

Statement of the Communications Authority

Streamlined Arrangements for the Filing and Publication of Interconnection Agreements

15 December 2020

INTRODUCTION

Pursuant to sections 36A(5A), (5B) and (5C) of the Telecommunications Ordinance (Cap. 106) (“TO”), parties to an interconnection agreement shall file a copy of the agreement with the Communications Authority (“CA”) within 14 days of it being made unless the obligation of filing is waived by the CA, and the CA may publish all or any part of an interconnection agreement. On 2 March 2012, the former Telecommunications Authority (“TA”) issued a statement entitled “*Update of the Existing Arrangements for the Filing and Publication of Interconnection Agreements*”¹ together with the “*Waiver under Section 36A(5B)*” (“2012 Waiver”)², setting out the arrangements for filing and publication of interconnection agreements effective from that day (“2012 Arrangements”).

2. Since 2012, the telecommunications market has continued to develop in a keenly competitive manner, with market mechanism operating well in resolving interconnection matters among industry players. Operators are generally able to enter into various interconnection agreements through commercial negotiations without the need of regulatory intervention by the CA. While the CA has been monitoring market developments and updating the regulatory regime from time to time to bring it in line with the latest market situation, there have been suggestions from the industry to streamline the arrangements for filing and publication of interconnection agreements in order to reduce administrative burden and save compliance costs.

3. It is against the above background that the Office of the Communications Authority (“OFCA”) embarked on a review of the 2012 Arrangements, with relevant proposals discussed with the industry through the

¹ The statement of the former TA is available at:
https://tel_archives.ofca.gov.hk/en/tas/interconnect/ta20120302.pdf.

² The 2012 Waiver is available at:
https://tel_archives.ofca.gov.hk/en/ordinance/pdf/to-20120302.pdf.

Telecommunications Regulatory Affairs Advisory Committee (“TRAAC”)³ over the last year. With general support of the TRAAC members to a proposed revised framework, a circular letter (“Circular Letter”) was issued to carrier licensees on 10 August 2020 to invite their views and comments on a draft revised waiver under section 36A(5B) of the TO.

4. Having carefully considered the comments received and taking into account the local market environment and international obligations of the Hong Kong Special Administrative Region Government (“HKSARG”), the CA sets out in this Statement its decision on the streamlined arrangements for filing and publication of interconnection agreements. For the avoidance of doubt, the CA has taken into account and given thorough considerations to all the relevant comments received, although not all of the issues raised may be specifically mentioned or addressed herein.

BACKGROUND

Statutory Provisions on Filing and Publication of Interconnection Agreements

5. The relevant statutory provisions on filing and publication of interconnection agreements are set out in section 36A of the TO, as follows –

- (5A) *Subject to subsection (5B), parties to an interconnection agreement shall ensure a copy of the agreement is filed with the Authority within 14 days of it being made.*
- (5B) *The obligation to file a copy of an interconnection agreement under subsection (5A) may be waived by the Authority in relation to a particular interconnection agreement or interconnection agreements of a certain kind.*
- (5C) *The Authority may publish all or any part of an interconnection agreement if it –*

³ TRAAC advises the Director-General of Communications on all economic and regulatory issues related to the development of telecommunications in Hong Kong. Members of TRAAC mainly include telecommunications operators and industry organisations. For its terms of reference and current membership, see:

https://www.ofca.gov.hk/en/about_us/advisory_committees/TRAAC/index.html.

- (a) considers it is in the interest of the public to do so;
- (b) has first given the parties an opportunity to make representations on which parts of the interconnection agreement should not be published; and
- (c) has considered such representations received within the time specified by it.

2012 Arrangements

6. Under the 2012 Arrangements, the requirement to file interconnection agreements only applies to carrier licensees providing fixed or mobile services and such requirement will be waived if (a) all the interconnecting parties are external fixed carriers who do not maintain or operate any submarine cable landing stations in Hong Kong; or (b) any one of the interconnecting parties is a space station carrier licensee. Publication is applicable only to three types of interconnection agreements, namely Type I, Type II and blockwiring interconnection agreements between carrier licensees⁴.

7. The 2012 Arrangements were set to meet the following objectives (“Objectives”) –

- (a) the HKSARG, as a member of the World Trade Organisation (“WTO”) and a signatory to the agreement on basic telecommunications services under the auspices of the General Agreement on Trade in Services (“GATS”), has to continue to fulfil its obligations⁵;
- (b) the need to preserve the existing transparency of information

⁴ In the published interconnection agreements, the name of the parties concerned and the information which is specific or proprietary to any particular operator and which is of no relevance to third parties are redacted.

⁵ In paragraph 2.4 of the WTO GATS Reference Paper on Basic Telecommunications, it is stated that:
*“2.4 Transparency of interconnection arrangements
 It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.”*

The definition of “major supplier” is given as:

“A supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.”

The definition of “essential facilities” is given as:

“Facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.”

relating to interconnection arrangements (as regards the types of interconnection services and supporting facilities available, the technical terms and commercial terms under the concluded agreements) for the purpose of establishing prompt and efficient interconnections among incumbent operators and new entrants; and

- (c) the need to ensure the continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for reference by the market and regulatory oversight by the former TA on interconnection arrangements among operators to facilitate the performance of his functions under the TO.

PROPOSED REVISED FRAMEWORK

8. OFCA proposed a revised framework for discussion with the TRAAC (“Revised Framework”)⁶ to streamline the above arrangements, namely **by waiving the filing requirement for all interconnection agreements, except for those signed between carrier licensees in relation to telecommunications networks, systems, installations or services, which are of a type or contain any substantive element that is new to one or more of the parties to the interconnection agreements concerned.** The Revised Framework aimed at reducing the burden of filing agreements for every case of interconnection among carrier licensees whilst ensuring that the Objectives would continue to be served.

9. With general support received from the TRAAC on the Revised Framework, OFCA further developed the details of the revised filing requirements and issued the Circular Letter on 10 August 2020 seeking comments from carrier licensees on the terms of the revised waiver (“Revised Waiver”). In the Circular Letter, elaboration was given on how the filing requirements pursuant to the Revised Waiver would be implemented, namely:

- (a) under the Revised Waiver, filing of interconnection agreements between carriers and belonging to a type that has been filed with the CA before the date when the Revised Waiver takes effect (“Effective Date”) will no longer be required, regardless of whether they are newly signed agreements or renewal agreements

⁶ Please refer to https://www.ofca.gov.hk/filemanager/ofca/en/content_757/traac1_2020.pdf.

between the parties. These include but are not limited to the major categories of interconnection agreements filed by carrier licensees since the 1990s as summarised in **Appendix 1**;

- (b) in regard to interconnection agreements that are not filed before the Effective Date, they are required to be filed with the CA if they are of a type that is new, or contain any substantive element that is new, to one or more of the parties to the agreements concerned. For example, where a carrier licensee signs an interconnection agreement with another carrier licensee and the agreement is of a type (or contains any substantive element) that is new to both parties, the filing obligation is maintained. Both parties have an obligation under section 36A(5A) of the TO to file the agreement with the CA within 14 days of it being made;
- (c) where an interconnection agreement is signed between two carrier licensees, namely Carrier A and Carrier B respectively, and the agreement (“Agreement X”) is of a type (or contains any substantive element) that is new to only one party (e.g. Carrier A) but not the other party (i.e. Carrier B), in that the other party (Carrier B) has already signed with another party an interconnection agreement (“Agreement Y”) which is of a type (or contains any substantive element) that is the same or substantially the same as Agreement X, and provided that the other party (Carrier B) has already filed Agreement Y with the CA, the filing requirement for Agreement X is waived; and
- (d) as to what constitutes a “new” type or “new” substantive element of interconnection, it should generally refer to those types or substantive elements of interconnection that are novel or innovative to the parties concerned, in terms of service, technology, technical arrangements, charging structure, terms and conditions, or some other aspects. For the avoidance of doubt, renewal or revision of existing agreements previously filed with the CA in respect of adjustment of price levels (without changing the charging structure), additional points or capacities of interconnection (without changing the technical arrangements), minor updates to terms and conditions etc. would not be regarded as a “new” type or “new” substantive elements of interconnection.

10. By the deadline of 7 September 2020, two submissions were received from Hong Kong Telecommunications (HKT) Limited (“HKT”) and

the group of Hong Kong Broadband Network Limited, HKBN Enterprise Solutions Limited and HKBN Enterprise Solutions HK Limited (collectively referred to as “HKBN”) respectively, providing comments on the Revised Waiver.

RESPONDENTS’ VIEWS ON THE REVISED FRAMEWORK

11. HKT’s comments focused on details of the implementation of the Revised Framework pursuant to the terms of the Revised Waiver. More specifically, HKT asked for clarification on how an interconnection agreement (Agreement X) would be considered as similar to another interconnection agreement (Agreement Y) that has been filed such that the filing requirement for Agreement X would be waived under the Revised Waiver. Further, given that the CA would have reserved power under the Revised Waiver to require a party to file interconnection agreement despite the waiver, HKT considered that such power should only be exercised under exceptional circumstances and the CA should provide explanation when making such a request. Lastly, HKT opined that for an interconnection agreement subject to filing requirement, compliance cost could be reduced if only one party to the interconnection agreement would be required to make the filing after obtaining consent from the other party.

12. On the other hand, HKBN was of the view that the concept of “new type” of interconnection agreements was vague and the proposal would still place administrative burden on both the operators and OFCA, and therefore urged OFCA to waive the filing requirement completely.

CA’s CONSIDERATIONS

Revised Framework

13. The CA notes the support of the industry to the Revised Framework in general. By confining the regulatory requirement to filing of interconnection agreements between carriers which are of a type or contain any substantive element that is new and have not been filed before⁷, the CA considers that a balance has been struck between reducing the compliance cost

⁷ For the avoidance of doubt, the Revised Framework does not affect those interconnection agreements between carrier licensees the filing requirement of which has already been waived under the 2012 Waiver, namely interconnection agreements to which (a) all parties are external fixed carriers without maintaining or operating any submarine cable land stations in Hong Kong; and (2) any one of the parties is a space station carrier. These interconnection agreements will continue to be waived under the Revised Waiver.

of operators and ensuring the Objectives are met. Whilst operators generally have no difficulty to negotiate and conclude agreements on a commercial basis for existing types of interconnection, there is uncertainty regarding new types of interconnection, where the practice may still be evolving and there may not be sufficient information in the market regarding the terms and conditions of interconnection to facilitate negotiation and conclusion of agreements in an effective manner. The Revised Framework would serve the purpose of facilitating prompt and efficient interconnection in respect of any new developments in the industry, thereby promoting effective competition in the market.

New Type of Interconnection Agreements

14. As regards what constitutes a “new” type of interconnection agreements, as pointed out by OFCA in the Circular Letter, under a fast changing environment of technology and market developments for telecommunications, it is difficult and inappropriate to pin down the precise boundary of what is “new” in comparison with previously filed agreements. The CA considers that the elaboration set out in paragraph 9 above should provide reasonable guidance for operators to decide whether the interconnection agreements signed by them belong to a “new” type or contain “new” substantive elements of interconnection, or whether the agreements belong to a type that has been filed before. Where necessary, carrier licensees are welcome to consult OFCA on whether a particular, or particular type of, interconnection agreement(s) they enter into is “new” and therefore subject to the filing requirement.

CA’s Power to Require Filing of Interconnection Agreements

15. The power of the CA under the Revised Waiver to require a party to file an interconnection agreement despite the waiver is the same as that in the 2012 Waiver. The CA would like to emphasise that where the market mechanism is operating well in resolving interconnection matters, the CA does not expect to exercise this reserved power frequently and lightly with regard to those interconnection agreements for which the filing requirement has been waived. The CA would only do so after giving due consideration to the Objectives, and inform the parties concerned of the rationale for the requirement.

Filing of Interconnection Agreements

16. On the question as to whether one or both party(ies) to an interconnection agreement is/are required to make the filing, section 36A(5A) of

the TO provides that “*parties to an interconnection agreement shall ensure a copy of the agreement is filed with the Authority within 14 days of it being made*”. Accordingly, the filing obligation falls on all parties to the relevant interconnection agreements.

17. This notwithstanding, it has been a common practice among licensees to appoint one interconnecting party to an agreement to file the agreement for and on behalf of the other party to OFCA. OFCA will then contact both interconnecting parties concerned and require them to review the finalised redacted version of the interconnection agreement before its publication on OFCA’s website. Given that the existing practice has been functioning well, licensees should continue to follow the same practice.

CA’S DECISION

18. Having considered all the views and comments received and on the basis of the above considerations, the CA has decided as follows –

- (a) the Revised Waiver in **Appendix 2** of this Statement is issued pursuant to section 36A(5B) of the TO and supersedes the 2012 Waiver with immediate effect; and
- (b) the CA will continue to publish the following types of interconnection agreements previously filed by carrier licensees pursuant to section 36A(5C) of the TO, namely Type I, Type II and blockwiring interconnection agreements, as well as publish the new interconnection agreements filed by carrier licensees under the Revised Waiver, with the following information redacted –
 - (i) the name of the parties to the interconnection agreement; and
 - (ii) information which is specific or proprietary to any particular operator and which is of no relevance to third parties.

To fulfil the publication requirement, the carrier licensees concerned shall submit, in addition to the unabridged version of the agreement which is required under the Revised Waiver, a redacted version of the agreement to the CA, both in electronic format in the portable document format (“PDF”) or other popular formats with searchable function. The CA will make a final decision on which part of the document should be redacted for the

purpose of publication after giving an opportunity to the interconnecting parties to review.

19. The CA would like to emphasise that the Revised Waiver issued under section 36A(5B) of the TO shall not affect in any way the power and rights of the CA under sections 7I, 35A or 36D of the TO or the relevant licence conditions to request licensees to furnish interconnection agreements on a case-by-case basis as and when necessary for the CA's performance of its regulatory functions as appropriate.

Communications Authority
15 December 2020

Major Categories of Interconnection Agreements Filed by Carrier Licensees: 1994 – 2020

Conventional Types of Interconnection	Examples of Elements of Interconnection Covered in Interconnection Agreements Filed by Carrier Licensees		
	At network level:	At system/installation level:	At service level:
Type I ¹	<ul style="list-style-type: none"> • Circuit switched networks • Packet switched networks 	<ul style="list-style-type: none"> • Connections of copper wire and optical fibre (e.g. T1, E1, T3, or STM1/4/16/64) • Telecommunications equipment required for interconnection 	<ul style="list-style-type: none"> • Call delivery and conveyance services • Origination, termination and transiting services for local calls • Origination, termination and transiting services for external telecommunication calls • Inter-operator short message services • Video call interconnection services • Interconnect link setup and leasing services • Colocation space leasing services • Telecommunications equipment services
Type II • at Point A ²	<ul style="list-style-type: none"> • Circuit switched 	<ul style="list-style-type: none"> • Connections of copper wire and 	<ul style="list-style-type: none"> • Access link setup and leasing services

¹ Type I interconnection generally refers to the notional mid-point in the link interconnecting the gateways of two networks (e.g. fixed-fixed, mobile-mobile, fixed-mobile, and local carriers with cable stations). The gateways can be toll exchanges, tandem exchanges, local exchanges or dedicated interconnection gateways.

² Type II interconnection at Point A generally refers to interconnection made at the telephone exchanges such that the party requesting the interconnection may use customer access network starting from the telephone exchanges to customer premises.

Conventional Types of Interconnection	Examples of Elements of Interconnection Covered in Interconnection Agreements Filed by Carrier Licensees		
	At network level:	At system/installation level:	At service level:
<ul style="list-style-type: none"> • at Point B³ • at Point C⁴ 	<ul style="list-style-type: none"> • networks • Packet switched networks 	<ul style="list-style-type: none"> optical fibre (e.g. T1, E1, T3, or STM1/4/16/64) • Telecommunications equipment required for interconnection 	<ul style="list-style-type: none"> • Internal tie cable services • Colocation space leasing services • Telecommunications equipment services • FTTB broadband services • Local loop services

³ Type II interconnection at Point B generally refers to interconnection made at a distribution point under public streets, such that the party requesting the interconnection may use the customer access network starting from that distribution point to customer premises. Such distribution points are usually located between telephone exchanges and customer premises.

⁴ Type II interconnection at Point C, also known as “blockwiring”, generally refers to interconnection made at the in-building wiring system in individual buildings or inter-linking clusters of buildings within a building complex, such that the party requesting the interconnection may use the in-building wiring system within that building and that building complex.

**TELECOMMUNICATIONS ORDINANCE
(CHAPTER 106)
Waiver under Section 36A(5B)**

Interpretations

1. In this Waiver, unless the context otherwise requires,
 - “Authority” means the Communications Authority;
 - “Ordinance” means the Telecommunications Ordinance (Cap. 106); and
 - “2012 Waiver” means the waiver issued by the former Telecommunications Authority on 2 March 2012 pursuant to section 36A(5B) of the Ordinance,and except as hereinbefore provided or unless the context otherwise requires, words or expressions herein shall have the meanings assigned to them in the Ordinance or subsidiary legislation enacted under the Ordinance (including any statutory modification or re-enactment thereof for the time being in force) and words and expressions in the singular include the plural and *vice versa*.

The Waiver

2. The Authority, in exercise of its power under section 36A(5B) of the Ordinance, having regard to such relevant considerations including the following :
 - (a) the previous arrangements for the filing of interconnection agreements which were subject to the 2012 Waiver;
 - (b) the market developments and changes since the issue of the 2012 Waiver;
 - (c) the continued availability and accessibility of the most up-to-date information concerning interconnection arrangements for the better performance of the functions of the Authority under the Ordinance and for facilitating effective monitoring and regulatory oversight on interconnection arrangements among different network operators;

- (d) the transparency of information relating to interconnection arrangements for the purpose of facilitating prompt and efficient interconnections among different network operators;
- (e) the obligation of the Hong Kong Special Administrative Region (HKSAR) Government as a member of the World Trade Organisation (WTO) and a signatory to the agreement on basic telecommunications services under the auspices of the General Agreement on Trade in Services (GATS);
- (f) operators' cost of compliance with the obligation under section 36A(5A) of the Ordinance to file a copy of their interconnection agreements with the Authority and in relation to the publication of the agreements under section 36A(5C) of the Ordinance; and
- (g) generally, the kinds of interconnection agreements for which the requirement of filing to be hereby waived under section 36A(5B) are not of such a nature as to require close monitoring by the Authority, or may hinder prompt and efficient interconnections or affect the fulfilment of the HKSAR Government's obligation under the WTO and GATS. Where the circumstances so warrant or the public interest so requires, the Authority may resort to its powers under the Ordinance including sections 7I, 35A or 36D for copies of the relevant interconnection agreements or other information;

HEREBY waives generally a party to an interconnection agreement the obligation to file a copy of an interconnection agreement with the Authority within 14 days of it being made save and except for those interconnection agreements of the kinds as described in Schedule 1.

3. Notwithstanding Schedule 1, the obligation to file those interconnection agreements made between holders of carrier licences described in Schedule 2 is also waived.

4. Notwithstanding this Waiver, the Authority may in writing require a party at any time after 14 days of an interconnection agreement being made by that party to that interconnection agreement to file a copy thereof within a specified period.

5. For the avoidance of doubt, nothing in this Waiver shall have the effect of amending, altering, varying, abrogating or in any way affecting the power and rights of the Authority under the Ordinance or the relevant licences each provision of which other than those affected by this Waiver shall remain operative and as effectual as though this Waiver had not been granted.

6. The Authority may withdraw, modify or replace this Waiver and/or the Schedule in whole or in part in relation to a particular interconnection agreement or interconnection agreements of a certain kind that is covered by this Waiver and/or introduce additional terms and conditions of this Waiver from time to time.

7. This Waiver supersedes the 2012 Waiver and shall become effective from the date hereof and shall continue in force until withdrawn, modified or replaced by the Authority.

8. This Waiver shall be made public.

(Chaucer Leung)
for Communications Authority
15 December 2020

SCHEDULE 1
Interconnection Agreements subject to filing requirement

1. Interconnection agreements made between holders of carrier licences in relation to telecommunications networks, systems, installations or services established, maintained or provided under the Ordinance or a licence, which are of a type or contain any substantive element that is new to one or more of the parties to the interconnection agreements concerned.

SCHEDULE 2
Interconnection Agreements not subject to filing requirement under Schedule 1

2. Notwithstanding Schedule 1, where:
 - (a) all the parties to the interconnection agreement are external fixed carriers and none of them maintains or operates any submarine cable landing stations in Hong Kong;
 - (b) any one of the parties to the interconnection agreement is a space station carrier; or
 - (c) for an interconnection agreement falling within the description of Schedule 1, any one of the parties has previously filed with the Authority an interconnection agreement which is of a type or contains any substantive element that is the same (or substantially the same) as the first-mentioned interconnection agreement;

the filing of the said interconnection agreement is not required.

3. For the avoidance of doubt, filing of interconnection agreements between holders of carrier licences and belonging to a type that has been filed with the Authority before the date of this Waiver is not required, regardless of whether they are newly signed agreements or renewal agreements between the parties.

4. In Schedules 1 and 2:

“carrier licence” has the meaning as defined in section 2 of the Ordinance;

“external fixed carrier” means a holder of a carrier licence for the provision of external telecommunications services only. For the avoidance of doubt, a carrier licensee who is authorized to provide both internal and external telecommunications services is not considered as an external fixed carrier for the purpose of this Waiver;

“interconnection agreement” means any agreement which is in force irrespective of whether it is made before or after the date of this Waiver for interconnection to and between telecommunications systems or services of which the type includes those as defined in section 36A(3D) of the Ordinance;

“space station carrier” means a holder of space station carrier licence or telemetry, tracking, command and monitoring licence which is issued for the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications.
