for the purposes of any such disclosure by OFCA. Furthermore, should OFCA purport to rely on s.126 of the Ordinance to disclose any information or documents which contain any confidential information of HGC or its employees, HGC requests OFCA to give HGC reasonable prior notice and sufficient time to redact the confidential information therein or to discuss suitable measures with OFCA to protect the confidential information provided in this response.

² Unless otherwise stated, defined terms herein bear the same meaning given to them in the Notice and its Annex.

³ We have sought an extension of the deadline for our submissions given that the consultation period only marginally exceeds the statutory minimum and is too short to address the full range of issues. HGC has provided comments to the best of our ability although a further supplement may be provided in due course.

⁴ See, for example, <https://www.telecoms.com/communications-service-provider/hkbn-eventually-rejects-china-mobile-acquisition-bid> and <https://www.bloomberg.com/news/articles/2025-05-26/hkbn-ceo-says-china-mobile-s-takeover-offer-undervalues-company>

- HKBN’s announcement of 3 June 2025 states that it continues to evaluate available alternative options.⁵
 - According to CMHK’s own announcement, it has not yet received support of the Ministry of Commerce to proceed with the Proposed Transaction.⁶
- 3) Any consultation process typically demands substantial effort and resources from all interested persons, including OFCA. Given the obvious uncertainties as to the status of the Proposed Transaction, HGC questions whether it is appropriate to commence a consultation at this juncture.
- 4) The curious urgency in this consultation is particularly stark given the limited time undertaken to assess the evidence and concerns raised. In particular:
- The deadline for operators to submit views and provide data/information to OFCA was 31 March. [REDACTED] OFCA did not seek any clarification or additional input from HGC.
 - In the subsequent [REDACTED], it appears OFCA reviewed all evidence gathered and was already able to inform CMHK of the identified competition concern within that period.
 - By 6 May 2025, CMHK already had drafted the proposed commitments to submit to OFCA.
 - Just 18 working days later, the CA had assessed the draft commitments, reached a view on the sufficiency of those to address the CA’s concerns and prepared the Notice for publication.
 - Given the voluntary nature of OFCA’s information requests, we expect there are information gaps not only for HGC’s information but also information from other third parties. Those holes raise questions on whether there is sufficiently robust evidence for CA to conclude even a preliminary assessment.
 - It is also unclear whether OFCA engaged with HKBN prior to the issuance of the Notice. It would be obviously irrational to have only spoken with CMHK and to have not already consulted HKBN prior to the Notice. The Proposed Commitments are in relation to HKBN’s “Relevant Buildings” and HKBN would have been able to provide feedback based on their actual experience as it had already been subject to similar commitments in 2019. It would be most unusual if OFCA has started this consultation without any involvement of the one operator that has had to implement such remedies previously – especially as CMHK considers the Notice a “*significant step towards satisfying the Pre-Conditions*”.⁷ Mere bilateral discussions between OFCA and CMHK are clearly not ‘significant’ nor sufficient.

⁵ <https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0603/2025060300025.pdf>

⁶ <https://www.hkexnews.hk/listedco/listconews/sehk/2025/0620/2025062000888.pdf>

⁷ <https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0609/2025060900588.pdf>

- 5) All the above shows a rush to reach a conclusion in the context of the Proposed Transaction longstop date of 5 December 2025 and where other material pre-conditions have not yet been satisfied.

1.2 Economic analysis of the Proposed Transaction

- 6) [REDACTED]
- As outlined below, we are unaware of the basis on which OFCA and its economic consultant reached their conclusions regarding most of the relevant markets. The Notice is largely silent on substantive analysis.
 - However, we note from OFCA’s Circular Letter of 4 March 2025 that the type and level of detail of data being sought was very limited in scale. [REDACTED]
 - We assume OFCA will eventually publish the results of its consultant’s economic analysis. This would be consistent with the approach in 2019 in relation to *HKBN/WTT* and in 2014 in *CSL/HKT*.
 - However, transparency at this stage of the Proposed Transaction is crucial to ensure market, international investor and public confidence in the process. Given the concerns involved are significantly more complex than previous mergers reviewed by the CA and the notable brevity of the Notice on the analysis to date, HGC requests that OFCA provides a copy of the economic consultant report to HGC and other interested parties as soon as possible, and certainly before OFCA makes any decision on the Proposed Commitments.⁸

1.3 OFCA’s finding of a likely substantial lessening of competition

- 7) The Notice indicates that the Proposed Transaction is likely to result in an SLC —the relevant test under the Merger Rule.⁹ That means the CA has already met the threshold to start a formal investigation under the CO.
- 8) Many questions regarding OFCA’s analysis of the Proposed Transaction remain unanswered. Given its responsibility under the CO and as public authority, the CA should not accept commitments unless it is confident they are effective. Where there are wider risks of other SLCs or uncertainties about the scope, appropriateness, or impact of commitments, an investigation is required because:
- **Legal certainty around the SLC is essential to assess effective remedies.** Simply addressing one issue may mean wider risks are overlooked. A comprehensive review would boost confidence in the review process for the market, international investors and

⁸ HGC would be happy to arrange for suitable confidentiality protections to be in place if there are concerns relating to such information being made available.

⁹ Although the Notice uses the terms “*competition issue*” and “*competitive conditions may be significantly altered*” those are merely synonyms for SLC, as (1) that is the only applicable test under the Merger Rule, and (2) had the “*competition issue*” not been likely to cause an SLC, there would be no trigger for the CA to investigate or bring proceedings before the Competition Tribunal, and thus no reason for the Proposed Commitments.

the public, and would pre-empt any suggestion that there have been shortcuts in the name of convenience.

- **Third party engagement appears to have been limited.** Compared with OFCA’s involvement of WTT throughout the commitments phase for the HKBN/WTT merger in 2019, we have seen no indication of HKBN’s involvement in the assessment of the Proposed Commitments.
- **The CA has already met the threshold for further investigation** long before the Proposed Transaction longstop date. There is no clear rationale for OFCA to rush the preliminary assessment; on the contrary, there is ample time for OFCA to continue evidence gathering.

[§<]

1.4 Amendments needed for the behavioural remedy to operate as intended

9) [§<], the Proposed Commitments, as currently drafted, have a number of material shortfalls.

Reference	HGC Comment	Explanation
§2 - Definition of Relevant Building	Proposed Commitments should cover all In-building Telecommunications Systems owned or leased by HKBN or CMHK	HGC understands the purpose of the remedy is to maintain existing levels of competition at the building level. No reason is given why a “Relevant Building” is limited to where only HKBN has installed and owns In-building Telecommunications Systems. The definition of the “Relevant Building” should include buildings where either HKBN and CMHK have installed and own or lease In-building Telecommunications Systems.
§3.2 - Definition of Requesting Operator	Scope of Relevant Operator is too narrow and excludes the full range of potential competitors	The current drafting confines the access remedy to operators who are not already providing services in the Relevant Building. [§<] HGC requests §3.2 to be amended such that a Requesting Operator only needs to hold a UCL.
§3.2 – Evidence of no other feasible means	Excessive evidential barriers for Requesting Operator should be removed	HGC notes that requiring Requesting Operators to prove there are “no other feasible means” of access to buildings is unnecessary and a disproportionate burden. This may lead to disputes and significant delay, undermining the remedy’s utility. Paragraph 9 of the Notice defines “no feasible means” as “scenarios where there is no physical space within that building for installing any elements of an in-building telecommunications system, or the property management office or owner(s) of that building is/are to accommodate the installation of a

Reference	HGC Comment	Explanation
		<p><i>new in-building telecommunications system</i>". This is to be evidenced via "a written confirmation made by [the Requesting Operator's] senior management".</p> <p>In practice, it would be difficult for any operator, including HGC, to demonstrate that there are no other feasible means of access in a timely manner. [§<]</p> <p>Proving that there is no physical space available is difficult. [§<]</p> <p>The evidential requirements put a Requesting Operator at a significant disadvantage in the downstream retail market which demands quick delivery of services. As such it would effectively nullify the purported pro-competitive effects of the Proposed Commitments.</p> <p>HGC submits that the Proposed Commitments remove the requirement for third party operators to provide evidence for "no other feasible means of access".</p>
<p>§3.1/ 3.2 – Nature of the Request</p>	<p>Recommend CMHK to be obliged to enter into Master Service Agreements upon request of Requesting Operator</p>	<p>The Proposed Commitments suggest a cumbersome building-by-building and operator-by-operator request system:</p> <ul style="list-style-type: none"> • This creates a significant bureaucracy around requests being made and reviewed, which wastes time and money for CMHK in handling requests. [§<] • [§<] <p>HGC considers it appropriate, proportionate and commercially realistic for CMHK to commit to enter into a comprehensive Master Service Agreement with any operator requesting such an arrangement.</p> <p><u>Content of the MSA</u></p> <p>The MSA could be made on reasonable standard rates (including one-off installation, site visit charge, recurring rental charges) for the following facilities in all Relevant Buildings:</p> <ul style="list-style-type: none"> • Fibre block-wiring, vertical and horizontal wirings. • Copper block-wiring, vertical and horizontal wirings. • Lead-in ducts; and • Lead-in fibre cable or fibre core. • The Master Service Agreement would also cover usage of the facilities inside the Relevant Building, such as the cabinet space in TBE room, cable trunking, cable riser, horizontal conduit space etc. <p>The advantage of a Master Service Agreement is that the principal terms of access are agreed upfront. CMHK will then only have to implement the access – rather than hold up competitors in potentially</p>

Reference	HGC Comment	Explanation
		lengthy debates and negotiations on a building-by-building request process. <u>Timing for entering into the MSA</u> CMHK should “fix it first” in terms of remedy i.e. contracts should be concluded prior to closing [§<]. [§<]
§3.1 – Fair and reasonable terms	Pricing should align with interconnection agreements published from time to time	While the Proposed Commitment to offer access on fair and reasonable terms is welcome in principle, this remains too vague. [§<] To address this, HGC requests that OFCA provides guidance on the price range for wholesale and access pricing associated with the Proposed Commitments, relative to blockwiring agreements and other interconnection agreements as are published from time to time. ¹⁰ Establishing a transparent pricing framework would prevent opportunistic pricing practices and provide much-needed commercial certainty for all access seekers, thus maintaining competitive pressure in the market.
§3.3 – Dispute Resolution	Timeline for CA determination is required	HGC notes that the Proposed Commitments envisage any disputes may be referred to the CA for determination. [§<] HGC considers that additional mechanisms need to be built in the Proposed Commitments to minimise the need to escalate any disputes to the CA. Specifically, the Proposed Commitments should set out: <ul style="list-style-type: none"> • The prescribed timeframe for CMHK to (i) respond to any request for access; and (ii) accept or counter-propose terms and conditions. • The default position if CMHK fails to agree to Requesting Operator terms/OFCA solution within a stated period.
§5.1 – Reporting	Appointment of a Monitoring Trustee	Compliance must be demonstrably independent to inspire market confidence. [§<] HGC therefore considers that the appointment of an external, independent monitoring trustee is necessary to report directly to OFCA based on the timeline as set out in paragraphs 5.1 and 5.2 of the Proposed Commitments.
§4 – Procurement Commitment	Unclear scoping of CMHK Group	The definition and scope of the “Group” subject to Procurement Commitment obligations are not clearly delineated. The draft states that “Group” includes “ <i>any other entity which it controls as of the Effective Date</i> ”. However:

¹⁰ https://www.ofca.gov.hk/en/industry_focus/industry_focus/interconnection_agreement/type_i_interconnection_agreement/index.html

Reference	HGC Comment	Explanation
		<ul style="list-style-type: none"> • No guidance is given as to what constitutes control and there is no list or description of all entities that will be bound by the Proposed Commitments. • [§<] <p>This creates material uncertainty both for market participants and for OFCA in enforcing compliance. To ensure legal clarity and genuine accountability:</p> <ul style="list-style-type: none"> • The definition of “control” should be added to the Proposed Commitments. • [§<]
§4 – Procurement Commitment	Extent of obligation on CMHK	<p>The “best endeavours” obligation sets too low a threshold.</p> <p>[§<]</p> <p>CMHK should be required to “<i>procure and ensure</i>” that all Group entities comply with the access and non-circumvention commitments, and to hold CMHK accountable for any breaches by Group companies. The Proposed Commitments must specify that failure by any Group entity to co-operate, or any act of circumvention, will be directly attributable to CMHK for the purposes of enforcement and potential remedies.</p>

[§<]

2. Conclusion

- 10) HGC respectfully urges OFCA to reconsider the adequacy of its current competitive assessment and recognise that a more in-depth investigation is warranted.

[§<]

- 11) HGC remains available to OFCA to discuss these submissions further. [§<]
HGC hopes OFCA will take this invitation to demonstrate a willingness for genuine and substantive engagement with HGC (and other operators) and ensure all views are properly heard.