

Date: 28 June 2025

STRICTLY CONFIDENTIAL – CONTAINS BUSINESS SECRETS

BY EMAIL

Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Attention: [REDACTED] and [REDACTED]

Dear Sirs,

Re: Notice to seek representations on the Commitments offered by China Mobile Hong Kong Company Limited in relation to the acquisition of HKBN Ltd.

1. Reference is made to your notice dated 29 May 2025 in relation to the proposed acquisition of HKBN Ltd. ("**HKBN**") by China Mobile Hong Kong Limited ("**CMHK**") (the "**Transaction**"). Terms used in the Notice are used below for convenience.

Introduction

2. We noted your views on the Transaction as set out in the Notice. Below are SmarTone's comments on the Notice. In summary:
 - **OFCA's preliminary assessment of the Transaction is inexplicably inadequate.** OFCA has not adequately assessed our vertical relationships with HKBN and/or how those are impacted by the Transaction. These include (i) credible theories of harm relating to HKBN's existing vertical relationships with SmarTone in mobile backhaul, MVNO services and leased lines for fixed broadband as CMHK will have both the *ability and incentive* to engage in strategies that risk the foreclosure of SmarTone (and other operators), (ii) removal of HKBN as an additional competitive constraint in mobile services (through its MVNO customer base). It obviously has the effect of substantially lessening competition in Hong Kong and creating an uneven level playing field.
 - **OFCA's frame of assessment and remedies are out of step with its overseas peers.** The risks identified below reflect consistent themes of merger reviews in established jurisdictions.¹ The factual, legal and economic complexity of such reviews *in similar market circumstances to the Transaction* has triggered the need for (1) rigorous investigations and (2) substantive evidence gathering and (3) robust remedies.² As a public

¹ Examples include *3UK/Vodafone* (UK, 2024), *Swisscom/Vodafone Italia* (Italy, 2024), *Orange/VOO/Brut  l  * (France, 2023), *TRUE/Dtac* (Thailand, 2022), *Celcom/Digi* (Malaysia, 2022), *Sprint/T-Mobile* (USA, 2019), *Hutchison 3G/Telefonica* (UK, 2016), and *BT/EE* (UK, 2016).

² See, e.g. the recent UK example of *3UK/Vodafone*. This was a 15-month market inquiry and involved invoking statutory information gathering powers from the merging parties and also third parties. In *TPG/Vodafone* (Australia, 2018), the

authority and to maintain local and international confidence in the regulatory process, OFCA should be seen to be actively verifying with evidence that there are no risks to competition beyond that briefly identified in the Notice.

- **Formal investigation is needed to maintain confidence in the regulatory process.** OFCA’s preliminary assessment stems from a stunted process of information gathering. Absent a rigorous investigation and substantive evidence gathering, the Commitments do not adequately address the range of issues we have raised here and in previous submissions. We do not repeat other arguments from previous submissions (see **Annex 1**). Conducting a formal investigation would give OFCA sufficient time and evidence to thoroughly examine these (and any other) credible theories of harm.³
- OFCA’s definitive conclusion in such a short timeframe risks rushing into unhealthy entrenched and duopolistic market structures (which are rare in telecommunications markets overseas) – **impacting operators, consumers/businesses and the resilience of the Hong Kong mobile network.**

OFCA has not considered the risk of vertical foreclosure in wholesale mobile backhaul market

3. HKBN is currently our [REDACTED]⁴ provider of mobile backhaul [REDACTED]. Notably, our reliance on this independent supplier already exceeds [REDACTED] and will surpass [REDACTED] in terms of bandwidth for the backhaul service⁵. [REDACTED] mobile backhaul connects mobile base stations to the core network and is essential to meet the demands of 5G. IP lines of [REDACTED] are in SmarTone’s experience insufficient to support the future demands of next-gen (e.g. 5G-A and 6G networks) to be placed on MNO networks.
4. Post-Transaction, CMHK (as a vertically integrated operator with leading positions as an MNO and FNO) will have both the *ability and incentive* to engage in foreclosure strategies below, which have the effect of reducing the choices of “independent” fixed operators and substantially lessening competition in the mobile market (i.e. [REDACTED] and SmarTone could only choose [REDACTED], leaving us without negotiation power over terms, including price and service quality).
5. This risk is grounded in the structural incentives created by the Transaction and a lack of commitments by CMHK to prevent such conduct. The Transaction could eliminate the choices of independent fixed operators because the number of

ACCC conducted an 8-month market inquiry. Compared to such peer agencies, the nature of OFCA’s preliminary assessment appears to have taken a “light” approach to evidence gathering.

³ The Transaction’s Long Stop Date is 5 December 2025. There are at least 5 months for OFCA to gather evidence, investigate and reach a conclusion that is grounded in the actual factual matrix in the market.

⁴ SmarTone currently only sources supply of [REDACTED].

⁵ See Schedule 2 of our letter dated 17 April 2025. [REDACTED].

independent FNOs will be reduced from [REDACTED].⁶ Without enforceable remedies, one of the events below will occur, which has the effect of substantially lessening competition and affecting the resilience of the mobile network in Hong Kong:

- Risk of tacit coordination of wholesale price - Given the Transaction will result in two significant integrated players (i.e. CMHK and HKT), this will raise the risk of increased incentives to tacitly coordinate between themselves (and other operators).⁷ Such coordination may lead to higher prices in the market and consequent cost disadvantages for mobile backhaul customers such as SmarTone.
- Self-preferencing - If HKBN were to offer preferential internal pricing to CMHK, it could create a cost advantage for CMHK. This would risk impairing the ability of non-integrated MNOs to compete downstream in mobile services. Even when [REDACTED], CMHK may ignore or terminate the same as explained below.
- Resilience and risk concentration - Given the Transaction results in less independent and sizeable FNOs, SmarTone and other MNOs may be left with only having access to and/or migrating to [REDACTED]. This heighten the potential risk of diminished service quality because [REDACTED] already has limited resources which are heavily relied on by other MNOs. Such a risk to the resilience of the network may vary depending on district. By way of illustration, the table indicates the coverage of [REDACTED] in the Central & Western District in terms of the cellsites in the case of a migration:

[REDACTED]

Note: The percentage is calculated based on the number of cellsites of SmarTone supported by the relevant fixed operators at Central & Western District in April 2025.

6. The three possible risks above illustrate the importance to ensure there is fair access and on FRAND terms (i.e. Fair, Reasonable, and Non-Discriminatory) to ensure diversity of supply and a resilient network.
7. CMHK's financial strength means it could absorb the short-term loss of SmarTone's business in exchange for long-term strategic gains. Notably, CMHK made a similar point during the HKT/CSL merger in 2014 where it warned of similar foreclosure risks:

"[...] We submit that the Proposed Transaction may result in HKT gaining additional market power as all MNOs rely heavily on FNOs to provide backhaul services connecting their radio base stations and core networks. CMHK

⁶ SmarTone does not consider [REDACTED], for example, to be a feasible alternative for an MNO. [REDACTED] does not offer wholesale solutions with IP lines. Instead, it only offers non-IP fiber which would require MNOs to make significant additional investments into additional infrastructure and equipment to transmit the network to base stations. Further, [REDACTED] has limited coverage in commercial buildings e.g. many buildings in Central would not be serviced by [REDACTED].

⁷ See Annex 2 for the existing and projected share of backhaul services provided by various suppliers measured by the number of IP lines, bandwidth and annual expenditures.

recommends the CA to consider the effect of vertical integration resulted from the Proposed Transaction. Consideration should be given to the fact that HKT remains the largest fixed network operator and HKT/CSL will become the largest mobile network operator. [...]"⁸

Risks of foreclosing the continued access, service degradation and future access

8. SmarTone fears that SmarTone could face service disruption, escalating costs, reduced service quality, and long-term erosion of its market position if CMHK could leverage HKBN's fixed infrastructure to:
 - ignore [REDACTED]; and
 - engage in constructive refusals to supply. CMHK could seek to favour its own mobile operations by, for example, deprioritising SmarTone's traffic during peak periods, delaying service upgrades, introducing operational inefficiencies (whether through technical throttling or commercial disincentives), poor maintenance/repair etc.
9. Such conduct would leave us in a precarious position. While our [REDACTED] rights may provide legal grounds for recourse, the practical commercial reality is that enforcement of such protections could require costly and time-consuming negotiations and/or litigation. In the meantime, our network performance — and by extension, competitive position — could be materially weakened. We have [REDACTED] alternatives as [REDACTED] does not provide [REDACTED] backhaul to us, and even SmarTone could be in a weaker negotiating position with [REDACTED].
10. To enhance 5G and prepare for 5G-A and 6G advancements, we are likely to face a technical and commercial imperative to [REDACTED]. In either scenario, HKBN (or CMHK post-Transaction) does not guarantee higher-capacity services such as [REDACTED] for new cellsites or next-gen network:
 - New Site Expansion: As we continue to roll out new cellsites every year to support 5G densification and prepare for 6G, we will require new IP backhaul lines. If CMHK refuses to supply these lines, or imposes commercially unreasonable terms (such as discriminatory higher prices for new IP lines), SmarTone may be forced to delay or scale back our network expansion. This obviously will impact our ability to compete – reducing choice, innovation and quality MNO services.
 - Next-Generation network ([REDACTED]): The evolution to 6G will demand significantly higher backhaul capacity. If CMHK withholds or delays the availability of [REDACTED] services, we will be denied access to essential future upgrades and our ability to deliver competitive next-gen mobile services will be compromised.

⁸ See CMHK's submission to OFCA available at https://www.coms-auth.hk/filemanager/common/policies_regulations/consultations/submissions/20140205/CMHK.pdf

11. This risk is particularly acute because [REDACTED]. CMHK could exploit this gap to purposefully raise our costs with them, or force us to rely on more expensive alternatives.⁹
12. Such analysis has been considered in mobile backhaul markets by overseas competition authorities, for example in UK ¹⁰ (*BT/EE*, 2016) and Italy (*Swisscom/Vodafone Italia*, 2024).¹¹ *BT/EE* is instructive – as the risk of foreclosure from a mobile/fixed merger in concentrated market structures was carefully analysed – and was only dismissed as a theory of harm because of the existence of *ex-ante* regulation by OFCOM.¹² Remedies were required in *Swisscom* to prevent the risk of foreclosure of wholesale access arising from a fixed/mobile merger.

Proposed remedies

13. The Commitments do not address any of these issues. OFCA must request from CMHK the following remedies:
14. [REDACTED].
15. [REDACTED].
16. [REDACTED].
17. [REDACTED].

OFCA has not sufficiently considered the risk of foreclosing access to MVNO customers and the horizontal overlap in mobile services

18. It is obviously wrong for OFCA to dismiss competition concerns because two obvious risks below directly reduce competition in the mobile market:

Risk of foreclosing

19. HKBN is a [REDACTED] MVNO partner of SmarTone for almost [REDACTED] years and to our knowledge, HKBN has approximately [REDACTED] MVNO customers and almost [REDACTED] are using the SmarTone network.¹⁴ We

⁹ Based on SmarTone's experience, [REDACTED].

¹⁰ See the UK CMA decision on *BT/EE* at https://assets.publishing.service.gov.uk/media/56992242ed915d4747000026/BT_EE_final_report.pdf.

¹¹ C12659 – *Swisscom Italia/Vodafone Italia*, Order no. 31416 of the Italian Competition and Market Authority of 19 December 2024.

¹² See, *BT/EE* pages 221 to 293. Also see for example, a detailed economic analysis of mobile backhaul risks in a fixed/mobile merger (e.g. https://assets.publishing.service.gov.uk/media/55d48b0640f0b609ff000007/BT_EE_CRA_Summary_of_Vertical_Analyses.pdf) and OFCOM's analysis (https://assets.publishing.service.gov.uk/media/55cc79abe5274a547300002f/Ofcom_Phase_2_submission.pdf)

¹⁴ We do not have the market share for the MVNO post-paid customers in Hong Kong. OFCA's statistics have covered both two segments: (i) post-paid MVNO segment and (ii) pre-paid MVNO segment. In the segment (i), the key MVNO players are HKBN and SunMobile (HKT) to our best knowledge.

treat them as our own, with [REDACTED] maintaining loyalty for at least [REDACTED] years.

20. The Hong Kong mobile market, especially in the post-paid segment, is intensely competitive. Service providers spent very substantial resources and enormous marketing effort to acquire customers from each other, as well as to retain their own customer base. CMHK in recent years are by and large the only operator in Hong Kong that have a net inflow of customers as compared to all other operators (see **Annex 3**). If this fixed-mobile merger happens, CMHK, already the largest mobile operator, will consolidate further the mobile market with around [REDACTED] mobile customers under HKBN's MVNO business today. This consolidation of market power and influence is a lot more substantial than what the [REDACTED] market share suggests. To put it in context, in the last twelve months, with enormous marketing effort, CMHK was able to acquire about *only 100,000 customers* from other operators. The consolidation of the [REDACTED] mobile customers from HKBN translate into *over [REDACTED] years' worth of acquisition effort* in an intensely competitive mobile market. In other words, the merger directly eliminates competition by removing the [REDACTED]-year competition-driven process to acquire new customers. It is therefore wrong to conclude that this fixed-mobile merger is not substantially lessening competition.
21. Post-Transaction, CMHK will have *both the ability and incentive* to cut off a revenue stream for SmarTone and to transfer MVNO customers to the CMHK network as the number of HKBN's MVNO customers is over [REDACTED] times CMHK's net monthly acquisition rate. [REDACTED]. Given HKBN has the playbook – CMHK will have ever greater incentive to implement such a strategy post-Transaction.
22. Given the strength and capacity of CMHK's mobile network, CMHK has no difficulty in hosting additional MVNO customers without incurring additional capital expenditure. Therefore, the Transaction will present a real risk that CMHK will leverage its power as a leading MNO and will cease acquiring MVNO services from other MNOs post-Transaction.
23. The risk of foreclosure should be viewed holistically in the context of CMHK's and HKBN's overall market position post-Transaction. In addition to the above, the removal of HKBN as a MVNO will limit consumer choice, reduce competition for mobile customers and impact SmarTone's MVNO business:
 - The mobile market in Hong Kong is already highly concentrated. HKT (CSL) and CMHK are the top two market players. Both HKT and CMHK already have significant market power from their MNO businesses. For players such as SmarTone, MVNO is an additional sales channel which allows SmarTone to have access to HKBN's network and customers.

- As explained above, CMHK would have an ability to cut-off a revenue stream for SmarTone – weakening our range of services as an MNO competitor, noting that HKBN is a [REDACTED] MVNO partner of SmarTone.
 - To our best knowledge, there are two key active post-paid MVNO in Hong Kong and HKBN is one of them. To our knowledge, HKBN has approximately [REDACTED] MVNO customers and almost [REDACTED] are using the SmarTone network. OFCA should be protecting all consumers – however sizeable they are deserving of real choice of provider.
 - Barriers to entry will be even higher post-Transaction as MNO services will be dominated by two vertically integrated players (i.e. HKT and CMHK), further deterring new MVNOs to enter the market. This is in addition to existing barriers, such as, the need for initial investments in billing systems, customer services etc.
 - SmarTone is able to leverage on HKBN’s marketing activities and brand recognition. MVNO’s arrangement with HKBN also represents an opportunity for SmarTone to better maximise its network utilization. [REDACTED].
24. OFCA has previously considered the relevance of MVNOs in Hong Kong in *HKT/CSL*. Further, a number of overseas agencies have insisted on a wide range of remedies in mergers where there is a risk to reducing consumer choice and a reduction in the number of mobile suppliers arising from foreclosure strategies. For example, *TRUE/Dtac* (Thailand, 2022), *Celcom/Digi* (Malaysia, 2022), *Sprint/T-Mobile* (USA, 2019) and *Hutchison 3G /Telefonica* (UK, 2016). OFCA is well placed to discuss with its peer agencies on how they assess such risks.
- Horizontal Overlap: Loss of one less independent MVNO***
25. The Transaction gives rise to a horizontal overlap in the supply of mobile services as a result of HKBN’s MVNO activities. [REDACTED].
26. CMHK is already the largest mobile player by number of subscriptions. Post Transaction, CMHK would acquire control over HKBN’s MVNO customers, further strengthening its already dominant market position. The logic of OFCA in the Notice is to require a remedy is that irrespective of the size of a competitor - *a reduction in the number of competitors* in an already concentrated market with barriers to entry is a sufficient trigger for a potential lessening of competition. That logic surely is applicable also to the horizontal overlap in mobile services. In *HKT/CSL*, OFCA was very alert to increases in concentration in mobile market and insisted on remedies. OFCA should be well aware of how overseas agencies globally have consistently and carefully scrutinised mobile mergers and intervened in transactions resulting in a reduction in the number of players.
27. SmarTone submits that the list of MVNO Service Licensees on OFCA’s website is not a credible delineation of competitive constraints. To our best knowledge, a significant number of them are not active in offering MVNO services for the

mass market. OFCA should investigate the number of active MVNO post-paid subscriptions for the mass market.

28. SmarTone sees the Transaction as a reduction in competition (due to the loss of one less independent MVNO) that would further reduce consumer choice in a mobile market with limited credible options already. Preventing consumers from being forced into CMHK contracts without consent is therefore important to be taken into account.
29. The Notice does not suggest that OFCA has assessed a range of issues in this horizontal overlap such as the likely pricing impact on MVNO customers post-Transaction with CMHK controlling the pricing strategy of HKBN, possible negative pricing effect for MVNO customers if they were all ported to CMHK and the extent of competitive constraints that active MVNOs such as HKBN place on CMHK and other MNOs.

Remedies

30. The Commitments do not address any of these issues. OFCA must request from CMHK the following remedies:
31. [REDACTED].
32. [REDACTED].
33. [REDACTED]

OFCA has not considered the risk of limiting the resale of fixed network services and cross border connectivity

Resale of fixed network services

34. SmarTone [REDACTED] utilises HKBN's fibre network to resell fixed-line broadband services for residential and business customers, whilst SmarTone's reliance on HKBN's network exceeds [REDACTED] of its fixed broadband customer base as at 31 May 2025.
35. Post-Transaction, CMHK has the *ability and incentive* to engage in foreclosure strategies below, which has the effect of reducing the choices of independent fixed operators and substantially lessening competition in the fixed broadband market (i.e. [REDACTED] and SmarTone could only choose [REDACTED], leaving us without negotiation power over terms, including price and service quality).
36. The Transaction could eliminate the choices of independent fixed operators because the number of independent FNOs will be reduced.¹⁵ Without enforceable remedies, one of the events will occur, which has the effect of

¹⁵ [REDACTED] has limited coverage in commercial buildings e.g. many buildings in Central would not be serviced by [REDACTED].

substantially lessening competition by squeezing non-integrated players (including SmarTone) out of the fixed market:

- *Risk of foreclose SMC in the resale of fixed network service:* If CMHK refuses to supply fixed services (either outright or a constructive refusal), our alternative fixed suppliers could only support approximately [REDACTED] of our existing fixed broadband customer base. Due to their coverage limitations, this may force the remaining customers to switch to other players. This would have the effect of removing competition in certain districts in Hong Kong and choice for consumers in an already concentrated market.
- *Risk of tacit coordination of the price* - Given the Transaction will result in two significant integrated players (i.e. CMHK and HKT), this will raise the risk of increased incentives to tacitly coordinate between themselves (and other operators).¹⁶ Such coordination may lead to higher prices in the market and consequent cost disadvantages for resellers of fixed broadband services such as SmarTone.
- *Self-preferencing* - If HKBN were to offer preferential internal pricing to CMHK, it could create a cost advantage for CMHK. This would risk impairing the ability of non-integrated MNOs to compete in the fixed market.

37. There are features of our relationship with HKBN that merit further assessment by OFCA:

- Although SmarTone may have [REDACTED] alternatives, SmarTone may face difficulties in switching. First, alternative suppliers than HKBN may have coverage limitations (e.g. not covering certain districts or buildings). Second, end-customers may not agree with additional installations arising from a switch. Both would result in SmarTone becoming less compelling as a retail offering – and eventually customers would face reduced choice if SmarTone were forced to exit or scale back its fixed offerings.
- there remains a practical risk of service degradation/quality of service impact (in a similar way to backhaul above) and being denied new products by CMHK (which is similar to the analysis above on mobile backhaul).

38. To mitigate the risks of foreclosure, SmarTone requests additional remedies. The access remedies below, in particular, are broadly consistent with those in *HKBN/WTT* in 2019 and ought not to be controversial. Indeed, similar fixed access remedies can be found overseas, for example, *Orange/VOO/Brut el e* in France, 2023.¹⁷ Given the Commitments already allow for a remedy in fixed networks where CMHK has a small market share, the risk of SmarTone being foreclosed should also be a concern to be addressed.

¹⁷ https://ec.europa.eu/competition/mergers/cases1/202349/M_10663_9760254_2225_3.pdf

¹⁷ https://ec.europa.eu/competition/mergers/cases1/202349/M_10663_9760254_2225_3.pdf

Remedies

39. The Commitments do not address any of these issues. OFCA must request from CMHK the following remedies:
40. [REDACTED].
41. [REDACTED].
42. [REDACTED].

Cross border connectivity

43. In addition to resale of fixed network services in Hong Kong, there are equally strong needs to ensure cross-border connectivity is maintained post-Transaction. As detailed in our previous submissions, CMHK's position in the Mainland China market already gives it an ability to gate-keep cross-border solutions.
44. Post-Transaction, their ability and incentive to engage in foreclosure strategies is ever more enhanced – leveraging their dominance in Mainland China markets to favour their Hong Kong fixed and mobile businesses. The same risks will present themselves – either outright refusal to supply and/or unreasonable terms leading to a constructive refusal. In either scenario, SmarTone and other MNOs/FNOs would suffer an obvious disadvantage – and there are [REDACTED] alternatives for us to switch to given the strength of China Mobile (see Annex 1).
45. The Commitments do not address any of these issues. OFCA must request from CMHK the remedies outlined above at paragraphs 40 to 42 to preserve cross-border connectivity solutions and to avoid Hong Kong based operators being put at material disadvantage.

OFCA has not considered the potential for conglomerate effects

46. A traditional conglomerate effects theory of harm merits assessment. Through strong positions in mobile and fixed markets, post-Transaction CMHK will have the *ability and incentive* to leverage its market power across markets and offer bundled services to CMHK's and HKBN's customers. CMHK will also be able to bundle its cross-border connectivity with local fixed access (and mobile) – with the enterprise segment most likely to have the significant impact.
47. Non-integrated players (including SmarTone, [REDACTED]) will not be able to offer similar packages. This presents an obvious foreclosure risk – such that non-integrated players' market positions are undermined further. Post-Transaction, two integrated market players (i.e. HKT and CMHK) will dominate fixed and mobile markets.
48. OFCA previously considered the possibility of conglomerate effects in HKT/CSL. However, the theory of harm is more relevant here as HKBN currently is only a

MVNO and has a relatively weak position in mobile. Given CMHK's mobile leading position, compared to the scenario in 2014, there is here an enhanced risk that competitors could not replicate CMHK's bundled services when they do not have access to HKBN's new high-speed internet offerings and/or customers will likely find the bundled services offered using CMHK's network more attractive (e.g., as a result of brand recognition as well as CMHK's strong financial position to offer a competitive package).

49. The Commitments do not address any of these issues. OFCA must assess further remedies to prevent such strategies from having an anti-competitive effect:
- [REDACTED]; and/or
 - [REDACTED].

OFCA has not considered the relevance of Fixed Mobile Convergence

50. The Notice does not suggest that OFCA has assessed the reality of a fixed-mobile converged market (i.e. a converged market where FNOs and MNOs compete for the same customers).¹⁸ The market in Hong Kong is no longer segmented between fixed and mobile. In particular, there is an increasing relevance of 5G FWA as a credible and realistic alternative to fixed broadband in terms of quality, speed, coverage and price.¹⁹
51. In addition to market wide trends that OFCA will be best placed to investigate, SmarTone's own experience in 5G FWA is of particular relevance.
- Our 5G FWA service is growing. We have seen YOY increase in subscriber base of [REDACTED] between 2024 and 2025. Customers are also staying with a 5G FWA solution for a long period with around [REDACTED]. retention rate for our 5G Home Broadband solution (as at April 2025).
 - 5G FWA is growing in terms of revenue and profit for SmarTone – becoming a key engine in our growth (FY24 v FY25 saw 33% revenue increase and 70% EBIDTA). You may gather more evidence from other MNOs to confirm such trend and trajectories.
52. As shown by overseas recent examples, FMC raises new market definition issues for a competition authority to consider. For example, in *3UK/Vodafone* (2024), the UK CMA's very recent investigation examined in detail the growth of FMC solutions.²⁰ This reflects the clear need for OFCA to properly define an FMC market and to have engagement with operators to assess the substance – not falling back on a quick 'preliminary' view. The Notice does not suggest that

¹⁸ The Notice refers to "fixed mobile bundles" – but that is not FMC – that is merely a market of commercial bundles as opposed to a converged market where FNOs and MNOs compete for the same customers.

¹⁹ [REDACTED] Consultancy Study on Quantification of 5G's Contribution to the Economy of Hong Kong, January 2024

²⁰ https://assets.publishing.service.gov.uk/media/6756f990f96f5424a4b877b7/Final_report_9_December_2024.pdf

OFCA has assessed the patterns of substitutability that its own consultant ([REDACTED]) has identified. For example:

- It would show a strong overlap between HKBN and CMHK that has not been addressed. Both CMHK and HKBN have sizeable/leading positions as MNO and FNO. In 2014, CMHK itself raised concerns²¹ about a “fixed-mobile (converged)” market in 2014 – and such converged market has only become more concentrated since:

*“The combined effect of the above is that, upon completion of the Proposed Transaction, **HKT/CSL will become a giant all-in-one service provider of fixed telephone service, fixed broadband service, 2G/3G/4G mobile service and even wi-fi service. HKT/CSL might become a dominant or near-dominant operator in the combined fixed and mobile services market.**”*

- Creates a duopolistic structure. Post-Transaction, HKT and CMHK will dominate the market with non-integrated players having smaller positions. The symmetry of market position and offerings makes the risk of tacit coordination even more likely.
- Reduces incentives to innovate. The Transaction removes CMHK as a challenger in 5G FWA and its growing fixed network. This reduction in choice and in alternative solutions ultimately will impact consumers and businesses.

53. There is no suggestion in the Notice that FMC as a market was considered. Without an investigation and the gathering of evidence into this market, it is difficult to understand the rationality of any conclusions being reached.

Conclusion

54. This submission and our previous submissions (**Annex 1**) clearly demonstrate that the Transaction has the effect of substantially lessening competition in Hong Kong and creating an uneven level playing field.

55. The Notice fails to cover a range of competitive concerns and therefore it has been too early in arriving at the narrow scope of the Commitments. Specifically, SmarTone notes:

- There remain credible theories of harm relating to HKBN’s existing vertical relationships with SmarTone in mobile backhaul, MVNO services and leased lines for fixed broadband. CMHK will have the *ability and incentive* to engage in strategies that risk the foreclosure of SmarTone (and other operators). Additionally, there will be an increased risk of tacit coordination between HKT and CMHK and reduce the incentives for HKT and CMHK to compete head-to-head.

²¹ https://www.coms-auth.hk/filemanager/common/policies_regulations/consultations/submissions/20140205/CMHK.pdf

- The removal of HKBN as an additional competitive constraint in mobile services (through its MVNO customer base) will impact an already concentrated market. Consumer choice will be reduced. Preventing consumers from being forced into CMHK contracts without consent is also important to be taken into account.
 - The Transaction strengthens CMHK's already dominant market position and creates a competitive advantage for CMHK by absorbing HKBN's post-paid customers—an asset that would otherwise require a [REDACTED]-year competition-driven process to acquire, further concentrating the market and diminishing consumer choice.
 - Impact on the resilience of the mobile service and the future supply for next-gen network in Hong Kong remains unclear.
 - Unanswered questions do remain as to the extent of increment and horizontal overlap in a combined FMC market. The reduction in competition in FMC in Hong Kong may lead to structural harm to the market – and risks the consequent negative impact on price, quality and innovation.
56. We have outlined above additional remedies that match the areas of concern to operators, customers and network resilience. We are available to discuss with you the contours of some of those proposals.
57. OFCA's preliminary assessment stems from a stunted process of information gathering. Given OFCA has already found at least a substantial lessening of competition in fixed broadband, it is well placed to now use its statutory powers to conduct a formal investigation. By gathering further evidence and through proper substantive engagement with operators, OFCA will be better placed to assess the need for such additional remedies in other markets.
58. We remain available to discuss with OFCA this submission and our previous comments that have not yet been addressed.
59. If you have any queries, please contact [REDACTED] on [REDACTED].
60. All rights of SmarTone are reserved.
61. *This submission contains confidential information within the meaning of the Competition Ordinance as it contains confidential data and business secrets that are not generally known to our competitors, customers or suppliers – and disclosure of which would potentially harm competition and/or impact commercial relationships. The contents of this submission shall not be shared with any other person. SmarTone can consider supplying to OFCA a non-confidential version upon request.*
62. *This information is solely provided to OFCA for the purpose of reviewing the Transaction, and shall not be used for any other purpose.*

Yours faithfully,

SmarTone

SmarTone

Annex 1 – SmarTone previous submissions to OFCA

Annex 2 – Mobile Backhaul services

[REDACTED]

Annex 3

Net porting records of CMHK and other operators (Daily average)

[REDACTED]

Date: 8 April 2025

HIGHLY CONFIDENTIAL

BY EMAIL

Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Attention: [REDACTED] and [REDACTED]

Dear Sirs,

Re: Consultation on the proposed acquisition of HKBN Limited by China Mobile Hong Kong Company Limited (the “Proposed Transaction” or “merger”)

1. Reference is made to your agency's circular dated 4 March 2025 in relation to the Proposed Transaction.

Pre-mature to kick off any consultation

2. We submit that it is pre-mature to kick off the consultation at this point of time when there continues to be many uncertainties around the Proposed Transaction, noting that: (i) HKBN is still discussing with different investor(s) in respect of separate offer(s); (ii) HKBN has not appointed the independent financial advisor or independent board committee to consider the transaction yet; and (iii) with the Securities and Futures Commission's consent, the deadline for dispatching the offer document is further delayed for a year (i.e. from 23 December 2024 to 5 December 2025).
3. Notably, it is difficult and unfair for any operators (SmarTone inclusive) to comment on the merger when the merger has not been confirmed and adequate information (including details of the merger, industry consultant's advice and merging parties' submissions) is not made available.
4. In addition, any pre-mature consultation could give a wrong market signal that the Proposed Transaction will proceed. Such market signal could have the effect of misleading potential investors and shareholders of HKBN and, more importantly, damaging the interest of the investing public and integrity of securities market in Hong Kong.

Pre-requisite for an extensive consultation process

5. Even if the pre-conditions in the offer document got satisfied and the merging parties agree with the merger, we submit that your agency has to take all necessary steps (including an engagement of an industry consultant and an in-depth investigation under section 7(1) of Schedule 7 of the Competition Ordinance) and to study the global market landscape and all merger cases across the world before initiating any consultation for the reasons below:
- (i) setting a rare precedent - Hong Kong will set a rare precedent by creating a duopoly market (i.e. a market being dominated by two integrated players), as compared to other parts of the world, where they strive to keep a triple play or quadruple play in the telecommunications industry for the purpose of preserving competition.
 - (ii) creating an unfair level market field - The merger will result in an unfair level market field in Hong Kong, which could eliminate competition. While China Mobile (as the world's largest mobile operator in terms of total number of subscribers with 995.6 million) controls the cross-border connectivity and the world's largest network¹, this merger will entrench such conglomerate's market power and will path a way for China Mobile to lessen competition by squeezing out non-integrated players in a foreseeable future.
6. Even if your agency has taken all the necessary actions above, we submit that your agency must go through an extensive and transparent consultation process to ascertain views of industry participants, relevant government agencies and stakeholders and provide them with sufficient time² and access to all relevant information (including the industry consultant's advice and merging parties' submissions) for their assessments.

SLC Effect arising from the merger

7. We submit that your agency must consider the broadband and mobile market as a single relevant market (the "**FMC Market**") as this merger could have a material impact on the entire telecommunications industry and substantially reduce Hong Kong-based players' ability to compete.
8. We write to express our major concern on the merger, because it has, or is likely to have, the effect of substantially lessening competition (the "**SLC Effect**") for the reasons below:

¹ China Mobile's interim report 2024 (see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0830/2024083000931.pdf>)

² Neither 14 days (for the initial period) nor 28 days (for an extended period) is adequate for an extensive consultation process.

No countervailing power in the FMC Market

9. The merger has, or is likely to have, the SLC Effect because there will be no countervailing power in the FMC Market after the merger.
10. As at the date hereof, it is already difficult for any Hong Kong-based players to compete or negotiate with China Mobile (i.e. the world’s largest mobile service operator) because of its characteristics: (i) China Mobile has a significant market power and an extremely strong financial position (i.e. cash and cash equivalents of RMB132 billion, with total assets amounting to nearly RMB2 trillion as at 30 June 2024)³ and (ii) China Mobile controls “the world’s largest network”⁴. For example, China Mobile has the ability to determine the price at the roaming tariff segment for Mainland China and we do not have much room to negotiate. This is because China Mobile is one of the [REDACTED] suppliers, controlling the cross-border connection between Hong Kong and Mainland China (i.e. absent such connectivity, Hong Kong-based players could not offer any roaming services for Hong Kong residents travelling from Hong Kong to Mainland China). Despite the significant market power, Hong Kong-based players remain in competition given Hong Kong government’s recent supportive policies.
11. After the merger, it will be extremely difficult for us and other Hong Kong-based players to compete or negotiate with China Mobile, as China Mobile will be an integrated player with a dominant position in the Greater Bay Area. In our case, China Mobile’s arm (i.e. HKBN) will control [REDACTED] of wholesale leased lines (also known as backhaul services⁵) and local fixed broadband services after the merger and distortive impacts include the following:
 - (i) serious harm to long-term customer welfare (in the case of end-customers) – This merger harms long-term customer welfare by (i) reducing the number of providers offering broadband services and mobile services and (ii) increasing the fees for the same, as soon as Hong Kong-based players got squeezed out. It is extremely important that long-term customer welfare must not be traded off by short-term benefits for eliminating non-integrated players.
 - (ii) serious harm to long-term customer welfare (in the case of enterprise customers) – This merger harms long-term customer welfare through a control over backhaul services. As China Mobile (via HKBN) will control [REDACTED]

³ China Mobile’s interim report 2024 (see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0830/2024083000931.pdf>)

⁴ China Mobile’s interim report 2024 (see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0830/2024083000931.pdf>)

⁵ Mobile network operators require backhaul services for connecting their base transceiver stations to core networks.

of our backhaul services, it could substantially affect our ability to compete by increasing the backhaul price or terminating the backhaul services. As explained in paragraph 10 above, it will be extremely difficult for us to negotiate or to remain in competition, absent any support from your agency or Hong Kong Government.

- (iii) reduction in choice of independent suppliers – This merger reduces the number of independent suppliers. After the merger, there is [REDACTED] independent supplier in the FMC Market.

Removal of an effective and independent supplier (HKBN)

- 12. The merger has the SLC Effect because the merger removes an effective and independent supplier (i.e. HKBN). HKBN, as a leading broadband service provider in Hong Kong, is not likely to fail in the near future, given its strong financial performance, extensive fiber transmission network, a large customer base, and a well-established brand. Notably, its revenue exceeds HK\$10 billion and its profits exceed HK\$10 million for the year ended 31 August 2024.⁶

Serious harm to innovation

- 13. We submit that this merger will further distort the unfair level playing field in Hong Kong, to the extent that it is not possible for non-integrated players to invest in innovation or to remain in competition.
- 14. We have invested in a world-class 5G network that rivals, and in reality superior to, those networks in other global financial centers. We have greatly expanded the coverage and connectivity to enable our customers to “work anywhere”, and our network has superior coverage in country parks and remote areas. Building on Hong Kong government’s support, we would invest to sustain and improve this network, as we believe the 5G network is a critical backbone to innovation and AI adoption in Hong Kong.
- 15. The merger could take away our ability to compete and to invest in next-gen networks, absent any support from your agency and the Hong Kong Government. It will not be conducive to development of next gen networks (which are critical to support IoT applications and other cutting-edge technologies such as artificial intelligence).

High entry barriers

⁶ See Annual Report of HKBN at <https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1114/2024111400133.pdf>

16. We submit that this merger can raise entry barriers, given that (i) costs associated with extensive networks are high and (ii) more importantly, China Mobile has the ability to restrict any access to any critical network and/or to increase the input costs of Hong Kong-based player(s) as explained above.

Pre-requisite for making a decision

17. Even if your agency has completed all the extensive consultation process, investigations and assessments above, we submit that your agency has to consider all relevant merger cases across the world and to come up with robust remedies for preserving competition and innovation in Hong Kong, before making any decision on the merger.

Conclusion

18. It is pre-mature to kick off the consultation at this point of time when the merger has not been confirmed and adequate information (including details of the merger, industry consultant's advice and merging parties' submissions) is not made available. Absent which, it is difficult and unfair for any operators to comment on the merger.
19. **This submission together with any other information which we may separately submit are only intended for benefits of your agency and other antitrust agencies in Hong Kong and Mainland China for the sole purpose of assessing the competition concern arising from this merger. Save for the above, none of those agencies (your agency included) may disclose any part thereof to any other person or quote or refer to it any public document or file it with any person, without our prior written consent in each specific case.**
20. If you have any queries, please contact [REDACTED] on [REDACTED].

Yours faithfully,

SmarTone

Date: 17 April 2025

HIGHLY CONFIDENTIAL

BY EMAIL

Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Attention: [REDACTED] and [REDACTED]

Dear Sirs,

Re: Our response to the proposed acquisition of HKBN Limited by China Mobile Hong Kong Company Limited

1. Reference is made to the announcement of China Mobile Hong Kong Company Limited (“**China Mobile**”) dated 9 April 2025 in respect of its acquisition of 15.46% of HKBN Shares from TPG Wireman, L.P (“**TPG**”) ¹.
2. The announcement indicates China Mobile’s intention to acquire 15.46% of HKBN Shares from TPG irrespective of the voluntary cash offer and infers its intention to further acquire 12.33% of HKBN Shares from Canada Pension Plan Investment Board (collectively, the “**interrelated transactions**”) in a foreseeable future. Upon completion, China Mobile will be the single largest shareholder of HKBN and will own 411,032,451 HKBN Shares², representing 27.79% of the entire share capital of HKBN.
3. We write to seek your agency’s confirmation as to whether your agency has supported, endorsed and approved any of the interrelated transactions, noting that those transactions are subject to the Merger Rules because of China Mobile’s control over HKBN.
4. In determining whether there is a control, your agency has to consider all the circumstances of the matter and not solely to the legal effect of any instrument, deed, transfer, assignment or other act done or made pursuant to the Competition Ordinance. In this case, China Mobile’s ability to control HKBN emanates from the following:

¹ See CMHK’s announcement at <https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0409/2025040900507.pdf>

² We calculated this figure based on the shareholding information set out in the CMHK’s announcement dated 9 April 2025.

China Mobile's control over HKBN

5. If China Mobile proceeds with the interrelated transactions, China Mobile will have a control over HKBN because it will become the single largest shareholder of HKBN with a holding of 27.79%³. We must emphasize that such holding would be sufficient to command more than 50% of votes cast, considering HKBN shareholders' attendance in general meeting for the year 2024⁴.
6. If China Mobile also acquires perpetual vendor loan notes with a principal amount of approximately HK\$970 million⁵ (which are convertible into 83,661,106 HKBN Shares) from Twin Holding Ltd, rights associated with the notes will further entrench China Mobile's power to control HKBN.

China Mobile's decisive influence over HKBN

7. If China Mobile proceeds with the interrelated transactions, it could exercise decisive influence over HKBN given that HKBN will rely on China Mobile's financial support⁶ after completion.
8. Given that there is no proper framework to avoid any meddling of China Mobile into HKBN's decision making process, it is very likely that China Mobile could determine HKBN's decisions relating to strategic commercial behaviors (such as business plans) through the ways below:
 - (A) Consent from China Mobile – HKBN must seek China Mobile's consent in order to leverage China Mobile's customer base and resources and/or to enter into strategic collaboration agreements with China Mobile.
 - (B) Consultation with China Mobile – HKBN is compelled to consult China Mobile before making any decision which may affect China Mobile's interest with an aim to mitigate the risks that China Mobile may withdraw its resources or support.
 - (C) Nomination of a director by China Mobile - HKBN has a proven record of appointing a director that is nominated by the substantial shareholder and

³ See the Schedule 1 for HKBN's shareholding structure after completion of the interrelated transactions.

⁴ For poll results of HKBN's general meeting for the year 2024, please see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1212/2024121200700.pdf>

⁵ HKBN Annual Report 2024 (see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1114/2024111400133.pdf>, page 42).

⁶ CMHK's announcement dated 2 December 2024 (see:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1202/2024120203351.pdf>)

seeking the advice from such director on important decisions.⁷ Once a director as nominated by China Mobile sits on HKBN's board, such director could affect HKBN's management decisions directly.

9. Based on the foregoing, the Merger Rules are applicable to the interrelated transactions.
10. In conclusion, we urge your agency to provide us and other industry participants with a confirmation as to whether your agency has supported, endorsed and approved any of the interrelated transactions.

Supplemental Information

11. Reference is made to our first submission dated 8 April 2025. We set out our relevant operational data in Schedule 2 for your agency's reference.
12. We reiterate our strong reservations with the interrelated transactions or the merger. As the structure of today's supply chains is very complex, intertwined and delicate given (i) China Mobile's significant market power and resources and (ii) our intertwined relationship with HKBN (who is our supplier of fixed broadband services and our customer through MNVO arrangements). The merger will disrupt supply chains and will also take away our revenue streams and our customers (that are serviced by HKBN's MNVO arrangements and fixed broadband services), in addition to competition concern and serious harm to long-term customer welfare as explained in our first submission.
13. **This submission together with the information contained in the Schedules which we may separately submit are only intended for benefits of your agency and other antitrust agencies in Hong Kong and Mainland China for the sole purpose of assessing the competition concern arising from the interrelated transactions and the merger. Save for the above, none of those agencies (your agency included) may disclose any part thereof to any other person or quote or refer to it any public document or file it with any person, without our prior written consent in each specific case.**
14. If you have any queries, please contact [REDACTED] on [REDACTED].

⁷ In 2019, HKBN appointed Mr. Zubin Jamshed Irani (i.e. a partner and managing director with TPG Capital) because HKBN took the view that Mr. Irani from TPG "would provide valuable insights on the strategic planning and investment decisions of the Group".

SmarTone

Yours faithfully,

SmarTone

Schedule 1

Shareholding Structure of HKBN ⁸

Name of Shareholder	After the acquisition of 15.46% of HKBN Shares from TPG Wireman, L.P		After the acquisition of 12.33% of HKBN Shares from Canada Pension Plan Investment Board	
	<i>Number of issued HKBN Shares held</i>	<i>% of total issued HKBN Shares</i>	<i>Number of issued HKBN Shares held</i>	<i>% of total issued HKBN Shares</i>
China Mobile	228,627,451	15.46%	411,032,451	27.79%
Canada Pension Plan Investment Board	182,405,000	12.33%	-	-
Sub-total	411,032,451	27.79%	411,032,451	27.79%
Other Shareholders				
Twin Holding Ltd (Note)	228,627,451	15.46%	228,627,451	15.46%
GIC Private Limited	91,913,760	6.21%	91,913,760	6.21%
Horwitz Bradley Jay	2,800,000	0.19%	2,800,000	0.19%
Yeung Chu Kwong	29,717,212	2.01%	29,717,212	2.01%
Tricor Trust (Hong Kong) Limited	414,804	0.03%	414,804	0.03%
Other Public Shareholders	714,415,890	48.31%	714,415,890	48.31%
Total	1,478,921,568	100.0%	1,478,921,568	100.0%

Note: Twin Holding holds the vendor loan notes with a principal amount of approximately HK\$970 million, which may be converted into 83,661,106 HKBN Shares. ⁹

⁸ The shareholding information is prepared based on China Mobile's announcement dated 9 April 2025 (see: <https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0409/2025040900507.pdf>)

⁹ See Twin Holding Ltd's disclosure of interest at https://di.hkex.com.hk/di/NSForm2.aspx?fn=CS20200226E00034&sa2=np&scpid1=36763&scpid3=0&scpid2=117716&sa1=pl&scsd=11%2f04%2f2019&sced=11%2f04%2f2025&pn=Twin+Holding&src=MAIN&lang=EN&g_lang=en&.

Schedule 2

[REDACTED]

4. SmarTone Telecommunications Holdings Limited's revenue arising from mobile services and other related service

	For the financial year ended 30 June 2022	For the financial year ended 30 June 2023	For the financial year ended 30 June 2024
Service revenue and other related service	HK\$4,488 million ¹⁰	HK\$4,546 million ¹⁰	HK\$4,508 million ¹⁰

¹⁰ See SmarTone's annual report 2023/2024 and 2022/2023 at:

<https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1007/2024100701016.pdf>
(page 80) and

<https://www1.hkexnews.hk/listedco/listconews/sehk/2023/0926/2023092600701.pdf>
(page 78)