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Your ref: OFCA/M/CO/2/3-24 C

27 June 2025

Office of the Communications Authority
29/F, Wu Chung House,
213 Queen's Road East,
Wanchai, Hong Kong.

URGENT by Email and By Post

Attn: Mr Alvin Li
Principal Regulatory Affairs Manager (Market & Competition 11)

Dear Mr Li,

Notice to seek representations regarding the Communications Authority's (CA) Intended Acceptance of Commitments Offered by China Mobile Hong Kong Company Limited ("CMHK") under section 60 of the Competition Ordinance in relation of the Proposed Transaction

- 1) We referred to the CA's Notice issued on 29 May 2025 ("Notice") enclosed with the proposed Commitments Offered by CMHK to the Proposed Acquisition of HKBN Limited ("Commitments") and inviting representations from the interested parties and the industry including Hong Kong Cable Television Limited ("Cable TV") regarding CA's Intended Acceptance of the Commitments. Thank you for your letter dated 11 June 2025 to extend the prescribed deadline for the industry to make representations by 28 June 2025.
- 2) Hong Kong's current telecommunication market demonstrates a competitive market landscape with a few operators having their own infrastructure networks and competing at low service charges. It is apparent that a merger between a major fixed network operator and a dominant mobile service operator can [REDACTED] reshape the existing operating environment. Having reviewed the Notice, Cable TV took the view that the CA's preliminary assessment of the Proposed Transaction's does not appear to take several crucial factors into consideration which might give rise to competition issues that might arise from the Proposed Transaction.



- 3) The preliminary assessment by CA does not seem to contain analysis on the market power of the merged entity (CMHK/HKBN). The over-simplistic approach and over-emphasis on the little overlap of business between CMHK and HKBN was adopted to rebut the usual competition risk in the form of coordinated outcome might result from the merger. As such, only one key competition issue was identified in the Notice. The only competition risk identified is that the reduced competition in buildings where both CMHK and HKBN currently provide retail broadband/local access services, particularly if rival operators face access barriers to install their own in-building systems.
- 4) [REDACTED] There is a lack of consideration on the wholesale risks. The design, scope, pricing terms of the Commitments have inherent deficiencies. In addition, the dispute resolution mechanism would rarely be invoked in business reality as time is of the essence to target new customers. More details would be elaborated below. CA's intended acceptance of the Commitments would weaken competition [REDACTED].
- 5) [REDACTED]
- 6) It is regulator's duty to preserve fair competition in order to avoid the consequence that the merged entity is able to exploit its market power to force its rivals or downstream service providers out of business. We believe that acceptance of the proposed Commitment would [REDACTED] damage the already challenged business environment and in particular, severely alter the market conditions of unified carriers faced at time of their making licence applications to the government.
- 7) The impact of the Proposed Transaction on the market competition is multifaceted. Whilst the Proposed Transaction may give rise to cross business innovation, it can also reduce the number of competitors in the market; create the likelihood of anti-competitive practices and higher prices for consumers in the long run. The balance between these outcomes often hinges on the regulatory environment. The regulators play a crucial role in maintaining the balance. At all material times,

the government should not be perceived by the public as the one who tolerates risks of stifling fair competition or ignores the fact that the merged entity has unfair advantage over other market participants might arise from the Proposed Transaction.

Commitments by CMHK

- 8) Notwithstanding the Notice contains three commitments included: (1) In-building System Commitment, (2) the Procurement Commitment; and (3) the Reporting Commitment, the only Commitment which attempts to address the competition issue are the In-building System Commitment (the Core Commitment). The other two commitments are measures to ensure CMHK's compliance with the Core Commitment. In essence, they are more relevant to regulatory supervision.
- 9) The Procurement Commitment requires CMHK must use best endeavours to ensure all entities within its group comply with and support the In-building System Commitment. The Reporting Commitment requires CMHK to submit semi-annual written reports to OFCA on compliance. The duration of both is same as the Core Commitment (with the first report timeline to OFCA is 6 months from the post-Effective Date).

In-building System Commitment

10) The Core Commitment is that CMHK must provide **fair and reasonable access** to HKBN's existing in-building telecommunications systems (e.g. wiring, ducts, cabinets) in the "Relevant Buildings".

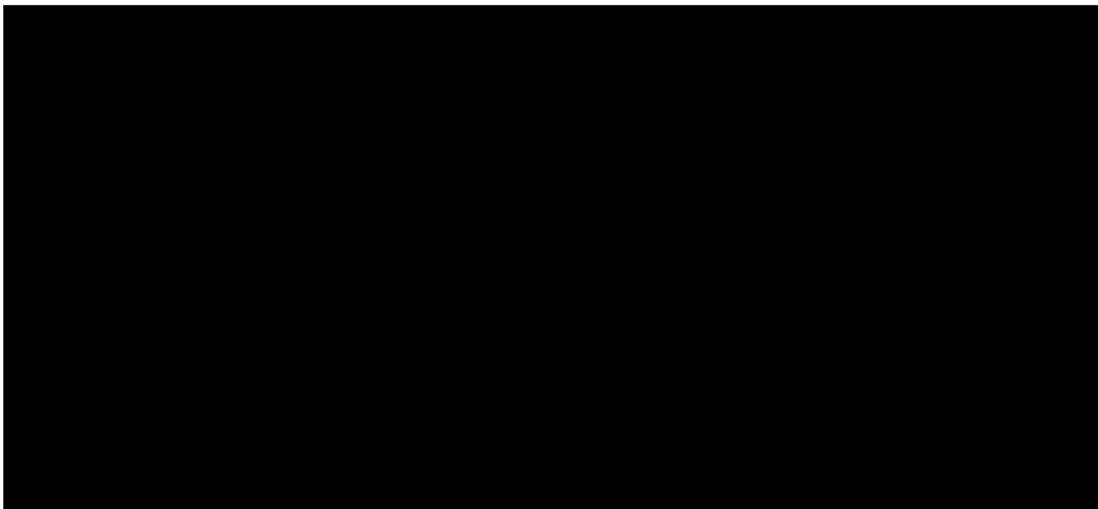
- **Available to:** competing licensed operators ("Requesting Operators") the following
 - (a) who are not already serving end-customers in that building.
 - (b) who can demonstrate no other feasible access (e.g. no physical space, building owner corporations' refusal).
 - **Process:** (i) The Requesting Operator submits detailed written request to CMHK
 - (ii) CMHK may request evidence of access barriers
 - (iii) Negotiation of terms, failing which may be resolved by
- Resolution by CA if needed** (binding if the Requesting Operator agrees).
- **Pricing:** charges must be based on reasonable costs (method determined by CA if disputed)
 - **Duration:** until varied/released under the Competition Ordinance.

Proof for "no feasible access" is unrealistic

- 11) Hong Kong has a significant degree of facilities-based competition. At the access level, viz. building access level, while there is a degree of overlapping infrastructure, difficulties in



accessing buildings often exist. One of the inherent deficiencies for the Core Commitment lies with the burden of proof. Requiring competitors to prove “no other feasible means of access” is impractical. Building owners rarely provide written rejections, thus making evidence hard to obtain. There are many scenarios attribute to denial of building access including but not limited to the lack of incorporated owners corporations (IC), the re-elections of IC, disputes between IC and some building owners, and the uncooperative acts of building management companies (BMO). In all these scenarios, the chance for competitors in obtaining any written rejection of access is very slim, if not impossible. [REDACTED]



Definition of “Relevant Buildings” is too narrow

12) The Core Commitment only included the existing HKBN buildings but buildings where HKBN installs system post-merger are excluded. The definition of the Commitment is too narrow and thus the scope for open access is limited. CMHK could strategically deploy HKBN’s infrastructure to monopolize new buildings. This fails to serve as an effective constraint to the potential market power which might be conferred to the merged entity in the market as a result of the Proposed Transaction. In this connection, we would propose to revise the Core Commitment in order to include both HKBN’s existing and post-merger buildings.

Ignore the wholesale competition risks

13) The Core Commitment only addresses the retail competition in buildings. The merged entity’s combined wholesale market power (e.g. backhaul, leased lines) could raise prices for smaller operators. The wholesale competition risk was not identified in the Notice and let alone any assessment on the same. [REDACTED]



[REDACTED] The Core Commitment and the total disregard of this aspect in CA's assessment is detrimental to Cable TV on both entry and capacity expansion level.

The pricing terms lack transparency

14)

[REDACTED] It is suggested that CA should mandate a cost formula after undergoing market study. A clear cost formula is a good example of regulatory guidance. It will be easier to follow and can reduce the number of future disputes.

Dispute resolution favours CMHK

15) The ultimate protection stated in the Commitment should operators be unable to commercially agree on the charge with the merged entity by CA's adjudication pursuant to reasonable cost is not new. It is a last resort only. The bargaining power of small operators is relatively low. They are not likely to take disputes on charge to CA for fear of losing their business opportunities. The fact that the decision of CA is binding only on Requesting Operator does not appear fair. Considering that CMHK can still challenge the unfavourable rulings in Court, the proposed dispute resolution mechanism by CA is impractical from the business perspective.

16) Conglomerates such as the CMHK or the merged entity would have the resources to engage in lengthy legal proceedings but not common to all operators. Delays so occasioned in the adjudication stall market entry. Customers will be lost to rivals in the process. Time wasted by futile attempts and the opportunity cost cannot be recovered. A simple and expedited summary procedure (with shorter timelines to ensure timely representations, adjudication and enforcement of the decision) can perhaps facilitate all parties concerned.

Inadequate long term competition safeguards

17)

[REDACTED] The Reporting Commitment is reactive only. Absent any request which can hardly be substantiated by documentary evidence, there is no guarantee on CMHK's opening rival access. Semi-annual reports are no effective prevention of anti-competitive behaviour. Dispute resolution by CA on case by case serves no deterrence effect.



18) *Overlooks bundling/market leverage*

The assessment overlooks the Proposed Transaction may give rise to the increase in market power of the merged entity which leads to a competition risk. The merged entity could offer predatory bundles (e.g. below cost broadband with mobile plans) to squeeze pure-play broadband operators. There is no evidence to refute that the Proposed Transaction would not give rise to an increase in bargaining power for the merged entity. Considering the merging parties' strong presence in both fixed network market and mobile business market, the existence of competitors in these two markets does not mean that they can place an effective competitive constraint on the merged entity in the future.

Assessment is premature

19) The Commitments only address the single competition concern, i.e. the barrier risk in relation to building access. The assessment and the Commitments ignore the cumulative impact of the Proposed Transaction at large. Enterprise market dominance in business (such as dark fibre rental, Dedicated Internet Access service, Data Center to Data Center interconnects and Business Broadband services, especially in congested underground utilities areas and those commercial buildings and data centers with limitation on access facilities as the merged entity is dominant the market share to rivals) remain un-assessed.

20) In view of the above, we fail to see how CA had fully considered the data analysis on areas such as the market share in terms of revenue, synergies, market trends, impact comparison on various types of business operated by the merging parties and the proximity and impact of those operators affected in order to prove that the merged entity's increase in market power is not disproportionate.

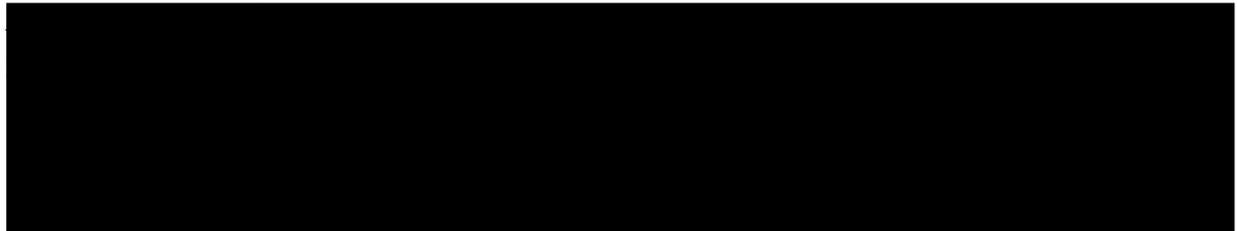
██████████ The preliminary assessment stated in the Notice seems premature and cannot dismiss other potential competition concerns may arise from the Proposed Transaction.

Suggestions

21) Cable TV respectfully submits that the Commitments stated in the Notice are incapable of effectively address the competition risks we identified from the Proposed Transaction. We would request for concrete safeguards in the Commitments to be offered by CMHK. We believe that the regulator should review again to conduct a “full and comprehensive” assessment of the data gathered in the consultation process before revising the Commitments. In particular, we suggest the following:



- (i) Expanding the definition of the “Buildings” to include future HKBN’s expansion (i.e. HKBN’s post-merger buildings);
- (ii) Expanding scope of assessment to include wholesale markets (e.g. backhaul and leased lines) and impose commitment to adequately address the potential harms;
- (iii) Stipulation of predefined pricing models for charges in accessing HKBN’s systems at their Buildings;
- [REDACTED]
- (v) Open CMHK’s mobile network and non-physical access barriers; and
- (vi) Introducing an expedited summary procedure for dispute resolution (shorter timeline for dispute resolution, appeal, enforcement of CA’s decision and audit review/reporting requirements to follow up on the implementation).



Should you have any questions to the above, please contact the undersigned at 2112 5831 or our general counsel, Ms. Celeste Chong at 2112 6604.

We look forward to hearing your favourably reply to our proposals.

Yours sincerely

Raymond Chan

Director

