

**Summary of the Representations  
Received in Response to the Consultation Paper on  
“Application for Prior Consent under Section 7P of the  
Telecommunications Ordinance in Respect of the Proposed  
Acquisition of CSL New World Mobility Limited by HKT Limited”  
Issued by the Communications Authority on 23 December 2013**

**(A) List of Respondents**

*Individuals*

1. Alvin Chan
2. Ben Lee
3. David Cheung
4. David Lau
5. Eric Chow
6. Isabelle (胡小姐)
7. John Cheung
8. Ken Wong
9. Manley Tai
10. Ricky Cheung
11. Simon Lo
12. Wong Wing Kit
13. 司徒德華
14. 李耀升
15. 陳耀明
16. 陳耀榮

*Industry and Other Organisations*

17. Certari Consulting Limited (“Certari”)
18. China Mobile Hong Kong Company Limited (“CMHK”)
19. China Motion Telecom (HK) Limited (“China Motion”)
20. Consumer Council
21. HKT Limited
22. Hong Kong Information Technology Federation (“HKITF”)
23. Hutchison Telephone Company Limited (“HTCL”)
24. RBB Economics (“RBB”)
25. SmarTone Mobile Communications Limited (“SMT”)
26. Truphone (Hong Kong) Limited and Truphone Limited (“Truphone”)
27. Wharf T&T Limited (“WTT”)

## **(B) Summary of Representations**

### **General**

#### *Representations from Individuals*

Representations from individuals in general opposed the Proposed Transaction, with most basing their objection on concerns about potential price increase.

#### *Representations from the Industry and Other Organisations*

2. HKT Limited, HKITF, HTCL and RBB (a consultant commissioned by HKT Limited, Telstra and New World) expressed support to the Proposed Transaction.

3. WTT was the only party among the industry and other organisations which opposed the Proposed Transaction.

4. Other respondents, including Certari, CMHK, China Motion, the Consumer Council, SMT and Truphone did not express opposition to the Proposed Transaction. Nonetheless, a number of them raised some specific competitions concerns that might arise if the Proposed Transaction were allowed to proceed and suggested measures to deal with them.

### **Market Definition**

#### *Representations from the Industry and Other Organisations*

5. A number of respondents such as CMHK, WTT and Truphone considered that the competition assessment of the Proposed Transaction should not be confined to the retail mobile telecommunications services market only. Other markets such as the fixed service market need to be examined as well. With regard to the number of market participants in the mobile market, SMT, Certari and HKT Limited suggested that 21 ViaNet should be treated as an MNO while WTT disagreed.

## **Market Concentration and Unilateral Effects**

### *Representations from Individuals*

6. Individual respondents expressed concerns that the Proposed Transaction would result in higher prices, fewer choices and/or lower quality of retail mobile telecommunications services. Some considered that low-end services, such as those currently provided by CMHK and New World Mobility Limited, would no longer be available after completion of the Proposed Transaction.

### *Representations from the Industry and Other Organisations*

7. The Consumer Council suggested that the Herfindahl-Hirschman Index should be used for gauging market concentration. It said that the results of its own calculations on market concentration suggested that the Proposed Transaction would likely raise competition concerns.

8. WTT noted that the mobile telecommunications services market was characterised by high concentration and high entry barrier.

9. RBB, on the basis of its own analysis of market concentration post-merger, opined that the Proposed Transaction would not raise any competition concerns. RBB argued that more 3G Spectrum would be made available for auction post-merger due to HKT Limited's commitment to divesting 3G Spectrum thereby alleviating any prevailing spectrum imbalance among the MNOs in the market. RBB also considered that with HKT Limited's commitment to honouring the existing wholesale agreements, the Proposed Transaction would not result in any adverse impact on the wholesale access terms for MVNOs.

10. HTCL, HKITF and HKT Limited all considered the existing telecommunications markets in Hong Kong very competitive, and they did not expect the situation to change post-merger, especially in view of the voluntary commitments proposed by HKT Limited. HKT Limited suggested that the merged entity would not have the ability to set price above competitive level and would remain constrained by its competitors and customers.

## **Coordinated Effects**

### *Representations from Individuals*

11. Individual respondents generally pointed to the connection between Hong Kong Telecommunications (HKT) Limited (“HKT”) and HTCL through family tie as area of concern. The thrust of their view was that post-merger, major telecommunications services such as mobile and fixed services would fall under the control of one family. Some individuals also claimed that the MNOs’ decision to stop providing unlimited data service plans was evidence of a coordinated outcome among the MNOs, and expressed worry that there would be a higher prospect of coordination after the completion of the Proposed Transaction.

### *Representations from the Industry and Other Organizations*

12. WTT and Truphone also pointed to the connection between HKT and HTCL through family tie that might give rise to concerns of potential collusion or the Li family controlling a substantial share of the fixed and mobile telecommunications markets. On the other hand, HKT Limited opined that there was no clear evidence suggesting that coordinated conduct had occurred in the market, or would likely to occur post-merger. On the Li family issue, HKT Limited pointed out that since 2000, when PCCW acquired HKT, regulatory safeguards had been put in place within the HKT group including establishing regulatory compliance committees to monitor the relationship between HKT and Hutchison.

## **Potential Competition Concerns Arising from the Fact that HKT is an Incumbent FNO**

### *Representations from Individuals*

13. Some individuals expressed positive view on the potential for the merged entity to enable its mobile services users to access the contents services provided by HKT’s affiliate which provides pay-TV services. One individual opined that fixed-mobile service bundle was not popular in Hong Kong and considered hence there was no need to consider the competition impact on this market.

### *Representations from the Industry and Other Organisations*

14. CMHK expressed concerns that HKT/CSL Limited would gain advantage in purchasing mobile backhaul services from the fixed

arm of HKT post-merger, and that HKT would gain additional market power in the market for supply of backhaul services. WTT was concerned that the Proposed Transaction would significantly strengthen HKT's market power as an integrated fixed and mobile operator which might in turn adversely affect competition in the fixed line market. Further WTT considered that the exit of CSL as a buyer from the backhaul market post-merger would harm the other FNOs.

15. HKT Limited argued that no competition concerns would arise in the fixed market as CSL currently was not a player in the fixed market. RBB opined that the Proposed Transaction would not raise any competitive concerns through the potential bundling of fixed/mobile services since the services historically had not been popular among customers.

## **HKT Limited's Voluntary Commitments**

### *Individual Representations*

16. Some individuals suggested alternative or additional spectrum divestment, while others opined that spectrum divestment would not help lower service charges on the part of the merged entity post-merger. An individual suggested that the merged entity should be required to maintain unlimited mobile data service packages.

17. The Consumer Council expressed concerns that the voluntary divestment commitment proposed by HKT Limited would result in CMHK having the largest spectrum holding in five years' time.

18. CMHK expressed concerns that HKT Limited's voluntary commitment to divesting the specified 3G Spectrum may render the merged entity unable to fulfil its contractual obligation to CMHK under the network capacity sharing agreement of CMHK with HKT post-merger. In the event that HKT was required to divest any 3G Spectrum, CMHK proposed that alternative bands of the 3G Spectrum should be divested to ensure that a contiguous block of spectrum would be available for auction.

19. SMT suggested that an absolute spectrum cap should be imposed on the merged entity's spectrum holding at 30% of the total amount of spectrum assigned to the market. On this basis, SMT further suggested that the merged entity should divest 20 MHz of spectrum in the 1800 MHz band, and 10 MHz of spectrum in the 850 MHz on top of the voluntary commitment. SMT also suggested that any spectrum

divestment should not involve spectrum held by Genius Brand. On the other hand, WTT suggested the divestiture of Genius Brand to a party not connected to the HKT or Hutchison group, or that the spectrum held by Genius Brand and HKT be taken back for auction with the Hutchison group not allowed to take part in such auction.

20. The MVNOs China Motion and Truphone expressed concerns that the Proposed Transaction might affect the network access services they were currently acquiring from CSL. They considered that the merged entity should be required to continue to honour their network access agreements post-merger.

21. HKITF and HTCL both opined that the voluntary commitments proposed by HKT Limited should suffice to address any potential competition concerns arising from the Proposed Transaction. RBB opined that the voluntary commitment of spectrum divestment by HKT Limited would have the effect of alleviating any spectrum allocation imbalance among the MNOs which might exist.

### **Public Benefits**

22. Truphone and WTT opined that HKT Limited failed to substantiate its public benefit claims and urged the CA to dismiss those claims.

### **Other Matters**

#### *Representations from Individuals*

23. Some individuals expressed concerns that the Proposed Transaction would lead to layoffs.

#### *Representations from the Industry or Other Organisations*

24. Certari opined that the counterfactual used in making assessment of the Proposed Transaction should take into account the likely situation where two other MNOs might merge in the near future.