

Notice to Seek Representations regarding the Communications Authority's Intended Acceptance of Commitments Offered by China Mobile Hong Kong Company Limited ("CMHK") under Section 60 of the Competition Ordinance in relation to the Proposed Acquisition of HKBN Ltd. by CMHK

29 May 2025

PURPOSE

This notice is issued by the Communications Authority ("CA") under section 2 of Schedule 2 to the Competition Ordinance (Cap. 619) ("CO") to seek representations from the industry and interested parties on CA's intended acceptance of the commitments offered by CMHK as set out in the **Annex** ("Commitments") under section 60 of the CO in relation to the proposed acquisition of HKBN Ltd. by CMHK ("Proposed Transaction").

2. For the avoidance of doubt, nothing in this notice represents or constitutes a decision made by CA. The invitation of representations by this notice is without prejudice to the exercise of powers by CA under the CO.

BACKGROUND

3. On 2 December 2024, CMHK announced a pre-conditional voluntary cash offer to acquire HKBN Ltd.¹, which is a publicly listed company on the Hong Kong Stock Exchange which indirectly and wholly owns Hong Kong Broadband Network Limited, HKBN Enterprise Solutions Limited and HKBN Enterprise Solutions HK Limited (collectively referred to as "HKBN"). As CMHK and HKBN hold carrier licences issued under the Telecommunications Ordinance (Cap. 106) ("TO"), the Proposed Transaction falls within the definition of a "merger" to which the Merger Rule applies pursuant to sections 3(2)(b) and 4(b) of

¹ CMHK's announcement in relation to the Proposed Transaction is available at: <https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1202/2024120203351.pdf>.

Schedule 7 to the CO². Under section 3(1) of Schedule 7 to the CO, the Merger Rule stipulates that an undertaking must not, directly or indirectly, carry out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong.

4. CA has conducted a preliminary assessment of the Proposed Transaction in accordance with the CO and the Guideline on the Merger Rule, taking into account the views and information provided by CMHK, HKBN as well as other relevant third parties. CA notes that CMHK and HKBN have a considerable presence in the mobile services market and fixed services market respectively in Hong Kong. However, there is limited horizontal overlap between CMHK and HKBN on retail fixed voice market, mobile services market and fixed-mobile bundles market. On the other hand, HKBN has substantial fixed network coverage in terms of number of buildings in Hong Kong. While CMHK's fixed network coverage is limited, CMHK indicates that, absent the merger, it is going to continue rolling out its fixed network in the future. Based on the competition analysis conducted which has taken into account the data and information received, CA has identified the following competition issue that would likely arise from the Proposed Transaction.

Reduced Competition in Retail Broadband and Local Access Networks for Buildings Currently Covered by CMHK and HKBN

5. Currently there are a number of fixed network operators ("FNO") providing wholesale services to other operators and retail services to residential and/or commercial end customers in Hong Kong. For those buildings which are currently covered by CMHK and/or HKBN for retail broadband services and/or local access networks, and where CMHK and/or HKBN have installed and own in-building telecommunications systems therein, there may be one less competitor for the provision of fixed telecommunications services in such buildings post-merger. If other FNOs encounter difficulties in accessing these buildings for installation of their own in-building telecommunications systems therein for service provision to end customers, it may result in a concern about reduction of competition and choice for end customers. For these buildings, the competitive

² Sections 3(2)(b) and 4(b) of Schedule 7 to the CO provide that the Merger Rule applies where one or more undertakings acquire direct or indirect control of the whole or part of one or more other undertakings, and either the undertaking acquiring control or the undertaking in which control is acquired holds a carrier licence under the TO, or directly or indirectly controls an undertaking that holds such a licence.

conditions may be significantly altered if any new competitors cannot enter these buildings to offer services to end customers and compete with the existing players due to building access difficulties. On the other hand, for buildings where other FNOs do not encounter difficulties of access and are hence able to install their own in-building telecommunications systems therein if they commercially decide to compete in this way, CA does not consider that the competitive conditions will be significantly altered post-merger.

THE COMMITMENTS OFFERED BY CMHK

6. The Office of the Communications Authority (“OFCA”) has communicated the identified competition issue to CMHK. On 6 May 2025, CMHK, offered the Commitments at **Annex** to CA under section 60 of the CO in return for CA not commencing an investigation or bringing proceedings in the Competition Tribunal in relation to the Proposed Transaction.

7. Specifically, CMHK offered the In-building System Commitment (see section 3 of the Commitments) to address the identified competition issue, and other associated commitments (i.e. Procurement Commitment and Reporting Commitment) for implementation of the In-building System Commitment.

CA’S ASSESSMENT OF THE COMMITMENTS

In-building System Commitment

8. CA notes that CMHK is prepared to open the access to the in-building telecommunications system owned and installed by HKBN (i.e. party to be acquired by CMHK) and, in the circumstances where a competing FNO is not providing fixed telecommunications services to any end customer at the building concerned and encounters difficulties in accessing that building for installation of any elements of an in-building telecommunications system for the provision of fixed telecommunications services to end customers, the In-building System Commitment will enable such FNO to provide fixed telecommunications services and thus compete with the merged entity. CA’s preliminary view is that the In-building

System Commitment would be sufficient to effectively address the competition issue.

9. CA notes that under the In-building System Commitment, the merged entity, after receiving a request, may require the requesting operator to provide evidence to demonstrate that there are no other feasible means of access to the building concerned for the purpose of installing any elements of an in-building telecommunications system for the provision of fixed telecommunications services to end customers within that building. For the purpose of the In-building System Commitment, “no other feasible means of access” should include but not limited to the 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 not willing to accommodate the installation of new in-building telecommunications system. With a view to facilitating the commercial negotiation among the parties, CA proposes that the requesting operator, in making a request, should provide to the merged entity a written confirmation made by its senior management that

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- (a) for a building that has common parts, there are no other feasible means of access to that building despite holding a certificate issued by CA under section 14(9) of the TO; and
- (b) for a building that has no common parts, there are no other feasible means of access to that building.

10. If the merged entity and the requesting operator fail to reach agreement on access or the terms of access following the written confirmation made by the requesting operator, they may refer the matter to CA for determination, provided that the requesting operator agrees in writing to be bound by CA’s determination. The merged entity and the requesting operator should, at the request of CA, provide all relevant supporting information and documents for the purpose of its determination.

Conclusion

11. Based on the above considerations, CA considers that the Commitments are sufficient to effectively address the competition issue.

CA therefore intends to accept the Commitments under section 60 of the CO and not to commence an investigation into the Proposed Transaction under section 39 of the CO.

INVITATION FOR REPRESENTATIONS

12. Pursuant to section 2 of Schedule 2 to the CO, CA would like to invite representations from the industry and interested parties on CA's intended acceptance of the Commitments in relation to the Proposed Transaction. CA will consider all representations received before finalising its decision of whether to accept the Commitments from CMHK.

13. Representations in response to this notice should be made in writing and reach OFCA **on or before 13 June 2025**. **Late submissions would not be considered.**

14. CA may publish all or part of the representations received and disclose the identity of the respondent in such manner as CA sees fit. If any party would like to claim confidentiality in respect of any part(s) of the representations pursuant to section 123(2) of the CO, it should identify the relevant part(s) and provide justifications to support its confidentiality claim for CA's consideration.

15. Representations should be addressed to –

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

Attention: Principal Regulatory Affairs Manager
(Market & Competition Section 11)

Fax: +852 2123 2187

Email: co-info@ofca.gov.hk

16. An electronic copy of the representations should be provided to the email address indicated above.

Office of the Communications Authority
29 May 2025

**Commitments given by
China Mobile Hong Kong Company 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 pre-conditional voluntary general cash offer to acquire the entire issued share capital of HKBN Ltd. by China Mobile Hong Kong Company Limited (the “**Transaction**”), China Mobile Hong Kong Company Limited hereby enters 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.

1. Effective date of the commitments

These commitments, signed by CMHK, 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;
CMHK	means China Mobile Hong Kong Company Limited, holder of UCL 002 (as of the Effective Date), together with any other entity which it controls as of the Effective Date;
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), HKBN Enterprise Solutions Limited, holder of UCL 022 (as of the Effective Date), and HKBN Enterprise Solutions HK Limited, holder of UCL 028 (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 (i) any in-situ blockwiring circuits, be they copper-based or fibre-based, vertical or horizontal; (ii) lead-in ducts/cables for accessing a Relevant Building; (iii) cabinet space in the telecommunications and broadcasting equipment (TBE) room; (iv) vertical cable risers; and (v) 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 HKBN immediately before the Effective Date 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 immediately before the Effective Date);
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	means the fixed telecommunications network operated, established and maintained by any of the Parties in accordance with its UCL;
OFCA	means the Office of the Communications Authority of Hong Kong;

Parties	means CMHK and HKBN, each a “Party”;
Requesting Operator	has the meaning given in section 3.2;
Relevant Building	means any building located in Hong Kong in which (i) HKBN has installed and owns the In-building Telecommunications System within that building immediately before the Effective Date; and (ii) the In-building Telecommunications System(s) within that building remains connected to the Network of any of the Parties after the Effective Date. For the avoidance of doubt, a Relevant Building does not include any other building(s): (i) which contains an In-building Telecommunications System(s) that is not owned by HKBN and either Party can access under the terms of a lease, license, or other access agreement with the relevant owner of the In-building Telecommunications System; or (ii) in which HKBN installs and owns an In-building Telecommunications System(s) after the Effective Date;
UCL	means a Unified Carrier Licence issued under the Telecommunications Ordinance (Cap. 106).

3. In-building System Commitment

- 3.1 Upon the written request of a Requesting Operator with reasonably sufficient details of its requirements, CMHK will facilitate access (or procure that HKBN facilitates access after the Effective Date) 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 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 (i) who holds a UCL with

authorisation to provide public internal fixed telecommunications services; and (ii) who, at the time at which a request pursuant to section 3.1 is made, is not providing fixed telecommunications services to any 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 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 CMHK 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 CMHK, without prejudice to CMHK's right to exercise any other legal right or remedy that may be available to it. CMHK may provide 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 accessing 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 will continue in force until it is varied or released pursuant to section 62 of the Competition Ordinance.

4. Procurement Commitment

- 4.1 CMHK will use its best endeavours to procure that all entities within its Group:

- (i) act in accordance with the commitments in section 3;
- (ii) provide all such assistance to enable compliance with the commitments in section 3; and
- (iii) not take any action that would be inconsistent with the commitments in section 3.

- 4.2 The Procurement Commitment will continue in force until the expiry of the In-building System Commitment.

5. Reporting Commitment

- 5.1 CMHK will submit to OFCA written reports on their compliance with 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 In-building System Commitment.

- 5.2 The Reporting Commitment will continue in force until the expiry of the In-building System Commitment.

6. General provisions

- 6.1 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.

- 6.2 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

China Mobile Hong Kong Company Limited

Name:

Title:

Date: