Statement of the Communications Authority

Acceptance of the Commitments Given by China Mobile Hong Kong Company Limited to the Communications Authority Pursuant to Section 60 of the Competition Ordinance (Cap. 619)

1 August 2025

PURPOSE

This Statement sets out the competition assessment of the Communications Authority ("CA") on China Mobile Hong Kong Limited's ("CMHK") proposed acquisition of HKBN Ltd. ("Proposed Transaction") and explains its decision to accept the commitments given by CMHK to CA under section 60 of the Competition Ordinance (Cap. 619) ("CO") in relation to the Proposed Transaction.

INTRODUCTION

2. Section 3 of Schedule 7 to the CO provides 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 ("SLC Effect") in Hong Kong (the "Merger Rule"). Under the CO, there is no requirement to notify CA of a merger falling within the Merger Rule. However, under section 39 of the CO, if CA has reasonable cause to suspect that a contravention of, *inter alia*, the Merger Rule, has taken place, is taking place or is about to take place, it may conduct an investigation. On the other hand, section 60 of the CO provides that CA may accept from a person a commitment to take any action or refrain from taking action that CA considers appropriate to address its concern about a possible contravention of, *inter alia*, the Merger Rule, in return for CA's agreement not to commence an investigation or bring proceedings in the Tribunal, or to terminate any investigation that has been commenced or proceedings that have been brought.

3. To provide guidance to the competition assessment under the Merger Rule and the procedures to follow in deciding whether to conduct an investigation and in conducting an investigation under Part 3 of the CO, CA and the Competition Commission jointly issued the Guideline on the

Merger Rule ("Merger Guideline")[1] and the Guideline on Investigations ("Investigations Guideline")[2] respectively.

The Proposed Transaction

4. On 2 December 2024, CMHK announced a pre-conditional voluntary cash offer to acquire HKBN Ltd.[3], 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 Schedule 7 to the CO[4].

5. Pursuant to the Investigations Guideline, before CA has formed a view on whether it has reasonable cause to suspect that a contravention of the Merger Rule has occurred (or is likely to occur), CA may conduct an initial assessment and seek information on a voluntary basis by making market inquiries in order to identify whether: (a) it is reasonable to conduct an investigation; and (b) there is sufficient evidence to establish a reasonable cause to suspect that a contravention of the Merger Rule has occurred.

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1 The Merger Guideline is available at: https://www.compcomm.hk/en/legislation_guidance/guidance/merger_rule/files/Guideline_The_Merger_Rule_Eng.pdf.

2 The Investigations Guideline is available at: https://www.coms-auth.hk/filemanager/en/content_923/comp_guide6_en.pdf.

3 CMHK's announcement in relation to the Proposed Transaction on 2 December 2024 is available at: https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1202/2024120203351.pdf. On 9 April 2025, CMHK announced that it entered into a share purchase agreement with TPG Wireman, which is one of the shareholders of HKBN, that CMHK will acquire approximately 15.46% of the enlarged issued share capital of HKBN from TPG Wireman. The completion took place on 7 May 2025. The announcements on 9 April and 7 May 2025 are available respectively at : https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0409/2025040900507.pdf https://www1.hkexnews.hk/listedco/listconews/sehk/2025/0507/2025050701455.pdf.

4 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.

6. CA made an inquiry on 4 March 2025 to seek information from the potential merging entity of CMHK and HKBN ("Merged Entity") as well as views from relevant third parties likely to be affected by or interested in the Proposed Transaction, including carrier licensees authorised to provide internal fixed, external fixed and/or mobile services. Taking into account all the information and data provided by the parties by 17 April 2025 as well as those otherwise available[5], CA conducted a competition assessment of the Proposed Transaction in accordance with the CO and the Merger Guideline. CA has in parallel engaged a consultant ("Consultant") to conduct an economic analysis of the competition effects that may arise from the Proposed Transaction and has taken into account such analysis in its competition assessment below. While this Statement would not reproduce the full extent of the Consultant's report, it should not be inferred that the findings cited herein represent the entirety of the key conclusions. For the avoidance of doubt, this assessment does not constitute a formal investigation under section 39 of the CO. Nor has CA conducted an investigation into the Proposed Transaction under section 39 of the CO.

7. CA identified a competition issue which would likely arise from the Proposed Transaction after considering all the views and information provided by the relevant parties and the Consultant. CA communicated the competition issue to CMHK, and in return CMHK offered a set of commitments (the "Proposed Commitments")[6] to CA under section 60 of the CO for CA not to commence an investigation or to bring proceedings in the Competition Tribunal in relation to the Proposed Transaction. Subsequently, on 29 May 2025, CA issued a notice ("Notice") pursuant to section 2 of Schedule 2 to the CO to seek representations from the industry and interested parties on CA's intended acceptance of the Proposed Commitments[7]. By the extended deadline of 28 June 2025[8], CA received four representations from HGC Global Communications Limited ("HGC"), HKBN, Hong Kong Cable Television Limited ("Cable TV") and

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[5] Such as data reported by telecommunications licensees periodically to CA for statistical purposes.

[6] Please refer to the annex to the Notice at: https://www.coms-auth.hk/filemanager/en/content_711/cp20250529.pdf.

[7] Please refer to the link at footnote 6 above.

[8] The deadline for representations was originally set for 13 June 2025, 15 days after the issue of the notice. In response to the requests of the industry, the deadline for representations was extended by another 15 days to 28 June 2025.

SmarTone Mobile Communications Limited ("SmarTone")[9] respectively. In response to their requests, CA offered individual meetings with each of the respondents by a deadline[10] and did meet with all of them in relation to their submissions.

8. CA noted the industry concern raised in the representations on mobile backhaul services currently provided by HKBN (See paragraph 58 below) and considered it justified to draw CMHK's attention to this concern. On 23 July 2025, CMHK offered a set of revised commitments (the "Revised Commitments") to address the concerns raised in those representations. After due consideration, CA has decided to accept the Revised Commitments as set out in the **Annex** under section 60 of the CO in return for not commencing an investigation into the Proposed Transaction. For the avoidance of doubt, all the information, inputs, views and representations received during the consultation process have been carefully reviewed by CA and taken into account in this Statement, albeit not each of such submissions is explicitly mentioned or addressed in this Statement. Taking into account the requests of the respondents, some figures submitted by them or their names in certain representations are redacted in this public version of the Statement. The redaction is done in a manner to preserve the legibility of the Statement.

COMPETITION ASSESSMENT OF WHETHER THERE IS SLC EFFECT

The Merged Entity

9. CMHK, the acquirer, holds a unified carrier licence ("UCL") to provide internal fixed telecommunications services and mobile services. While CMHK's current business focuses mainly on mobile services and is one of the major mobile network operators ("MNOs"), it is also a fixed network operator ("FNO") providing local fixed telecommunications services in Hong Kong.[11]

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9 Please refer to the link at: https://www.coms-auth.hk/en/policies_regulations/consultations/completed/competition_matters/intended_acceptance_of_commitments_offered_by_cmhk/index.html.

10 Three weeks from the extended deadline for representations.

11 China Mobile International Limited ("CMI") is the sister company of CMHK under the same China Mobile Group and holds a UCL for provision of internal fixed and external fixed telecommunications

10. HKBN Ltd., the acquiree, indirectly and wholly owns HKBN which holds UCLs to provide internal and external fixed telecommunications services. HKBN's current business focuses mainly on local fixed telecommunications services, and is one of the major FNOs in Hong Kong. HKBN also holds a number of services-based operator ("SBO") licences for the provision of local voice telephony services, international value-added network services including Internet access services, external telecommunications services ("ETS") and mobile virtual network operator ("MVNO") services. After completion of the Proposed Transaction, HKBN will become an indirect subsidiary of CMHK[12].

Competition Assessment Approach

11. CA's analytical framework for assessing whether the Proposed Transaction would have or would be likely to have the SLC Effect is described in the Merger Guideline. In general, CA conducts a competition assessment of a merger by first identifying the relevant markets, such as the areas of overlap between the businesses of the acquirer and acquiree, and then an assessment of whether the merger has, or is likely to have, SLC Effect in the identified relevant markets. Our assessment takes into account the Consultant's analysis, all available information and data provided by relevant parties including those provided in the representations.

The Relevant Markets

12. The Guideline on the Second Conduct Rule ("Second Conduct Rule Guideline")[13] has set out the approach for identifying the relevant markets within which to assess a given competition concern into product/service dimension and geographical dimension. Such approach is a conceptual framework and is not intended to be applied mechanically[14].

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services. Noting that CMI's major operation is on external fixed services, CA has taken into account the services provided under CMI in assessing any competition issues such as external facilities (see paragraphs 109 - 114 below).

12 See paragraph 15 of CMHK's announcement issued on 2 December 2024 (https://www1.hkexnews.hk/listedco/listconews/sehk/2024/1202/2024120203351.pdf).

13 The Second Conduct Rule Guideline is available at: https://www.coms-auth.hk/filemanager/en/content_923/comp_guide2_en.pdf.

14 See paragraph 3.11 of the Merger Guideline.

In relation to telecommunications markets specifically, the Merger Guideline states that such markets "*may be characterised by dynamic and rapid technological changes. In such circumstances, market boundaries are not likely to remain constant*"[15].

13. With regard to the product/service dimension of the Proposed Transaction, CA has identified each of the relevant service markets taking into account, *inter alia*, the services offered by either or both of CMHK and HKBN. With regard to the geographical dimension of the Proposed Transaction, CA considers that the geographical scope of all such markets is the territory of Hong Kong.

14. In its competition assessment of the Proposed Transaction, CA has considered the following relevant markets in Hong Kong -

(a) Fixed local access network services;
(b) Leased lines and mobile backhaul services;
(c) Retail fixed Internet access services;
(d) Retail multiple-play services;
(e) Retail local fixed voice services;
(f) Retail mobile (including international roaming) services;
(g) Mobile access network services;
(h) Interconnection services;
(i) Access to external telecommunications facilities and ETS; and
(j) Information technology ("IT") services.

<u>Indicative Safe Harbours</u>

15. The Merger Guideline provides guidance as to which mergers are unlikely to have SLC Effect[16]. Two indicative safe harbour measures of market concentration are set out in the Merger Guideline, namely the four-firm concentration ratio test ("CR4") and the Herfindahl-Hirschman Index ("HHI") –

(a) CR4 is calculated by summing the market shares of the four (or fewer) largest firms in the relevant market. A merger is considered to be within this safe harbour if –

(i) the post-merger CR4 is less than 75% and the merged entity has a market share of less than 40%; or

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[15] See paragraph 3.12 of the Merger Guideline.

[16] See paragraphs 3.15 – 3.19 of the Merger Guideline.

(ii) the post-merger CR4 is 75% or more and the merged entity has a market share of less than 15%;

(b) HHI measures market concentration and is calculated by summing the squares of the market shares of all the firms operating in the relevant market. Both the absolute level of the HHI, which provides a gauge of the market concentration, and the change in HHI resulting from the merger, which measures the impact of a merger on market concentration, provide an indication of whether a merger is likely to raise competition concerns. A merger is considered to be within this safe harbour if –

(i) the post-merger HHI of a market is less than 1 000;
(ii) for a market with a post-merger HHI of between 1 000 and 1 800, the increase in the HHI is less than 100; or
(iii) for a market with a post-merger HHI of more than 1 800, the increase in the HHI is less than 50.

16. A merger that meets either one of the safe harbour measures will fall within the safe harbour. That said, the safe harbour measures are indicative in nature. The Merger Guideline expressly recognises that a merger falling outside the safe harbour thresholds is not necessarily an indication that the transaction would have SLC Effect in a market. It merely indicates that further inquiry may be made by CA to assess the extent of any potential anti-competitive effects[17]. CA has carried out such further inquiry in relation to the relevant markets, with a view to ensuring any potential anti-competitive effects are adequately addressed.

Unilateral and Coordinated Effects

17. The Proposed Transaction with two rivals competing in various service markets involves a horizontal merger. According to the Merger Guideline, a horizontal merger may lessen competition in two ways, in terms of creating unilateral effects and coordinated effects. A single merger may raise both types of effects. Unilateral effects may arise in a merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to reduce output or otherwise exercise market power it has gained, even given the expected responses of other market participants to the resulting

[17] See paragraph 3.13 of the Merger Guideline.

change in market condition. On the other hand, coordinated effects take place where the merger increases, enables or encourages post-merger coordinated interaction among the firms in the market. Mutually accommodating conduct elicited by the coordinated effects may enhance a firm's incentive to raise prices, by assuaging the fear that such a move would lose customers to rivals[18].

Vertical Foreclosures

18. The Proposed Transaction creates a vertically integrated firm between a major FNO and a major MNO. According to the Merger Guideline, in a vertical merger[19], the Merged Entity may have the ability and incentive to foreclose downstream non-integrated rivals' access to the supply of such an input. Such behaviour is known as "input foreclosure theory of harm". On the other hand, when a supplier integrates in the downstream market with an important customer of its upstream rivals, such downstream presence of the Merged Entity may enable it to foreclose access to a sufficient customer base by its actual or potential rivals in the upstream market (the input market) thereby reducing their ability or incentive to compete. Such theory of harm is known as "customer foreclosure".

With-and-without Test

19. According to the Merger Guideline, in assessing whether competition is likely to be substantially lessened by a merger, CA will usually employ an analytical tool called the "with-and-without" test. That is, the level of competition that is likely to exist in a market with the merger will be assessed and compared with the level of competition that is likely to exist in the market without the merger. The competitive situation without the merger is referred to as "the counterfactual". This analysis will be applied prospectively, that is, future competition will be assessed with and without the merger.[20]

CA's Competition Assessment of Each of the Relevant Markets

[18] See paragraphs 3.32 – 3.34 of the Merger Guideline.

[19] According to section 3.77 of the Merger Guideline, a vertical merger means "the integration of two functional levels in the supply chain".

[20] See paragraph 3.36 of the Merger Guideline.

20. The Proposed Transaction primarily entails (a) a horizontal merger between (i) two FNOs with their respective fixed network infrastructures, retail fixed Internet access and voice services and (ii) an MNO and an MVNO on the retail mobile business; and (b) a vertical merger between a major MNO and a major FNO with potential impact on the leased lines and mobile backhaul services and retail multiple-play services. CA will first identify each of the relevant markets, then analyse the potential horizontal effects in terms of market concentration level, i.e. safe harbour measures, unilateral effects and coordinated effects for each of the relevant markets, and the with-and-without test (as appropriate). On the other hand, CA will consider the vertical foreclosure and conglomerate effect that might affect the leased lines and mobile backhaul services and retail multiple-play services.

(A) Fixed Local Access Network Services

21. The fixed local access network services market covers all kinds of fixed network access services, which may include but not limited to the provision of dark fibre, leased lines, mobile backhaul services for MNOs, and wholesale inputs for other FNOs and SBO licensees to offer retail services of various kinds. CA's consideration in deciding the relevant market is on whether there should be separate markets for this service based on technologies and the type of customers.

22. From the perspectives of technology, there is no evidence available to CA suggesting that the underlying technologies deployed by various FNOs are sufficiently different in terms of their capability in supplying services in this market to warrant a market delineation based on technologies.

23. Regarding the type of customers, CA notes that suppliers in this market are generally able to serve both retail and wholesale customers as the underlying fixed network infrastructure which underpins this market is basically the same. Typical example of retail customers includes those medium to large sized business entities which use leased lines to build a private network for communications between offices located at various areas across the territory. On the other hand, examples of wholesale customers may include those FNOs and/or SBOs which acquire wholesale inputs for their provision of downstream fixed voice and/or Internet access services, or MNOs which acquire mobile backhaul services from the FNOs as inputs for their provision of downstream mobile services. As the Proposed Transaction involves a merger of a major MNO (i.e. CMHK) and

a major FNO (i.e. HKBN), it may require more in-depth vertical analysis on the leased lines and mobile backhaul services markets. This will be discussed in a separate section. Thus, CA considers that there is no need to define separate markets for retail and wholesale customers among business customers using different type of services.

24. Having carefully considered the above, CA considers that the relevant market for fixed local access network services in Hong Kong should be defined as one single market, with no distinction made between the technologies deployed or the type of customers (namely retail or wholesale), except that the leased lines and mobile backhaul services for wholesale customers will be separately considered.

Competition Assessment

25. The local fixed telecommunications market in Hong Kong has been fully liberalised since 2003. As at 30 June 2025, there were 29 carrier licensees authorised to roll out local fixed networks in Hong Kong, demonstrating a vibrant competitive landscape at the facilities-based level. Among these fixed carrier licensees, Cable TV, CMHK, HGC, HKBN and PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited (collectively referred to as "PCCW-HKT") have extensive network coverage in the relevant facilities-based market in Hong Kong.

26. The fixed network infrastructure broadly consists of two main components, namely the core network and the access network. Major FNOs in Hong Kong operate their own fixed network infrastructure with both components. The Proposed Transaction would result in extended coverage on the part of the Merged Entity, an important dimension in which competition among facilities-based FNOs occurs. Depending on the magnitude of that extension, and if such extension is unmatched by similar extension on the part of the Merged Entity's rivals, both extant and potential, competition risk might arise following completion of the Proposed Transaction as a result of the enhanced market power conferred to the Merged Entity in the form of extended coverage.

27. In addition, potential competition issue may arise from the Proposed Transaction especially in relation to coverage in those buildings where only four or three FNOs are currently present, but there are only two or one competing operators other than the Merged Entity remain post-

merger[21]. In those buildings, the Proposed Transaction could effectively be a "4-to-3" or a "3-to-2" merger. The outcome of one less competitor, in and of itself, would not pose any competition risk so long as rivals, extant or potential ones, would be able to extend their fixed network infrastructure to such buildings for service provision without significant difficulties. The reason is that rivals' entry, or the threat of entry, should be sufficient to counteract any exercise of potential market power on the part of the Merged Entity gained through the merger in those buildings. However, if rivals encounter difficulties in extending their fixed network infrastructure to such buildings, and the number of such buildings (i.e. only two or one competing operators other than the Merged Entity remain post-merger) is not insignificant, there is a likelihood that market power in terms of coverage would be conferred to the Merged Entity.

28. Regarding the ease of expansion of fixed network infrastructure, generally speaking, the available evidence does not indicate that market participants encounter significant difficulties in extending their core networks. On the other hand, based on available information, CA notes that market participants sometimes do encounter constraints in gaining access to buildings for installing in-building telecommunications systems for the purpose of service provision. For example, where there is insufficient physical space within the buildings and/or the property management office or owner(s) refuse to grant access ("Building Access Constraints").

29. Given the wide range of services that may be covered in this market, there is no direct quantitative data available to assess the market share of individual participants in this market for calculating the CR4 and HHI values. CA considers it prudent to further examine the potential competition issue which might arise following completion of the Proposed Transaction, as detailed in the following paragraphs. Furthermore, this market is of particular importance as promoting competitiveness in the fixed local access network services market (i.e. at facilities-based level) is likely to support competitiveness in the retail fixed voice services market, the retail fixed Internet access services market and the retail mobile market to be discussed below.

<u>Unilateral effects</u>

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21 As advised by the Consultant, the precedent cases in overseas economies indicate that if there are still three other competing networks after the merger, normally it will not be considered to raise any significant competition concern.

30. Unilateral effects may arise in a merger where one firm merges with a competitor that previously provided a competitive constraint, allowing the Merged Entity profitably to increase prices or reduce output or otherwise exercise power it has gained post-merger[22].

31. Section 21(3) of the CO sets out a non-exhaustive list of the matters that may be taken into consideration in determining whether an undertaking has a substantial degree of market power[23]. This comprises an analysis of several factors including market share, countervailing buyer power, barriers to entry or expansion, and market-specific characteristics[24]. These factors are, however, not exhaustive and there may be other considerations that CA will take into account in its assessment of market power in a given case. It is not necessarily the case that a high market share equates directly to a substantial degree of market power[25].

32. On the basis above, a potential competition issue may arise in buildings where the Merged Entity, in particular for those covered by HKBN with broader coverage than CMHK, has installed their own in-building telecommunications systems to provide services within those buildings. This could lead to the reduction of one competitor in these buildings post-merger. If the number of these buildings is not insignificant, and the Building Access Constraints exist in these buildings to restrict other FNOs' access to install their own in-building telecommunications systems for service provision, there would be reduced likelihood of new entry, or threat of new entry to serve those buildings. Consequently, the overall competitive landscape at the facilities level would likely be significantly altered, raising concern about unilateral effects, namely an increase in the market power of the Merged Entity in the fixed local access network services market (viz. at the fixed network infrastructure level).

33. Based on the available information, HKBN has an extensive coverage, with its local access network covering over [redacted]% of buildings

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22 See paragraph 3.33 of the Merger Guideline.

23 In the context of the Second Conduct Rule.

24 See paragraphs 3.7 and 3.8 of the Second Conduct Rule Guideline.

25 Paragraph 3.40 of the Merger Guideline states that *"[h]igh market shares and concentration levels as a result of a merger are generally necessary but not sufficient conditions for the creation or enhancement of market power that may lead to a contravention of the Merger Rule*". In the context of the Second Conduct Rule, the Second Conduct Rule Guideline also states that *"[u]ndertakings are more likely to have a substantial degree of market power where they have high market shares. However, a high market share does not necessarily imply a substantial degree of market power*". (paragraph 3.10 of the Second Conduct Rule Guideline).

in Hong Kong. While CMHK has a relatively limited coverage of around [redacted]%, CMHK's in-building telecommunications systems largely overlaps with HKBN. Among those overlapped buildings, around [redacted]% of them have only one to two other competing networks whereas for those buildings covered by HKBN only, over [redacted]% of buildings have only one to two other competing networks. Applying the with-and-without test, it is noted that in the counterfactual absent the merger, CMHK would be planning to roll out its network to over [redacted] new households in the next three years. That means, it is reasonable to assume that in the counterfactual absent the merger, CMHK would very likely continue to roll out its network to some of the buildings with HKBN's coverage, and increasing the number of buildings with overlapping in-building systems by the Merged Entity. Hence, CA considers that the potential number of buildings with one to two competing networks, post-merger, is not insignificant and therefore might give rise to competition concern if the Building Access Constraints exist in those buildings restricting other FNOs' access to install their own in-building telecommunications systems for service provision.

Coordinated Effects

34. Coordinated effects may arise if market participants find themselves in a market environment more conducive for them to coordinate their actions. CA must therefore assess the extent to which a merger is likely to create and/or enhance conditions conducive to enabling market participants to reach and enforce coordinated outcomes (including coordinated price rises or coordinated strategies such as marginalisation of smaller competitors). Such coordination group must involve at least one firm other than the Merged Entity. In principle, for those existing FNOs which already have presence in some buildings where there are Building Access Constraints and the number of competing operators remains as two or one post-merger, they may adopt the strategy to monitor and collude to refuse to offer access to other FNOs seeking in-building access.

35. In view of the above, in the market for fixed local access network services, CA considers that ***the presence of Building Access Constraints at buildings currently covered by both CMHK and HKBN, or by HKBN only, before the merger, may give rise to competition issue in the form of unilateral effect, and with a potential increased risk of coordinated effect*** following completion of the Proposed Transaction. As a result, CA communicated the competition issue identified to CMHK, and in return CMHK offered the Proposed Commitments to CA under section 60 of the CO for CA not to commence an investigation in relation to the

Proposed Transaction. The Proposed Commitments include the In-building Systems Commitment ("IB Commitment") and other associated commitments, namely, the Procurement Commitment and Reporting Commitment[26].

Representations Received and CA's Responses

IB Commitment

36. The IB Commitment states *inter alia* that –

(a) CMHK commits to facilitate or procure that HKBN facilitates a requesting operator ("Requesting Operator") to access the in-building telecommunications systems of those buildings where HKBN has installed and owns in-building telecommunications systems therein, and where the Requesting Operator encounters difficulties accessing the buildings concerned for installing its own in-building telecommunications systems;

(b) The terms and conditions of access will be commercially negotiated on a fair and reasonable basis; and

(c) If the parties fail to reach an agreement, CA may intervene and make a decision.

37. In terms of the type of buildings that the IB Commitment should cover, HGC submits that it should cover all in-building telecommunications system owned or leased by either HKBN or CMHK in order to maintain existing levels of competition at the building level. Cable TV considers that CMHK can strategically deploy HKBN's infrastructure to monopolise in new buildings, and therefore proposes to revise the IB Commitment to include buildings covered by HKBN currently and post-merger.

38. In response to HGC's and Cable TV's representations on the types of buildings covered by the IB Commitment, as stated in paragraph 33 above, CA considers that CMHK has only limited coverage which largely overlaps with HKBN. In addition, the IB Commitment will include all the buildings with in-building telecommunications systems installed and

[26] Please refer to the Annex to the Notice (the link is available at footnote 6) for the detail of IB Commitment and other associated commitments.

owned by HKBN (i.e. the party to be acquired by CMHK) rather than restricting to overlapping buildings only. As such, CA considers that it can effectively address the competition concern as raised in paragraph 35 above and there is no need to extend the IB Commitment to include buildings with CMHK's coverage only. As regards the submission that the IB Commitment should include also the network leased by the Merged Entity, CA considers that the Merged Entity may not have full control of such leased network, and the new rival FNOs which have not yet served but are planning to serve customers in the relevant buildings should approach directly to the network owner, instead of the Merged Entity, for leasing the network. Regarding the request to extend the IB Commitment to include buildings covered by HKBN post-merger, CA considers that the IB Commitment should not include those buildings with HKBN's network installed and owned after the effective date. In case any FNO considers that there may be any potential network access issue in any other building, it may roll out its network to that building any time according to its commercial consideration. After all, FNOs have the statutory right to access to buildings for installation and maintenance of telecommunications facilities under section 14(1) of the TO.

39. In terms of the definition of the Requesting Operator, HGC submits to request amending the IB Commitment which confines the access remedy to operators who are not providing services in the relevant building to all UCL holders. Cable TV submits that building owners rarely provide written rejections and therefore making evidence hard to obtain to prove the "no other feasible means of access" under the IB Commitment. HGC shares the view that the requirement for the Requesting Operator to prove evidence on "no other feasible means of access" is not necessary and proposes to remove such requirement.

40. In response to HGC's and Cable TV's representations on definition of the Requesting Operator, CA considers that the IB Commitment is a targeted remedy but not a general access right. It is not a blanket obligation to open HKBN's infrastructure to all operators. To safeguard the integrity of the IB Commitment, there is a need for the Requesting Operator to demonstrate that there are no other feasible means of accessing the building. The requirement ensures that the IB Commitment is triggered only when operators have the genuine need in order to prevent the IB Commitment from being abused while observing HKBN's property rights.

41. [redacted] submits that CMHK should be obliged to enter into a master service agreement ("MSA") upon request of Requesting Operators

to avoid potentially lengthy debates and negotiations on a building-by-building request process, and seeks for advice from Office of the Communications Authority ("OFCA") on the appropriate resolution if such MSA cannot be reached by the parties within [redacted] months. [redacted] and [redacted] consider the terms as stated in the IB Commitment e.g. "fair and reasonable terms" or charging for accessing HKBN's existing systems are too vague. [redacted] and [redacted] request for guidance from the OFCA or CA's intervention on the cost calculation or charging level. In the case of disputes among the Requesting Operator and the Merged Entity over the terms and conditions, a simple procedure with prescribed timeframe for dispute resolution among the parties should be in place.

42. In response to [redacted]'s and [redacted]'s representations in paragraph 41 above, CA considers that the dispute resolution mechanism in the IB Commitment allows either party to refer unresolved access disputes to CA, whose determination is binding for both the Requesting Operator and the Merged Entity. This regulator-led dispute resolution mechanism is a well-established arrangement. This has also been adopted under determinations pursuant to the TO, and is considered to be an effective forum for resolving disagreements. CA will make determination based on the specific facts of each case and in a timely manner, rather than imposing rigid benchmarks that are not conducive to encouraging commercial negotiation or may not reflect market realities. Hence, CA considers that there is no need to impose further measures such as creating an MSA, setting out guidance or formula for charging price and prescribing a timeframe as suggested by [redacted] and [redacted].

Procurement Commitment and Reporting Commitment

43. The Procurement Commitment and Reporting Commitment state that CMHK will take relevant actions to ensure all entities within its group to act in accordance with the IB Commitment and submit to OFCA written reports every six months on their compliance with the Proposed Commitments respectively.

44. Regarding the Procurement Commitment, [redacted] submits that the definition and scope of the "group" subject to this commitment are not clearly delineated, and the "best endeavour" obligation sets too low a threshold. It considers that (a) the definition of "control" should be added; and (b) the IB Commitment should be followed by a wider CMHK's group to cover its parent and any change of the wider CMHK's group should be reported to OFCA.

45. Regarding the Reporting Commitment, HGC opines that the Merged Entity should be required to appoint an external, independent monitoring trustee to actively and regularly monitor and review CMHK's compliance with the IB Commitment and Procurement Commitment. On the other hand, Cable TV considers that the Reporting Commitment is reactive only. Absent any request which can hardly be substantiated by documentary evidence, there is no guarantee on CMHK's opening of rival access.

46. In response to [redacted]'s representations on the Procurement and Reporting Commitments, CA is of the view that the Procurement Commitment requires CMHK to use its best endeavours to ensure that all entities within its group comply with the commitments. The term "control" is intentionally left undefined to preserve regulatory flexibility and avoid legal loopholes. On the other hand, using "best endeavours" rather than "procure and ensure" reasonably reflects a realistic understanding of CMHK's influence over its affiliates. CA needs to balance between enforceability and commercial autonomy. In case there is dispute between the legal definition of the terms and practical reality, CA will determine the dispute subject to public law principles. Given the narrow scope of the remedy and the requirement for periodic compliance reporting, there is no need to appoint a monitoring trustee, which would add unnecessary cost and complexity. Regarding Cable TV's representations on the Reporting Commitment, the present reporting mechanism in the Proposed Commitments is considered sufficient for OFCA to monitor compliance by CMHK. OFCA will take proactive steps to ensure compliance.

47. Having regard to evidence, analysis available to it and the representations received, ***CA is of the view that the remedies stipulated in the IB Commitment should adequately address the competition concern identified in the fixed local access network services market***.

(B) Leased Lines and Mobile Backhaul Services

48. As stated in paragraph 23 above, leased lines can be provided at retail and wholesale level. Regarding wholesale level, it can be input to facilitate both the fixed and mobile services. Taking into account that the Proposed Transaction might have potential vertical effect in the mobile backhaul services market where FNOs provide mobile backhaul services to MNOs, leased lines and mobile backhaul services are carved out from the fixed local access network services market for the competition assessment on the vertical effect. As leased lines are homogenous product,

CA considers that the relevant geographical scope of all such markets is the whole territory of Hong Kong.

Competition Assessment

Leased line services

49. At present, there are more than ten FNOs providing leased line services. While HGC, HKBN and PCCW-HKT are the major providers, there are other small players in the market including CMHK, but CMHK's presence in this market is not significant.

50. **Table 1 and Table 2** below show that only the calculated value of HHI of the leased lines services fall within the safe harbour tests in terms of the number of leased lines, while other calculated values of CR4 and HHI exceed the safe harbour thresholds.

Table 1: Market share by number of lines and bandwidth of leased lines services

Operator	Market Share for Number of Lines (%)	Market Share in terms of Bandwidth (%)
CMHK	[redacted]%	[redacted]%
HKBN	[redacted]%	[redacted]%
Merged Entity	**[20% - 30%]**	**[50% - 60%]**
PCCW-HKT	[redacted]%	[redacted]%
HGC	[redacted]%	[redacted]%
Others	[redacted]%	[redacted]%
Post-merger CR4	[redacted]**%**	[redacted]**%**

Source: Consultancy Report, based on CA's data as of February 2025.

Table 2: HHI for the number of lines and bandwidth of leased lines

	Pre-merger	Post-merger	Increase in HHI
No. of leased lines	[redacted]	[redacted]	[5 - 15]
Bandwidth (Mbps)	[redacted]	[redacted]	[150 - 250]

Source: Consultancy Report, based on CA's data as of February 2025.

51. Although the relevant safe harbour tests are largely failed, the market share of CMHK is immaterial (i.e. [redacted]% and [redacted]% in terms of number of leased lines and bandwidth respectively). CA considers that the Proposed Transaction will not materially change the market structure.

Input Foreclosure for mobile backhaul services

52. In provision of mobile services, an MNO is required to, among other things, procure mobile backhaul services from the FNOs for connection between its core network and radio base stations in different areas. Under the Proposed Transaction, HKBN as a major FNO may be able to exercise the input foreclosure strategy, i.e. by restricting or worsening terms of access to mobile backhaul services by MNOs other than CMHK. MNOs' ability to compete in the downstream mobile services market with CMHK is reduced. In theory, though the Merged Entity will lose sales and profits of mobile backhaul services in the upstream fixed local access network services market, the restricted access to backhaul services by other MNOs may cause degradation of their service quality and constraint in capacity expansion, thus driving customers to CMHK and increasing CMHK's revenues from the downstream local mobile services market.

53. The assessment of the vertical input foreclosure of the Proposed Transaction would involve whether the Merged Entity would have the ability and incentive to (a) completely foreclose other MNOs, which are the competitors of CMHK, of access to HKBN's backhaul services; or (b) provide backhaul services to the other MNOs at higher prices or reduced quality of service, as well as the adverse effects of such potential foreclosure on prices and quality offered to the end customers.

54. Taking into account that (a) there are multiple suppliers capable of providing leased lines for use as backhaul services by the MNOs; (b) leased lines are considered to be relatively homogenous and hence MNOs may switch between wholesale backhaul providers with high substitutability; and (c) the barriers to entry and expansion in the provision of backhaul services are also likely to be relatively low based on the available evidence, it is considered that rival providers of backhaul services should be able to expand their capacity to meet any increased demand if they so wish. In addition, according to the Consultant's analysis, while the Merged Entity may benefit in the downstream retail mobile market by foreclosing the upstream input of backhaul services to the MNOs, the additional profits from the retail mobile market may not be material enough to offset the lost wholesale profits from the sales of mobile backhaul services, thus lowering the incentive for the Merged Entity to foreclose. To conclude, as long as the competition at the facilities-based level remains robust post-merger, it is considered that there should be no material competition concern in relation to the input foreclosure for mobile backhaul services market.

Customer Foreclosure

55. The Proposed Transaction effectively creates a vertical merger for HKBN to likely be the sole or major upstream supplier of fixed telecommunications services to CMHK in the following two scenarios post-merger –

(a) HKBN to provide fixed telecommunications services at the facility-based level for CMHK to offer downstream fixed services to its wholesale and retail customers; and

(b) HKBN to provide the mobile backhaul services to CMHK for offering downstream retail mobile services to the end customers.

In both scenarios, other FNOs currently supplying fixed telecommunications services to CMHK may lose a major customer, and thus potentially being foreclosed.

56. In this regard, for the scenario in paragraph 55(a) above, given that there are demands for leased lines from the wholesale customers (including FNOs, MNOs and SBOs) other than CMHK in the market, and the fact that currently CMHK is a FNO with small market share, any FNO's claim of customer foreclosure, that loss of CMHK as its major customer would form a customer foreclosure and thereby reducing its ability or incentive to compete, is unsound.

57. For the scenario illustrated in paragraph 55(b) above, it is observed that CMHK procures mobile backhaul services from multiple major FNOs including HKBN. Even if CMHK were to procure mobile backhaul services solely from HKBN post-merger, there would be demand for mobile backhaul services from other MNOs as they may choose not to continue to procure mobile backhaul services from HKBN post-merger. In effect, the merger may lead to changes in commercial relationships, i.e. changes in who buys mobile backhaul services from whom. Therefore, it is considered that the Merged Entity would not have the ability to foreclose suppliers of mobile backhaul services.

Representations Received and CA's Responses

Input foreclosure on mobile backhaul services

58. In terms of the risk of vertical input foreclosure, HKBN submits that a number of industry players currently competing with CMHK are relying on HKBN to provide wholesale backhaul services at reasonable rates that enable them to offer their own mobile services at competitive rates, and HKBN also quotes the then wholesale agreements commitments to guarantee unchanged or no less favourable for three years in a previous merger case[27]. [redacted] submits that HKBN is currently its [redacted] provider of mobile backhaul services with [redacted] throughput contributing to over [redacted]% of mobile backhaul services with [redacted] in terms of bandwidth which is essential to meet the demands for 5G. It is also concerned that it would run the risks of being foreclosed with the continued access, service degradation and future access due to limited choice in the market post-merger. Without enforceable remedies, there is likelihood of occurrence of the scenarios including (a) risk of tacit coordination of wholesale price by two integrated players (i.e. PCCW-HKT[28] and the Merged Entity); (b) self-preferencing with cost advantage for CMHK; or (c) resilience and risk concentration concern as [redacted] and other MNOs may be left with the options of having access to and/or migrating the mobile backhaul services to another independent supplier post-merger. [redacted] proposes remedies including honouring the existing mobile backhaul agreements, renewal of such agreements with no less favourable terms and conditions, CMHK commits to provide backhaul services for new sites and next generation network, etc. Cable TV submits that the Merged Entity's combined wholesale market power (e.g. backhaul, leased lines) could raise prices for smaller operators. The wholesale competition risk was not identified in the Notice and let alone any assessment on the same.

59. In response to Cable TV's, HKBN's and [redacted]'s representations on risk of input foreclosure on wholesale mobile backhaul services, while CA notes that mobile backhaul services are in general homogenous, it should not be taken for granted that the Merged Entity would not terminate the supply of its mobile backhaul services to other MNOs which are direct competitors of the Merged Entity in the mobile services market. In fact, the foreclosure could effectively cause operational difficulties to the affected MNOs as it will take a substantial period of time and incur likely a higher cost for these MNOs to secure a large quantity of

27 See the merger case for the acquisition of WTT Holding Corp. by HKBN Ltd., which is available at: https://www.coms-auth.hk/en/policies_regulations/other/competition/co/registers_under_the_competition_ordinance/acceptance_of_the_commitments/index.html.

28 PCCW-HKT holds UCL No. 025 for provision of internal and external fixed service, and Hong Kong Telecommunications (HKT) Limited ("HKT") holds UCL No. 008 for provision of internal fixed and mobile services.

mobile backhaul services scattered across the territory from only a few alternative backhaul service providers available in the market. CA acknowledges the concern raised in the representations regarding supply of mobile backhaul services by HKBN post-merger. In the interest of preserving confidence and ensuring continuity, CMHK voluntarily agrees to extend the IB Commitment to cover also mobile backhaul services by preserving the terms of existing HKBN's mobile backhaul supply contracts with MNOs for three years in the IB Commitment, revised as **In-building System and Mobile Backhaul Services Commitments**. Details of the Revised Commitments are given at the **Annex**. The Consultant considers that the In-building System and Mobile Backhaul Services Commitments voluntarily proposed by CMHK should mitigate any concern regarding potential mobile backhaul services at least in three years post-merger. Taking into account the Consultant's views, CA considers that other remedies raised by [redacted] (including renewal terms, fair term for future access, mechanism to monitor all backhaul pricing) on mobile backhaul services are not necessary.

Input foreclosure on wholesale fixed services

60. CA notes that there are comments on the wholesale fixed services (without pointing to leased lines specifically). As leased lines in general is part of the wholesale fixed services, all the relevant views about wholesale fixed services (including leased lines) and our responses will be discussed together below.

61. SmarTone submits that it [redacted] utilises HKBN's fibre network to resell fixed-line broadband services to residential and business customers with over [redacted]% of its fixed broadband customer base using HKBN's network. It also considers that the Proposed Transaction would eliminate the choices of independent FNOs because the number of independent FNOs will be reduced. [redacted] proposes remedies on "Fixed Access and Service Commitments", "Access Commitment and Fair Terms for New Services" and firewall between CMHK and HKBN. [redacted] raises similar concern about fewer choice of FNOs, and claims that both of CMHK and HKBN are the only suppliers of [redacted] on soft-switch services to support its voice services.

62. Regarding SmarTone's and [redacted]'s representations on input foreclosure for fixed services, CA notes the Consultant's views that the Proposed Transaction does not raise any horizontal concern in the fixed services market and there is also no significant change of the competition

landscape for the fixed services post-merger. As stated in paragraphs 25 and 54 above, there are still three competing FNOs other than the Merged Entity with extensive network coverage post-merger, and there are also other suppliers which are capable of providing leased lines for use as backhaul services by MNOs, which is considered sufficient for the market to remain competitive and become the competitive constraint to the Merged Entity, therefore reducing HKBN's incentive to foreclose the sales of fixed network services to other FNOs. In addition, with the In-building System and Mobile Backhaul Services Commitments, it can address any potential concern of input foreclosure on resale of fixed network services. CMHK has committed to facilitating a Requesting Operator to access the in-building telecommunications systems of those buildings where HKBN has installed and owned in-building telecommunications systems therein, subject to other conditions. The Requesting Operator can make use of HKBN's in-building telecommunications systems to continue to enable it to resell fixed network services to its customers. Hence, there is no need to impose any further commitment (including any firewall between CMHK and HKBN for fixed service).

Customer foreclosure on wholesale fixed services (including mobile backhaul services)

63. In terms of risk of customer foreclosure, [redacted] submits that CMHK is its key customer on fibre rental business and it also has a strategic partnership with CMHK on network expansion, the Proposed Transaction, in the lack of sufficient and effective measures to preserve competition conditions, would have huge impact on [redacted]'s business sustainability. [redacted] submits that CMHK would immediately render contracts with other backhaul suppliers duplicative and may just terminate the contracts in short order after merging with HKBN. The Proposed Transaction will eliminate CMHK's reliance on third-party network resources, allowing CMHK to terminate existing services such as those provided by [redacted]. As such [redacted] proposes additional remedies of non-termination or renewal of existing wholesale agreements and maintenance of wholesale pricing and terms to ensure non-discriminatory access and transparent wholesale pricing.

64. Regarding the adverse impact on [redacted] owing to the loss of the strategic relationship with CMHK on the provision of fixed services (including fibre services), CMHK advises that it is unable to terminate its contract with [redacted] unilaterally [redacted]. The Consultant's view is that network deployment costs are primarily labour costs which can be scaled up or down in proportion of the network deployment required and in light of [redacted], [redacted] can adjust its strategies and business model. In response to

[redacted]'s and [redacted]'s representations on risk of customer foreclosure, as stated in paragraphs 56 - 57 above, the loss of leased lines and backhaul revenues from CMHK would not have a significant impact given that other FNOs and MNOs in the market may have increased demand for leased lines and mobile backhaul services after the Proposed Transaction and that may mean increased business opportunity for other FNOs. As such, CA considers that [redacted]'s proposal on remedies in relation to non-termination or renewal of existing wholesale agreements is not necessary.

65. Having regard to evidence, analysis available to it, the representations received and the In-building System and Mobile Backhaul Services Commitments, CA is of the view that there is no vertical competition concern, including input and customer foreclosure, identified in the wholesale fixed services (including leased lines and mobile backhaul services market). Nevertheless, ***CMHK's Revised Commitments to cover also mobile backhaul services should be able to address the concern on supply of mobile backhaul services by HKBN post-merger*** as stated in a number of the representations received.

(C) Retail Fixed Internet Access Services

66. Both CMHK and HKBN provide retail local fixed Internet access services in Hong Kong. In defining this market, CA has considered whether there should be separate markets for this service based on technologies (such as fibre-based and copper-based networks) and the type of customers.

67. Regarding the type of customers, CA notes that this market is normally made up of three types of customers, namely residential customers, small and medium business customers, and large business enterprises. Given that CMHK is not active in providing the Internet access services to business customers, and HKBN provides services to both residential and business customers, CMHK and HKBN overlap mainly in the residential segment only.

68. In terms of technology, the rationale for fixed local access network services as explained in paragraph 22 above also applies here, that there is no available evidence to suggest a market definition based on technologies. CA does not consider it appropriate to draw a distinction between the technologies deployed. Having said that, CA notices that while residential customers normally require simple Internet access services such as subscription-based narrowband or broadband services,

business customers may require more tailor-made services such as virtual private networks. Taking into account that the overlapping market where both CMHK and HKBN are active on residential segment but not business customers, CA sets out its analysis on the residential segment of the market in retail local fixed Internet access services focusing on narrowband and broadband services in Hong Kong.

Competition Assessment

69. At present, there are five main FNOs, namely Cable TV, CMHK, HGC, HKBN and PCCW-HKT, providing retail local fixed Internet access service for the residential customers in this market. There are also smaller FNOs and SBO licensees competing in this market.

70. **Table 3** and **Table 4** below show that the corresponding calculated values of both CR4 and HHI exceed the safe harbour thresholds.

Table 3: Market share by number of subscribers in the residential segment of retail local fixed Internet access services

Operator	Market Share (%)
CMHK	[redacted]%
HKBN	[redacted]%
Merged Entity	**[30% - 40%]**
PCCW-HKT	[redacted]%
HGC	[redacted]%
Cable TV	[redacted]%
Others	[redacted]%
Post-merger CR4	[redacted]**%**

Source: Consultancy Report, based on CA's data as of February 2025.

Table 4: HHI for the residential segment of retail local fixed Internet access services

	Pre-merger	Post-merger	Increase in HHI
HHI	[redacted]	[redacted]	[200 - 300]

Source: Consultancy Report, based on CA's data as of February 2025.

CA therefore considers it prudent to further assess the potential competition issue which might arise in this market following completion of the Proposed Transaction, as detailed in the following paragraphs.

Unilateral Effects

71. **Table 3** shows that the Proposed Transaction, if completed, would result in the Merged Entity having a share of [30% - 40%] in the residential segment of the market. PCCW-HKT would remain the largest player with a market share of around [redacted]%, suggesting a continued capability of providing significant competitive constraints on the Merged Entity's pricing decisions.

72. CA considers that competition among rivals in all the relevant fixed telecommunications markets occurs first and foremost at the fixed network infrastructure level, which is regarded as the upstream market. Competition at the facilities-based level in the upstream market in turn underpins competition in all downstream retail fixed telecommunications services markets. So long as competition at the facilities-based level remains robust, the competitiveness of the downstream retail fixed and mobile telecommunications services markets will be maintained. Hence market share in the retail markets in and of itself should not generally be placed too much weight. So long as the competition at the facilities-based level remains robust, the entry barrier to this market is relatively low.

73. With the implementation of In-building System and Mobile Backhaul Services Commitments, it could effectively tackle the Building Access Constraints allowing the Merged Entity's rivals to compete with the Merged Entity. CA therefore considers it unlikely for the Proposed Transaction, if completed, to give rise to any competition issue in the form of unilateral effects in this market.

Coordinated Effects

74. Provided that no issue arises from the Building Access Constraints in the buildings concerned, new entrants or the threat of entry could serve as a deterrent to any attempt of the existing market participants to attain a coordinated outcome in the first place. CA therefore considers it unlikely for the Proposed Transaction to give rise to any competition issue in the form of coordinated effects in this market.

75. Having regard to evidence, analysis available to it and the In-building System and Mobile Backhaul Services Commitments, ***CA is of the view that there is no competition concern identified in the retail fixed Internet access services market***.

(D) Retail Multiple-Play Services

76. Retail multiple-play services bundle different telecommunications services such as fixed voice, fixed Internet access, mobile services, online streaming services, etc. into one service package. In particular, CMHK being one of the major MNOs while HKBN being one of the major FNOs, the Merged Entity would become a fully-fledged fixed-mobile converged ("FMC") operator, and be able to offer discounts on FMC bundles, which may strengthen its market position. Theoretically, if the Merged Entity has a strong position in the provision of FMC services and the penetration of such FMC services is high, the Merged Entity may marginalise other non-converged competitors, leading to the theory of harm of conglomerate effects.

77. By reviewing the information submitted by CMHK, HKBN and other third parties, CA notes that currently there are multiple providers of FMC bundles. Different FNOs and MNOs provide FMC bundles through its own networks, or offer FMC bundles via wholesale fixed/mobile access from other providers. Since the FMC bundles may include various components, and there is very limited information provided by the providers on the offer of FMC bundles during the initial inquiry, CA did not find enough data to formulate the CR4 or HHI analysis.

78. Based on the available information, CA notes that the demand for FMC bundles is not particularly high in Hong Kong, based on the fact that despite various operators have launched FMC bundles for many years, the take-up of FMC bundles in the market is not extensive. That means, the penetration of such FMC services is not high, and thus it is not likely that the conglomerate effect of marginalising other non-converged competitors described in paragraph 76 above would happen post-merger. On the other hand, there are a number of providers in Hong Kong that are offering or would be able to offer FMC bundles. There is already a fully converged operator, i.e. PCCW-HKT/HKT in the market, and other operators that are not able to offer fully-integrated FMC bundles are able to rely on wholesale access from other operators to offer FMC bundles. This already exerts a competitive constraint on the Merged Entity. In light of the limited take-up and the presence of many suppliers of FMC bundles, CA is of the view that the Proposed Transaction is unlikely to give rise to any competition concern on the conglomerate effect as well as unilateral and coordinated effects compared to a counterfactual where the merger does not take place.

<u>Representations Received and CA's Responses</u>

79. Regarding the conglomerate effects derived from the Proposed Transaction, Cable TV submits that the Merged Entity could offer predatory bundles to squeeze out pure-play broadband operators, given CMHK's and HKBN's strong presence in both fixed network market and mobile market. Cable TV submits that, due to their strong presence, the existence of competitors in these two markets does not mean that they can place an effective competitive constraint on the Merged Entity in the future. [redacted] submits its concerns on risk of CMHK to engage in anti-competitive foreclosure strategy by deploying bundling or tied sales, and proposes various remedies to address the concerns, including hold-separate strategy (i.e. maintaining full economic, operational and management separation for CMHK and HKBN for at least [redacted] years); increasing the number of CMHK's mobile network resellers post-merger; freezing price and terms for all existing retail and wholesale contract for CMHK's and HKBN's customers for at least [redacted] years; prohibition for the Merged Entity to engage in FMC bundling in Hong Kong and cross-border bundling for a specified period post-merger; and appointment of independent monitoring trustee to review the Merged Entity's compliance with the Proposed Commitments. [redacted] submits that Hong Kong market is no longer segmented between fixed and mobile while 5G fixed wireless access ("FWA") will be a substitute to fixed broadband services. Also, the Merged Entity may leverage its market power across the market to offer bundle services, and proposes remedies such as operational segregation of CMHK and HKBN as well as prohibition on bundled services by CMHK.

80. In response to [redacted]'s, [redacted]'s and [redacted]'s representations on conglomerate effect arising from FMC bundling, as stated in paragraph 78 above and according to Consultant's views that (a) FMC bundles do not appear to be in high demand in Hong Kong; (b) there are alternative standalone services providers making the foreclosure strategy unprofitable; and (c) there is another fully converged operator in the market, the Proposed Transaction will unlikely lead to a substantial lessening of competition due to conglomerate, unilateral and coordinated effects compared to a counterfactual where the merger does not take place.

81. For the FWA service, CA agrees with the Consultant's view that FWA segment is very small relative to the wider Internet access services market. Even if FWA segment was included in the assessment, the assessment result would not be materially changed. As such, for this assessment, it is not necessary to determine whether FWA forms part of the same market as fixed Internet access services. Regarding Cable TV's comment about predatory bundles, PCCW-HKT/HKT is already a fully-converged telecommunications operator and there is no evidence indicating

that it is offering predatory bundles. The Merged Entity may instead act as a competitive constraint to the current integrated operator.

82. Having regard to evidence, analysis available to it and the representations received, ***CA is of the view that there is no competition issue identified in the multiple-play services market***.

(E) Retail Local Fixed Voice Services

83. Both CMHK and HKBN provide retail local fixed voice services in Hong Kong. Retail local fixed voice services encompass the supply of fixed voice services to business and residential customers for making local voice calls based on different technologies such as public switched telecommunications network ("PSTN") and Voice over Internet Protocol ("VoIP"). Consideration has been given to whether there should be separate markets for such retail local fixed voice services based on technologies and the type of customers, as well as whether the market boundary should be expanded to include other voice services, such as mobile voice services and/or ETS.

84. CA considers that retail local fixed voice services provided through the deployment of different technologies, whether PSTN or VoIP, should be included in the same relevant market as retail customers generally treat them as close substitutes.

85. Regarding the type of customers, noting that both CMHK and HKBN provide retail local fixed voice services to both residential and business customers but CMHK's main focus is on the retail sector, CA considers that the question of whether the relevant market should include both types of customers or whether they belong to separate markets can be left open. As the overlap of the Merged Entity in the business segment of the retail local fixed voice services market is insignificant, CA's analysis below will focus on the residential segment of the market where their businesses overlap.

86. CA has also given consideration to whether the relevant market should also include mobile voice services and/or ETS, and concludes that mobile voice services are not yet close enough substitutes for fixed voice services, at least for certain business customers, and thus should not be included in the same market. As for ETS, CA's view is that the competitive landscape governing the ETS segment is distinct from that of the retail local fixed voice services, therefore ETS should not form part

of the relevant market. Retail mobile telecommunications services and ETS will be considered separately later in this Statement.

87. Overall speaking, CA considers that for the market of the provision of retail local fixed voice services in Hong Kong, given that the Merged Entity' businesses primarily overlap in the residential segment, CA sets out its analysis on the residential segment of the market in this Statement. Under the principle of technology neutrality, CA does not consider it appropriate to draw a distinction between the technologies deployed for the purpose of defining the relevant market. Having considered carefully all the available evidence and information, CA's view is that competition issues are unlikely to arise in any other possible market segmentations; and mobile voice services and ETS are not part of this relevant market.

Competition Assessment

88. At present, there are three main FNOs providing retail local fixed voice services in Hong Kong, namely HGC, HKBN and PCCW-HKT. All of them serve residential and business customers. There are also a few smaller FNOs and a number of SBO licensees competing in this market.

89. **Table 5** and **Table 6** below show that the corresponding calculated values of both CR4 and HHI exceed the safe harbour thresholds.

Table 5: Market share of the residential segment of retail local fixed voice services[29]

Operator	Market Share (%)
HKBN	[redacted]%
CMHK	[redacted]%
Merged Entity	**[20% - 30%]**
PCCW-HKT	[redacted]%
HGC	[redacted]%
Others	[redacted]%
CR4 post-merger	**[redacted]%**

Source: Consultancy Report, based on CA's data as of February 2025

[29] Market shares of exchange lines are based on number of telephone lines whereas market shares of non-exchange lines (e.g. VoIP) are based on number of subscribers. CA does not collect market share data in revenue terms.

Table 6: HHI for the residential segment of retail local fixed voice services

	Pre-merger	Post-merger	Increase in HHI
HHI	[redacted]	[redacted]	[50 - 100]

Source: Consultancy Report, based on CA's data as of February 2025

CA therefore considers it prudent to further assess the potential competition issue which might arise in this market following completion of the Proposed Transaction, as detailed in the following paragraphs.

Unilateral Effects

90. **Table 5** shows that the Proposed Transaction, if completed, would result in the Merged Entity having a share of [20% - 30%] in the residential segment of the market. PCCW-HKT would remain the largest player in the market post-merger, with a market share at [redacted]%. As such, CA considers that the Proposed Transaction, if completed, would unlikely enhance any market power of the Merged Entity to a degree that would enable it to raise prices post-merger because of the significant competitive constraints from PCCW-HKT. More importantly, as discussed in paragraph 72 above, competition in any retail fixed telecommunications services markets is basically a reflection of the outcome of the rivalry at the facilities-based level, hence market share in the retail markets in and of itself should not generally be placed too much weight. Competitiveness of this market (which is a retail market) depends ultimately on the competition at the facilities-based level. So long as competition at the facilities-based level remains robust, competitiveness of this market would be ensured.

91. With the implementation of In-building System and Mobile Backhaul Services Commitments, it would effectively solve the Building Access Constraints, allowing the Merged Entity's rivals to compete with the Merged Entity. CA therefore considers it unlikely for the Proposed Transaction, if completed, to give rise to any competition issue in the form of unilateral effects in this market, considering especially the level of competition at the underlying facilities-based level.

Coordinated Effects

92. Same as the retail fixed Internet access services, so long as no issue arises from the Building Access Constraints in the buildings concerned that might hinder new entry as discussed above, new entrants or the threat of entry could also serve as a deterrent to any attempt of the

existing market participants to attain a coordinated outcome. CA therefore considers it unlikely for the Proposed Transaction to give rise to any competition issue in the form of coordinated effects in the retail local fixed voice services market.

93. Having regard to evidence and analysis available to it, ***CA is of the view that there is no competition concern identified in the retail local fixed voice services market***.

(F) Retail Mobile (including International Roaming) Services

Local retail mobile services market

94. In the highly competitive mobile market in Hong Kong[30], MNOs and MVNOs compete to supply mobile voice and data telecommunications services to the customers. Within the market, there might be separate market segment for (a) pre-paid and post-paid customers; (b) business and private individual customers; (c) voice and data services; and (d) services provided by different technologies (e.g. 3G, 4G and 5G, etc). From a supply-side perspective, any MNOs participating in the retail mobile telecommunications services market would have the ability to provide services in relation to any of the segments within the market as stated above. In terms of market definition, the Consultant is of the view that retail mobile services market is treated as a single market without further segmentation, based on the principle of supply-side substitutability that a mobile operator providing services to one customer group, such as residential customers, can easily offer similar services to another customer group, such as business customers. The same supply-side substitutability also applies in relation to the type of services (e.g. voice or data, pre-paid or post-paid). As such, CA considers that the relevant market for retail mobile telecommunications services in Hong Kong should be defined as one single market, with no distinction made between the technologies deployed or the type of customers (namely residential or business).

Competition Assessment

95. There are four main MNOs and 24 MVNOs participate in this market. **Table 7** and **Table 8** below show that the corresponding

[30] As at March 2025, the penetration rate of mobile service is 358.7%, which is one of the highest penetration rates in the world.

calculated values of both CR4 and HHI for the Merged Entity exceed the safe harbour thresholds.

Table 7: Market share of the retail mobile services

Operator	Market Share (%)
HKBN	[redacted]%
CMHK[31]	[redacted]%
Merged Entity	**[30% - 40%]**
HKT	[redacted]%
HTCL[32]	[redacted]%
SmarTone	[redacted]%
Other MVNOs[33]	[redacted]%
CR4 post-merger	[redacted]**%**

Source: Consultancy Report, based on CA's data as of February 2025

Table 8: HHI for the retail mobile services

	Pre-merger	Post-merger	Increase in HHI
HHI	[redacted]	[redacted]	[50 - 100]

Source: Consultancy Report, based on CA's data as of February 2025

CA therefore considers it prudent to further assess the potential competition issue which might arise in this market following completion of the Proposed Transaction, as detailed in the following paragraphs.

Unilateral Effects

96. **Table 7** shows that the Proposed Transaction, if completed, would result in the Merged Entity having a share of [30% - 40%] in the retail mobile services market. In the context of this case, CA considers that the competition assessment should take into account the fact that despite the Merged Entity's significant market share in the retail mobile services market, HKBN does not possess any spectrum and provides retail mobile services in the form of MVNO services through its SBO licence, and accounts for very minimal market share pre-merger. The number of MNOs remains as four post-merger, and the market structure will not be materially affected by the merger. In particular, CMHK's size or market power

[31] The number of subscriptions of CMHK includes CMI's MVNO customer base for the sake of assessment in this Statement.

[32] Hutchison Telephone Company Limited, holder of UCL No. 004.

[33] The number of subscriptions exclude the MVNO customer base of CMI and HKBN.

relative to its competitors will not change materially. As such, CA considers that the Proposed Transaction, if completed, would unlikely enhance any market power of the Merged Entity and lead to material competition issue compared to a counterfactual where the merger does not take place.

Coordinated Effects

97. As stated at paragraph 95 above, currently there are four main MNOs and 24 MVNOs participate in this market. The large number of market participants is unlikely for them to coordinate their actions. As such, CA considers it unlikely for the Proposed Transaction to give rise to any competition issue in the form of coordinated effect in this market.

International roaming services

98. Other than the local retail mobile business, CMHK and HKBN also provide international roaming services which enable local mobile customers to use their mobile handsets and SIM cards to have access to mobile services overseas (outbound roaming) or enable visitors to Hong Kong to have access to mobile services locally (inbound roaming). Given that MNOs negotiate with one another wholesale agreements concerning roaming services, there is a wholesale market for both inbound and outbound roaming. For outbound roaming, MNOs in Hong Kong charge their customers travelling overseas for roaming on the mobile networks in other places and they in turn pay wholesale roaming charges to the overseas mobile operators. CMHK currently may benefit from its association with CMI's bargaining power in negotiating roaming contracts. Having said that, given HKBN is operating the mobile business as a MVNO with limited presence for outbound roaming services pre-merger, the Proposed Transaction is unlikely to change the Merged Entity's bargaining position in wholesale roaming negotiations post-merger. CA is of the view that the Proposed Transaction is unlikely to lead to material competition issue compared to a counterfactual where the merger does not take place.

Representations Received and CA's Responses

99. Regarding the international roaming services, SmarTone submits that CMHK's position in the Mainland market already gives it an ability to gate-keep cross-border solutions. Post-merger CMHK's ability and incentive to engage in foreclosure strategies is ever more enhanced. Outright refusal to supply and/or unreasonable terms leading to constructive refusal would make SmarTone and other operators suffer an

obvious disadvantage and there are no [redacted] alternatives to switch to given the strength of CMHK.

100. In response to SmarTone's representations, CA is of the view that CMHK's existing position in cross-border connectivity on roaming services is not a result of the Proposed Transaction, and thus there is no material change post-merger compared with the counterfactual position. Also, given HKBN's mobile services just account for a very minimal portion of the total subscription numbers in Hong Kong, the Proposed Transaction is unlikely to change CMHK's bargaining position in wholesale roaming negotiations. Therefore, neither roaming prices for CMHK's customers nor prices for visitors' roaming on CMHK's network would likely be affected by the Proposed Transaction.

101. Having regard to evidence, analysis available to it and the representations received, ***CA is of the view that there is no competition issue identified in the retail mobile services (including international roaming) market***.

(G) Mobile Access Network Services

102. Currently, the four main MNOs are the providers of wholesale mobile access services to MVNOs. By acquiring wholesale access to the mobile networks, MVNOs are able to provide a variety of retail mobile telecommunications services. The combined market share of MVNOs by subscribers in the retail mobile telecommunications services market is around 17% and its revenue share is estimated to be lower than the four MNOs. Despite their modest share of the overall retail mobile telecommunications services market, MVNOs play an important role in maintaining competitive constraint on retail mobile prices, especially in the lower end segment of the market.

103. For MVNOs to be able to continue to act as competitive constraints on the pricing/output decision on the MNOs in general, it is important to assess the likely effects of the Proposed Transaction for MVNOs to acquire wholesale access to the mobile networks. In present case, the Proposed Transaction will not reduce the number of hosting mobile networks given HKBN is only an MVNO. In assessing the risk for CMHK to foreclose the supply of wholesale mobile access services to the MVNOs, CA is of the view that the incentive for CMHK to offer wholesale mobile access services are unlikely to change post-merger, given there are still three other MNOs for the MVNOs to choose from. CMHK would not

be benefited from foreclosing the MVNOs. As for the risk of customer foreclosure that HKBN switching its demand for wholesale mobile access services to CMHK only, given that HKBN's customer base is small, the impact to the other MNO(s) which is / are supplying radio access network capacity to HKBN will be minimal. Therefore, CA is of the view that the Proposed Transaction is unlikely to give rise to any competition concern on the conglomerate effect as well as unilateral and coordinated effects compared to the counterfactual where the merger does not take place. In light of the above, CA is of the view that the Proposed Transaction is unlikely to give rise to competition concern.

Representations Received and CA's Responses

104. SmarTone submits that the mobile market is highly concentrated, and CMHK will be able to acquire all HKBN's mobile customers with [redacted] subscriptions, which is equivalent to the number of new customers acquired by CMHK for [redacted] years if absent the merger, and thus removing CMHK's competition driven process in respect of acquisition of new customers. With the mobile market already highly concentrated with HKT and CMHK as the top two market players, CMHK would acquire control over HKBN's MVNO customers and further strengthen its already dominant market position post-merger, and further reduce consumer's choice in the mobile market with limited credible options for post-paid services. Also, CMHK has no difficulty in hosting additional MVNO customers without incurring additional capital expenditure. Therefore, the Proposed Transaction will present a real risk that CMHK will leverage its power as a leading MNO and HKBN will cease acquiring MVNO services from other MNOs post-merger, thus foreclosing other MNOs' access to HKBN's MVNO customers. [redacted] requests remedies for novation of HKBN's MVNO contracts to the hosting MNOs including [redacted], and revenue guarantee to ensure that [redacted] could continue to receive the potential MVNO revenue; and a firewall between CMHK and HKBN.

105. In response to SmarTone's representations, it is understood that as there are currently term contracts between HKBN and a couple of MNOs for mobile access network services, immediate cessation of acquiring MVNO services by HKBN from other MNOs post-merger will be very unlikely. More importantly, the [redacted] customer base of HKBN's MVNO services represents not more than a few percent of the market share for mobile subscriptions in Hong Kong. While SmarTone claims that the market is highly concentrated and there would be one less independent MVNO post-merger, CA needs to emphasize that the assessment focuses

on whether the Proposed Transaction would lead to substantially lessening competition to the overall mobile market, rather than any possible change in procurement of mobile access network services by an individual MVNO. As regards to SmarTone's representations that CMHK will leverage its power as a leading MNO and HKBN will then cease acquiring MVNO services from other MNOs post-merger, given that there are now 23 MVNOs in the market that are potential customers of SmarTone, CA is of the view that there should not be any competition concern on customer foreclosure. Regarding [redacted]'s request to impose MVNO revenue guarantee, there is no concern about customer foreclosure given the small market share of HKBN. Hence, there is no ground to require any remedy as proposed by [redacted].

106. Having regard to evidence, analysis available to it and the representations received, ***CA is of the view that there is no competition issue identified in the mobile access network market***.

(H) Interconnection Services

107. The Proposed Transaction involves a merger between two FNOs, as well as between a major FNO and a major MNO. Regarding the issue on interconnection between the carrier licensees, currently there is no regulatory guidance on interconnection charges between fixed carriers (i.e. fixed-fixed interconnection) and between a fixed carrier and a mobile carrier (i.e. fixed-mobile interconnection). Whether interconnection is subject to any charges, and if so the level, are subject to commercial negotiations. While there may be a concern that the Merged Entity might raise its interconnection charges, the carrier(s) concerned would likely demand correspondingly higher interconnection charges from the Merged Entity. CA considers that such market dynamics would likely be sufficient to deter the Merged Entity from raising its interconnection charges in the first place. In any case, if interconnecting parties fail to reach any commercial agreement on the terms and conditions of interconnection, either party may request a determination under section 36A of the TO. CA therefore considers that the Proposed Transaction, if completed, is unlikely to lead to material competition issue with unilateral and coordinated effects compared to the counterfactual where the merger does not take place, and raise any competition concern in this market

108. Having regard to evidence and analysis available to it, ***CA is of the view that there is no competition issue identified in the interconnection services market***.

(I) Access to External Telecommunications Facilities and ETS

109. The fixed external telecommunications facilities ("ETF") covers operation of submarine cables, overland cables and satellites. While CMI is the major provider of ETF in Hong Kong[34], HKBN's presence in this market is not significant. Based on the assessment on HHI, the increase in HHI for the equipped and activated capacity is less than 50 post-merger which falls within the safe harbour in the Merger Guideline. In addition, as at December 2024, the total activated external telecommunications facilities was around 84% of total equipped capacity demonstrating that there is still spare capacity. Hence, CA considers that the Proposed Transaction is unlikely to lead to material competition issue with unilateral and coordinated effects compared to a counterfactual where the merger does not take place, and raise any competition concern in the ETF market.

110. Competition at the external facilities-based level in the upstream market in turn underpins competition in all downstream retail external telecommunications services markets. So long as competition at the facilities-based level remains robust, the competitiveness of the downstream retail markets would be ensured. Both CMHK and HKBN offer ETS[35]. There are also a large number of other carriers and SBO licensees competing in the ETS market. Market rivalry among providers of ETS is intense as there are currently nearly 150 licensees eligible to provide ETS. Also, according to statistics submitted by the ETS providers, the volume of ETS traffic had been declining rapidly with the number of minutes falling over 50% from 2019 to 2024.

111. In light of the low entry barriers and the highly competitive nature of this market, as well as the fact that the market is shrinking due to the growing popularity of substitutes such as the real-time telephony functions built in the free-of-charged applications (e.g. WhatsApp and WeChat), CA considers that the Proposed Transaction, if completed, is unlikely to lead to material competition issue with unilateral and coordinated effects compared to the counterfactual where the merger does not take place, and raise any competition concern in the ETS market.

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[34] CMHK's UCL No. 002 does not authorise for provision of external fixed services, thus CMHK is not allowed to provide external fixed facilities in Hong Kong.

[35] CMHK offers ETS through its SBO Licences No. 0473 and 1175.

Representations Received and CA's Responses

112. In terms of the connectivity to CMHK Group's ETF, [redacted] submits that CMHK Group is one of the most important players in the ETF in Hong Kong. The Proposed Transaction will increase CMHK's ability and incentive to foreclose its competitors from accessing CMHK Group's ETF capacity. [redacted] proposes that additional remedy to grant access to CMHK Group's ETF capacity, in particular their cross-border connectivity networks, on terms and conditions which are of no less favourable terms than in the existing ETF access agreements, for at least [redacted] years post-merger.

113. In response to [redacted]'s representations on ETF, the Consultant is of the view that cross-border connectivity is not a separate market and the assessment is based on the whole ETF market, which is within the safe harbour. Although [redacted] raises concerns in relation to CMHK's strong position in ETF (e.g. in relation to foreclosure risks), CMHK's position in the ETF market will not change materially as a result of this merger, and it is already vertically integrated absent the merger, its ability or incentive to raise prices or engage in foreclosure will not change. Therefore, it is considered that such concern in relation to the merger is not justified. As such, CA agrees with the Consultant's assessment and considers that the Proposed Transaction is unlikely to raise any competition concern in this market.

114. Having regard to evidence, analysis available to it and the representations received, ***CA is of the view that there is no competition issue identified in the ETF and ETS market***.

(J) IT Services

115. Both CMHK and HKBN are providers of a range of IT services, including but not limited to data centre services, cloud services and system integration services. Provision of IT services without any establishment or maintenance of any means of telecommunications in general does not require a telecommunications licence under the TO. In fact, there are many large-scale participants competing in this market, some of them are telecommunications carriers in Hong Kong and some are not. Given the presence of strong rivals in this market, both local and global ones, together with the fact that both CMHK and HKBN have very small

presence in this market pre-merger[36], the Proposed Transaction is unlikely to lead to material competition issue with unilateral and coordinated effects compared to the counterfactual where the merger does not take place. Having regard to evidence and analysis available to it, ***CA is of the view that there is no competition issue identified in the IT market***.

(K) Other Expressed Concerns

Protection of Confidential Information

116. In the representations of [redacted], [redacted] and [redacted], they express concerns about CMHK's ability to access, through HKBN, commercially sensitive (or competitively sensitive) information of HKBN's customers, who purchase mobile backhaul services from HKBN and are CMHK's competitors in the downstream markets. The types of such sensitive information referred to in the relevant representations include subscriber data, backhaul service locations and bandwidth consumption. [redacted] and [redacted] suggest the imposition of information barriers between CMHK and HKBN, while [redacted] proposes a "hold-separate" measure requiring CMHK to maintain full economic, operational and management separation from HKBN for at least [redacted] years.

117. Having reviewed the relevant representations, the Consultant considers that, given mobile backhaul involves the transmission of aggregate traffic, HKBN should not be expected to gain access to any individual subscriber data. In addition, the location of radio base stations is likely observable publicly and it is unclear how CMHK could benefit materially from competitors' bandwidth consumption information. CA agrees with the Consultant's views that HKBN's backhaul services supply contracts are not likely to reveal information about CMHK's competitors that is commercially sensitive in the context of the relevant downstream markets. In addition, CA notes that it is a common practice for MNOs to coordinate or collaborate on the establishment of radio base station, and in fact mobile backhaul information would be shared amongst themselves during those occasions. In any case, CA considers that even if HKBN's backhaul service contracts may contain commercially sensitive information of customers of other operators (which, as above, has not been substantiated), the aforesaid voluntary In-Building System and Mobile Backhaul Services Commitments by CMHK would allow the MNOs

[36] Based on CMHK's submission and HKBN's public information, their market shares in the IT market are estimated to be less than 1% and around 1% respectively.

concerned enough time to switch to other suppliers or negotiate with HKBN for better terms, including confidentiality obligations on the part of HKBN, to mitigate any such concern. As such, CA considers that CMHK's ability to access to HKBN's relevant customers' commercially sensitive information following the Proposed Transaction is not likely to raise any material competition concern.

<u>Structural and Behavioural Commitments other than the In-building System and Mobile Backhaul Services Commitments</u>

118. In the representations of HKBN and [redacted], they proposed investment commitment by CMHK to continue investing in the fixed telecommunications infrastructure post-merger. On the other hand, [redacted] submits that structural remedies rather than behavioural remedies will be more appropriate to address competition concerns arising from the Proposed Transaction, that divestiture of either CMHK's or HKBN's fixed assets is the most direct and efficient solution to ensure that competition at building level is protected. Alternatively, a ringfencing or hold-separate solution ought to be adopted for a period of at least [redacted] years which will remind post-transaction the existing number of operators at wholesale and retail levels and preserve separate competitive constraints in the market.

119. In response to HKBN's and [redacted]'s representations, the Consultant considers that light-touch behavioural remedies are sufficient to address Building Access Constraints and structural remedies are not justified. While the Merged Entity may become a stronger competitor, it is unlikely that its market power will increase significantly with the Revised Commitments, and the remaining four large FNOs including the Merged Entity would be expected to continue to compete intensely. Therefore, it is unlikely that the merger would have a material detrimental effect on customer outcomes through a reduction in network quality due to falling investments. CA also iterates that there is limited horizontal overlap between CMHK's and HKBN's retail fixed market and mobile market. Strengthening HKBN's infrastructure improves service quality, customer retention and competitiveness, all of which benefit CMHK commercially. There is no need to compel what the market already incentivizes. On the other hand, there is no credible evidence indicating that the Merged Entity will have higher incentive post-merger to stop or reduce the scope of investment in expanding and upgrading its fixed and mobile fixed network infrastructure in Hong Kong. As for the proposal of imposing structural commitment to address the issue on Building Access Constraints, CA considers that the In-Building System and Mobile Backhaul Services Commitments could already address the identified competition concern in

relation to in-building telecommunications systems and hence, there is no need to impose a structural commitment such as divestiture of the Merged Entity's infrastructure, ringfencing or hold-separate solution.

Procedural Issues on Preliminary Assessment and Consultation Process

120. Cable TV, HGC and SmarTone submit views on the consultation process and propose CA to conduct an investigation. [redacted] considers that OFCA overlooked and/or downplayed the vertical foreclosure risks and conglomerate effect arising from the Proposed Transaction and expresses concern over the limited engagement with HKBN and limited scope of commitment, while SmarTone considers that CA's frame of assessment and remedies are out of step with its overseas peers, and CA provides a definitive conclusion on the Proposed Transaction in a short timeframe and thus poses risks to create an unhealthy entrenched and duopolistic market structure in Hong Kong.

121. As explained above, the competition assessment has taken into account the Consultant's analysis in respect of all the identified markets relevant to the Proposed Transaction and has already taken into account all the information and views provided by the industry players (including the submission of information during initial inquiry and representations received for consultation on the Notice), precedent cases and reference cases of other jurisdictions. The allegation that CA's frame of assessment and remedies are out of step with its overseas peers is grossly unfounded. CA has appointed the Consultant to conduct the economic analysis independently and the assessment framework is consistent with established practices and past cases.

122. CA further emphasizes that the statutory requirements, Merger Guideline and past practices when conducting assessment and engagement with the industry has been strictly adhered to in this case. The process is indeed in line with and the time taken is on a par with that of past cases handled by CA. Based on the analytical framework set out in the Merger Guideline, CA has taken into account the detailed economic analysis conducted by the Consultant with in-depth competition law expertise to assess whether the Proposed Transaction will have the SLC Effect, including detailed considerations on market definition, safe harbours, factors such as market share, barriers to entry, potential theories of harm, etc. CA has also strictly adhered to the procedures laid out in the Merger Guideline in respect of the acceptance of commitments, and the procedures laid out in the Merger Guideline on the statutory requirements and timeline in respect of the acceptance of commitments.

Economic Efficiencies

123. Section 8(1) of Schedule 7 to the CO provides that the Merger Rule does not apply to a merger if the economic efficiencies that arise or may arise from the merger outweigh the adverse effects caused by any lessening of competition in Hong Kong. The Merger Guideline expressly recognises that efficiencies are often difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the Merged Entity. Moreover, efficiencies projected reasonably and in good faith by the Merged Entity may not be realised. Therefore, the Merged Entity must do more than assert the claimed efficiencies. They must be able to demonstrate that the efficiencies are timely, likely and sufficient to outweigh the adverse effects caused by any lessening of competition[37]. In the present case, the Merged Entity did not expressively make claims about various efficiencies which would be generated following completion of the Proposed Transaction. As such, there is no need for CA to consider any further the issue of economic efficiencies when conducting this competition assessment.

CA'S ACCEPTANCE OF THE REVISED COMMITMENTS PROPOSED BY CMHK

124. OFCA communicated to CMHK on the representations received, in particular to the MNOs' concern over the access to HKBN's network for provision of mobile backhaul services under current contractual arrangement, and CMHK voluntarily offers the Revised Commitments, as set out at the **Annex** to this Statement, which extend the IB Commitment to include a voluntary commitment to preserve the terms and conditions of existing contracts signed with the MNOs for provision of mobile backhaul services for three years, which is therefore referred to as "In-Building System and Mobile Backhaul Services Commitments". The Procurement Commitment and Reporting Commitment also applies to the In-Building System and Mobile Backhaul Services Commitments. Accordingly and for the reasons given in this Statement, CA considers that the Revised Commitments are sufficient to effectively address its competition concern in relation to the Proposed Transaction and **decides to accept the Revised Commitments under section 60 of the CO and not**

[37] See paragraph 4.9 of the Merger Guideline.

to commence an investigation into the Proposed Transaction under section 39 of the CO.

Communications Authority
1 August 2025

Annex

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 System Commitment	has the meaning given in section 3.1;
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;

Mobile Backhaul Services	means the infrastructure that connects a mobile network operator's radio access network to its core network, enabling the transmission of data within a telecommunications system;
Mobile Backhaul Services Agreement	means an agreement entered into by HKBN with a Relevant Mobile Operator for the provision of Mobile Backhaul Services for the purposes of enabling the Relevant Mobile Operator to provide retail mobile services to end-customers in Hong Kong;
Mobile Backhaul Services Commitment	has the meaning given in section 3.7;
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;
Relevant Mobile Operator	means a mobile network operator (MNO) who holds a UCL with authorisation to provide mobile services;
UCL	means a Unified Carrier Licence issued under the Telecommunications Ordinance (Cap. 106).

3. In-building System and Mobile Backhaul Services Commitments

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 (referred to as 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.

3.7 CMHK will procure that HKBN provides or continues to provide Mobile Backhaul Services (under Mobile Backhaul Service Agreement) to Relevant Mobile Operators for three years from the Effective Date (referred to as the "**Mobile Backhaul Services Commitment**"), as follows:

(i) HKBN shall continue to comply with the terms and conditions of existing Mobile Backhaul Services Agreements and keep the material terms and conditions unchanged, or no less favourable than those in the existing Mobile Backhaul Services Agreements, until the expiry date of each relevant Mobile Backhaul Services Agreement (subject to the proper exercise by any party to a Mobile Backhaul Services Agreement of any enforcement, variation or termination right under that Mobile Backhaul

Services Agreement); and

(ii) if any Mobile Backhaul Services Agreement expires within three years from the Effective Date, upon request in writing by the Relevant Mobile Operator concerned, CMHK shall procure that HKBN enters into a new Mobile Backhaul Services Agreement on terms and conditions no less favourable than those in the existing Mobile Backhaul Services Agreement for a term expiring no earlier than the date falling three years from the Effective Date.

3.8 For the avoidance of doubt:

(i) Section 3.7 does not prohibit HKBN from offering terms and conditions that are more favourable (to the Relevant Mobile Operator) than those in the existing Mobile Backhaul Services Agreements; and

(ii) to the extent HKBN may have any unilateral right of termination on notice without cause under a Mobile Backhaul Services Agreement, it would not be "proper" for the purposes of section 3.7(i) to exercise that right.

3.9 The Mobile Backhaul Services Commitment shall expire three years from the Effective Date.

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 with respect to each of the commitments will continue in force until the expiry of the relevant commitment as the case may be.

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 last of the above commitments.

5.2 The Reporting Commitment with respect to each of the above commitments will continue in force until the expiry of the relevant commitment as the case may be.

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

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Name:

Title:

Date: