

Notice of Acceptance by the Communications Authority of Commitments Offered by Hong Kong Broadband Network Limited, HKBN Enterprise Solutions Limited and WTT HK Limited under Section 60 of the Competition Ordinance in relation to the Proposed Acquisition of WTT Holding Corp. by HKBN Ltd.

17 April 2019

BACKGROUND

On 13 February 2019, the Communications Authority (“CA”) issued a notice under section 2 of Schedule 2 to the Competition Ordinance (Cap. 619) (“CO”) to seek representations from the industry and interested parties on the CA’s proposed acceptance of the commitments offered by Hong Kong Broadband Network Limited and HKBN Enterprise Solutions Limited (both indirectly wholly-owned subsidiaries of HKBN Ltd.), as well as WTT HK Limited (an indirectly wholly-owned subsidiary of WTT Holding Corp.) under section 60 of the CO in relation to the proposed acquisition of the entire issued share capital of WTT Holding Corp. by HKBN Ltd (the “Proposed Transaction”) (the “Notice of Proposed Commitments”). By the announcement dated 22 February 2019, the CA extended the deadline for providing representations to the Notice of Proposed Commitments until 7 March 2019.

2. On 17 April 2019, the CA published a statement announcing and elaborating its decision to accept the revised commitments offered by the merging parties as set out in the **Annex** to this notice (“**Commitments**”), having considered the representations made in response to the Notice of Proposed Commitments.

NOTICE OF ACCEPTANCE

3. This notice is issued by the CA under section 4 of Schedule 2 to the CO to give notice that the CA, in exercise of its powers under section 60 of the CO, has decided to accept the Commitments and not to commence an investigation into the Proposed Transaction under section 39 of the CO.

Communications Authority
17 April 2019

**Commitments given by Hong Kong Broadband Network Limited,
HKBN Enterprise Solutions Limited and WTT HK Limited to the
Communications Authority pursuant to section 60
of the Competition Ordinance (Cap. 619)**

Pursuant to section 60 of the Competition Ordinance (Cap. 619), regarding the proposed acquisition of the entire issued share capital of WTT Holding Corp. by HKBN Ltd. (the “**Transaction**”), Hong Kong Broadband Network Limited (“**HKBN**”), HKBN Enterprise Solutions Limited (“**HKBNES**”) and WTT HK Limited (“**WTT**”) hereby enter into the following commitments with a view to addressing concerns about a possible contravention of the merger rule under section 3 of Schedule 7 to the Competition Ordinance. HKBN and HKBNES are indirectly wholly-owned subsidiaries of HKBN Ltd. whereas WTT is an indirectly wholly-owned subsidiary of WTT Holding Corp.

1. Effective date of the commitments

These commitments, signed by the Parties, shall take effect from the date on which the Authority accepts them or the date on which the Transaction completes, whichever is the later (“**Effective Date**”).

2. Definitions

For the purpose of these commitments, the following terms shall have the following meanings:

Authority means the Communications Authority established under the Communications Authority Ordinance (Cap. 616) or its successor;

Effective Date has the meaning given in section 1;

Group means, in relation to an entity, that entity, together with any other entity which controls, is controlled by or is under common control with that entity;

HKBN	means Hong Kong Broadband Network Limited, holder of UCL 045 (as of the Effective Date);
HKBNES	means HKBN Enterprise Solutions Limited, holder of UCL 022 (as of the Effective Date);
Hong Kong	means Hong Kong Special Administrative Region of the People's Republic of China;
In-building Telecommunications System	includes but not limited to (a) any in-situ blockwiring circuits, be they copper-based or fibre-based, vertical or horizontal; (b) lead-in ducts/cables for accessing a Relevant Building; (c) cabinet space in the telecommunications and broadcasting equipment (TBE) room; (d) vertical cable risers; and (e) horizontal conduits, used or capable of being used at the point in time at which a request pursuant to section 3.1 is made for the provision of fixed telecommunications services and which is owned by any of the Parties, or any entities within the Group to which the Parties belong, within a Relevant Building and which is available having regard to the reasonable needs of any of the Parties (or any other person who has obtained rights to use it from a Party);
Interconnection	means any connection between systems or services of a Party and a Requesting Operator or elements of such systems or services for the delivery of any communication, message or signal over the connection and, without limiting the generality of the foregoing, includes interconnection to a system, to a service, between systems, between services and between a system and a service;
Network	of a Party means the fixed telecommunications network operated, established and maintained by that Party in accordance with its UCL;
OFCA	means the Office of the Communications Authority of Hong Kong;

Parties	means HKBN, HKBNES and WTT, each a “Party”;
Requesting Operator	has the meaning given in section 3.2;
Relevant Building	means any building located in Hong Kong which is not exclusively for residential use and which satisfies both of the following conditions: <ul style="list-style-type: none"> • immediately prior to the Effective Date, either HKBN or HKBNES and WTT have installed and own In-building Telecommunications System within that building; and • after the Effective Date, the In-building Telecommunications System so installed and owned by either HKBN or HKBNES and WTT within that building is connected to the Network of any of the Parties.
Relevant Wholesale Customer	means a person, other than a Party, who is party to a Wholesale Agreement (as defined below) and who holds a valid UCL with authorisation to provide public internal fixed telecommunications services and/or SBO Licence;
SBO Licence	means Services-Based Operator Licence issued under the Telecommunications Ordinance (Cap. 106) with authorisation to provide Class 1 service, Class 2 service and/or Class 3 for Internet Access Services;
UCL	means Unified Carrier Licence issued under the Telecommunications Ordinance (Cap. 106);
Wholesale Agreement	means an agreement entered into by HKBN, HKBNES or WTT with a Relevant Wholesale Customer which is still in force as at the Effective Date for the provision of telecommunications services to a Relevant Wholesale Customer for the purposes of enabling the Relevant Wholesale Customer to provide retail fixed telecommunications services

to non-residential end-customers in Hong Kong;
and

WTT means WTT HK Limited, holder of UCL 028 (as of the Effective Date).

3. In-building System Commitment

3.1 Upon the written request of a Requesting Operator with reasonably sufficient details of its requirements, the Parties (or any one Party that the Parties may between themselves agree) will facilitate access by the Requesting Operator to any element(s) of the In-building Telecommunications System of a Relevant Building on fair and reasonable terms and conditions and in line with normal commercial practice for the purposes of enabling such Requesting Operator to provide fixed telecommunications services to end-customers occupying premises which are not for residential use within the Relevant Building (the “**In-building System Commitment**”).

3.2 For the purposes of the In-building System Commitment, a **Requesting Operator** is a person (a) who holds a UCL with authorisation to provide public internal fixed telecommunications services; and (b) who, at the time at which a request pursuant to section 3.1 is made, is not providing fixed telecommunications services to any non-residential end-customers within the Relevant Building to which access has been requested from any of the Parties. For these purposes, the Party who receives the request may require the Requesting Operator to provide evidence to demonstrate that there are no other feasible means of access to that Relevant Building for the purposes of installing any elements of an in-building telecommunications system for the provision of fixed telecommunications services to non-residential end-customers within that building.

3.3 Any disputes regarding the application of the In-building System Commitment or the terms and conditions of access to In-building Telecommunications System may be referred by any of the Parties or the purported Requesting Operator to the Authority for determination, provided that such purported Requesting Operator agrees in writing to be bound by the Authority’s determination. If the Authority accepts such request for determination, such

dispute will be determined by the Authority and shall be binding on the relevant Party, without prejudice to the rights of a Party or the purported Requesting Operator from exercising any other legal right or remedy that may be available to it. The relevant Party shall provide all relevant financial and/or technical information to facilitate the Authority to make the determination.

3.4 The terms and conditions in a determination made pursuant to section 3.3 of these commitments may include any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable, including (without limitation):

- (i) the level of, and the method of calculating, the charges that the Requesting Operator will pay to the relevant Party for the access to the elements of the In-building Telecommunications System;
- (ii) the lead time for making the elements of the In-building Telecommunications System available to the Requesting Operator; and
- (iii) in case of Interconnection, the points at which Interconnection is to be made as well as the technical standards and the lead time for effecting the Interconnection.

3.5 The charges referred to in section 3.4(i) above shall be based on the relevant reasonable costs attributable to the access to the elements of the In-building Telecommunications System. In determining the level, or method of calculation, of the relevant reasonable costs, the Authority may select from among alternative costing methods what it considers to be a fair and reasonable costing method.

3.6 The In-building System Commitment shall continue in force until it is varied or released pursuant to section 62 of the Competition Ordinance.

4. Wholesale Services Commitment

4.1 The Parties will continue to provide fixed telecommunications services under the Wholesale Agreements to Relevant Wholesale

Customers for three years from the Effective Date, as follows:

- (i) the Parties shall continue to comply with the terms and conditions of the Wholesale Agreements and keep the material terms and conditions unchanged, or no less favourable than those in the existing Wholesale Agreements, until the expiry date of each relevant Wholesale Agreement (subject to the proper exercise by any party to a Wholesale Agreement of any enforcement, variation or termination right under that Wholesale Agreement); and
- (ii) if any Wholesale Agreement expires within three years from the Effective Date, the relevant Party shall, if requested in writing by the Relevant Wholesale Customer concerned, enter into a new agreement on terms and conditions no less favourable than those in the existing Wholesale Agreement for a term expiring no earlier than the date falling three years from the Effective Date (the “**Wholesale Services Commitment**”).

4.2 For the avoidance of doubt:

- (i) section 4.1 does not prohibit the Parties from offering terms and conditions that are more favourable (to the Relevant Wholesale Customer) than those in the existing Wholesale Agreements; and
- (ii) to the extent that any Party may have any unilateral right of termination on notice without cause under a Wholesale Agreement, it would not be “proper” for the purposes of section 4.1 (i) for that Party to exercise that right.

4.3 The Wholesale Services Commitment shall expire three years from the Effective Date.

5. Procurement Commitment

5.1 The Parties will use their best endeavours to procure that all entities within their Group:

- (i) act in accordance with the commitments in sections 3 and 4;

- (ii) provide all such assistance to the Parties to enable the Parties to comply with their commitments in sections 3 and 4; and
 - (iii) not take any action that would be inconsistent with the Parties' commitments in sections 3 and 4.
- 5.2 The Procurement Commitment with respect to each of the commitments will expire upon the expiry of the relevant commitment as the case may be.

6. Reporting Commitment

- 6.1 The Parties (or another entity on the Parties' behalf) will submit to OFCA written reports on their compliance with each of the above commitments every six months, with the first such report to be submitted six months from the Effective Date and the last such report to be submitted upon the expiration of the last of the above commitments.
- 6.2 The Reporting Commitment with respect to each of the above commitments will expire upon the expiry of the relevant commitment as the case may be.

7. General provisions

- 7.1 Any notice delivered pursuant to these commitments shall be delivered by hand, or sent by email, facsimile, registered post or pre-paid post. Any notice shall be deemed to have been received: (i) if delivered by hand, when delivered; (ii) if sent by email or facsimile, on receipt of confirmation of transmission or delivery; or (iii) if sent by pre-paid post, (in the absence of evidence of earlier receipt) three business days after posting from within Hong Kong. Any notice received on a day which is not a business day shall be deemed to be received on the next following business day.
- 7.2 These commitments are governed by the laws of Hong Kong and subject to the jurisdiction of the Hong Kong courts.

For and on behalf of
Hong Kong Broadband Network Limited

[Signed]

Name:

Title:

Date: 26 March 2019

For and on behalf of
HKBN Enterprise Solutions Limited

[Signed]

Name:

Title:

Date: 26 March 2019

For and on behalf of
WTT HK Limited

[Signed]

Name:

Title:

Date: 26 March 2019