CDN0196

OFFICE OF THE TELECOMMUNICATIONS AUTHORITY

Report on the competition impact of the acquisition of shares in SUNDAY by PCCW

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1. SUMMARY

1.1 OFTA has now completed its assessment of whether the Transaction whereby PCCW will acquire a controlling shareholding in SUNDAY, warrants investigation under section 7P of the Ordinance.

1.2 This report concludes that no substantial lessening of competition in any relevant telecommunications market is likely to result from the Transaction. Based on this assessment and with specific reference to section 7P(2) of the Ordinance, which allows the Authority two weeks to commence a full competition investigation following a change in relation to a carrier licensee, the Authority has decided not to undertake an investigation into the Transaction under section 7P(1)(a).

2. GLOSSARY

"Authority" means the Telecommunications Authority;

"BWA" means broadband wireless access;

"CSL" means Hong Kong CSL Limited;

"Distacom" means Distacom Hong Kong Limited;

"Huawei" means Huawei Technologies Investment Co. Ltd;

“Mandarin” means Mandarin Communications Limited;

“M&A Guidelines” means the Telecommunications Authority Guidelines on Mergers and Acquisitions in Hong Kong Telecommunications Markets, 3 May 2004

“MNO” means mobile network operator;

“MVNO” means mobile virtual network operator;

“OFTA” means the Office of the Telecommunications Authority;

“Ordinance” means the Telecommunications Ordinance, Cap.106;

“PCCW” means PCCW Limited;

“Stock Exchange” means The Stock Exchange of Hong Kong Limited;

“SUNDAY” means SUNDAY Communications Limited;

“SUNDAY 3G” means SUNDAY 3G (Hong Kong) Limited;

“Takeovers Code” means the Hong Kong Code on Takeovers and Mergers in force from time to time;

“Telstra” means Telstra Corporation Limited;

“The Distacom Shareholding” means Distacom’s 46.15% shareholding in SUNDAY;

“The Townhill Shareholding” means Townhill’s 13.72% shareholding in SUNDAY;

“Transaction” means the transaction referred to in section 3 of this report;

“Townhill” means Townhill Enterprises Limited.

3. THE TRANSACTION

3.1 On 13 June 2005, PCCW announced that it had conditionally agreed to pay approximately HK$1.16 billion in cash to Distacom and Townhill to acquire their shareholdings, which together represent approximately 59.87% of the issued share capital of SUNDAY. The acquisition of these shares, which amounts to a controlling interest in SUNDAY, represents a *prima facie* change in relation to a carrier licensee and triggers the operation of section 7P of the Ordinance. As PCCW has now acquired more than 50% of the issued share capital and control, any additional acquisition of shares would not require further review by the Authority. OFTA notes that PCCW's action triggers PCCW's obligation under Rule 26.1 of the Takeovers Code to make a mandatory cash offer for the shares of all other shareholders, which if successful would make SUNDAY a directly or indirectly wholly owned subsidiary of PCCW.[1]

3.2 The date of 22 June 2005 was set for completion of PCCW's acquisition of the Distacom Shareholding and the Townhill Shareholding, with an offer to buy the shares of all other shareholders after completion in accordance with the Takeovers Code and Stock Exchange rules. A successful cash offer at the proposed offer price of HK$0.65 per share would result in a total payment in the order of HK$1.94 billion.

4. THE PARTIES

4.1 SUNDAY is a provider of mobile voice and data services in Hong Kong, and, through its wholly owned subsidiary, SUNDAY 3G, is a 3G mobile service operator. It began commercial operations with GSM 1800 wireless services in 1997 and has existing partnering arrangements in relation to its 3G services with Huawei, which was a shareholder in SUNDAY at the time of PCCW's announcement.

4.2 SUNDAY's main operating company for its 2G mobile service business is its fully-owned subsidiary, Mandarin. Mandarin in turn holds 100% of the

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[1] PCCW Limited, *Announcement (1) Conditional Sale and Purchase Agreements Relating to 1,790,134,000 Ordinary Shares in Sunday Communications Limited (2) Possible Mandatory Cash Offer by Citigroup Global Markets Asia Limited on Behalf of the Offeror for All the Issued Share Capital in Sunday Communications Limited Other Than Those Shares Already Owned or Agreed to be Acquired by the Offeror and Parties Acting in Concert with It and (3) Discloseable Transaction of PCCW Limited*, 13 June 2005.

share capital of SUNDAY 3G (the holder of SUNDAY's Hong Kong 3G licence). A complete list of telecommunications licences held directly or indirectly by SUNDAY under the Ordinance is provided in Annexure 1.

4.3 PCCW is the incumbent fixed line operator in the telecommunications industry of Hong Kong. Through its subsidiaries, it provides a wide range of telecommunications, internet and content services to businesses and consumers in Hong Kong and elsewhere. These services include, among others, fixed-line telephony, Internet access and pay TV. The company does not however currently own and operate a mobile network, either as an MNO or MVNO.

4.4 A complete list of telecommunications licences held directly or indirectly by PCCW under the Ordinance is provided in Annexure 1.

5. COMPETITION FORECLOSURE ISSUES

5.1 **Market Concentration:** If fixed-line and mobile telephone services are in fact competitive with each other so that they should be regarded as substitutable and in the same market for competition law purposes, PCCW's acquisition of SUNDAY would increase market concentration because there would be one less independent competitor from this transaction. An increase in concentration can be of concern if it gives the merged entity a greater ability to raise prices and reduce output, or if it increases the likelihood of co-ordinated conduct with other players in the market with essentially the same effects.[2]

5.2 In this case, there is a need for an initial assessment of the significance of the increase in market power of the merged entity compared with likely future competition in the market without the merger. The first stage of this assessment involves consideration of the safe harbour thresholds discussed in paragraphs 2.6 to 2.13 of the M&A Guidelines. This will indicate

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[2] As stated in paragraph 4.20 of the M&A Guidelines, a merger may lessen competition in two ways:

- Through non co-ordinated effects, including not only the effects on the merging parties, but also the effects on other firms; or
- Through co-ordinated effects, particularly in oligopolistic markets, by increasing the likelihood of the co-ordinated exercise of market power, either overtly or tacitly, by the remaining competitors.

whether further inquiry into the above issues is required, which would include testing the assumption of a combined fixed-line and mobile market within the analytical framework set out in Section 3 of the M&A Guidelines. If the fixed and mobile markets are separate, then this transaction is a bare acquisition which, as indicated below, raises very few competition issues.

5.3 In relation to other services, such as Internet access, value-added and IDD services, some assessment may be required as to the degree or significance of any overlap between the operations of PCCW and SUNDAY. These services may also warrant market concentration analysis.

5.4 **Loss of independent entry:** If in fact mobile and fixed line telephony services are effective substitutes for competition law purposes, then on the basis of separate markets for fixed-line services and for mobile telephony services, PCCW's acquisition of SUNDAY could be considered a form of market entry that makes PCCW's independent entry as a stand-alone mobile operator less likely. PCCW previously operated the CSL mobile telephone business, up until its complete sale of that business to Telstra in 2002.

5.5 As highlighted in the Authority's previous decision under section 7P(2) in relation to China Network Communications Group Corporation's acquisition of shares in PCCW,[3] key issues in cases of this kind include how likely is or was the acquirer's independent entry, to what extent does the Transaction preclude such entry and what is the likely consequential effect in terms of prices and the supply of services in a telecommunications market in Hong Kong. The analysis here would also consider that entry into the mobile market requires spectrum, unlike entry into the fixed market.

5.6 **Anti-competitive service bundling**: The Transaction will enable PCCW to offer a broader range of services to consumers in bundled or packaged forms drawing on the diverse service offerings of PCCW and its related companies. Accordingly, it is likely that PCCW's current "triple play" strategies, whereby it packages fixed-line telephony, Internet access and pay TV services, will be augmented by new "quadruple play" strategies inclusive of mobile telephony.

[3] Office of the Telecommunications Authority *Report on the competition impact of the acquisition of shares in PCCW by China Netcom*, 1 April 2005 (CDN0190).

5.7 Generally, there is no presumption that service bundling is anti-competitive. Many forms of bundling exist today in Hong Kong and are the consequence of the competitive process. They are very much welcomed by consumers as they can offer greater convenience and often lower prices. However, in some circumstances bundling may involve the use of market power in ways that are harmful to competition.

5.8 It is usual to assess such practices on an *ex post* basis under applicable laws against anti-competitive conduct rather than seek to preclude them on an *ex ante* basis. However, to the extent that the prospect of the bundling of SUNDAY's mobile telephony services with PCCW's other service offerings raises concerns now, it might be useful to identify what those concerns are and whether they warrant further investigation under section 7P.

6. COMPETITION ASSESSMENT

6.1 The purpose of this report to assess whether or not further investigation of the Transaction is required under section 7P(1) of the Ordinance. Accordingly, it is necessary to undertake a wide ranging consideration of actual and potential issues, including those that might foreshadow competition implications for future market conduct.

6.2 This approach is reflected in the alternative market definitions considered in this section and in the raising of issues that provide a clearer picture of the effects of the Transaction without necessarily revealing imminent competition problems. This is the case with the bundling strategies discussed below, which may be revisited by the Authority at some later date under the competition conduct provisions of the Ordinance.

6.3 The ultimate conclusion of this analysis is that no further assessment of the competition impact of the Transaction is required.

Market concentration

6.4 Potential concern over increased market concentration following the Transaction necessarily requires reference a combined fixed-line and mobile telephony market. If fixed-line and mobile telephony services are in separate markets, then the Transaction only involves the transfer of

SUNDAY's position in the mobile market to PCCW without any reduction in the number of operators in that market and hence no increase in market concentration.

6.5 Defining the relevant market as a combined one or as separate markets is not critical for the purposes of this report. Should issues of concern be identified under either scenario (here under the combined market scenario, or further below under a separate markets scenario), the Authority can then determine to what extent those concerns are sustainable following the usual market definition process in the course of a full investigation under section 7P(1). Where no issues of competition concern can be identified here under either scenario, it is not necessary to determine which market definition is to be preferred.

6.6 This approach accords with the general principle that the Authority should begin (but not necessarily conclude) the assessment of competition factors using a market definition that most readily highlights potential competition concerns. This is the "purposive" approach to market definition adopted by competition authorities in other leading competition law jurisdictions when attempting to identify all potential competition issues raised by a particular transaction or particular conduct.

6.7 A consequence of adopting a combined fixed-line and mobile services market is that those fixed-line licensees and mobile licensees that are part of the same corporate group must be viewed as one entity for the purposes of market concentration analysis, as well as for the overall assessment of competition effects. This is because they are under the ultimate control of the same management team and are not independent rivals seeking to constrain each others' pricing and output decisions – in other words, they are not competitors in the required sense. Accordingly, the market shares of such licensees are combined when assessing the concentration thresholds below.

6.8 The importance of market concentration in competition analysis is reflected in the safe harbour thresholds set out in paragraphs 2.6 to 2.13 of the M&A Guidelines. Mergers and acquisitions that do not breach these market share thresholds, that is, that do not lead to significant increases in market concentration, will not normally be investigated further by the Authority.

This is because the levels of increased market concentration observed indicate that any potentially adverse competition implications are unlikely to be significant in the context of section 7P(1).

6.9 The M&A Guidelines set out two independent safe harbour tests, one based on the CR4 Ratio test (paragraphs 2.8 of the M&A Guidelines) and the other on the HHI methodology (paragraphs 2.9 to 2.12). It is only necessary that the Transaction satisfy one of these tests to avoid further investigation. For the purposes of the current analysis, the CR4 Ratio test will be considered first.

6.10 The safe harbour test based on the CR4 Ratio has two limbs. First, a transaction will fall within the safe harbour if the combined market shares of the merging parties is less than 15%. Alternatively, a transaction that fails this first test will still be within the safe harbour if the combined market shares of the parties is less than 40% and the combined post-transaction market shares of the largest four market participants (known as the CR4) is less than 75%.

6.11 Using industry statistics maintained by OFTA for both fixed-line and mobile services, a merged PCCW/SUNDAY will enjoy a combined market share of less than 30% and the largest four market participants (including PCCW/SUNDAY) will have a combined market share of 72% based on subscriber numbers. Accordingly, the Transaction falls within the second limb of the CR4 Ratio test safe-harbour indicating that further investigation under section 7P(1) is not warranted.

6.12 The HHI methodology generally accords with this result. This methodology involves summing the squares of the market shares of all the firms operating in the market. Where a post-merger HHI calculation is less than 1,000 (for example, 10 businesses each with a 10% market share would yield an HHI reading of 1,000), the market in question will be regarded as unconcentrated. HHI readings of between 1,000 and 1,800 suggest a moderately concentrated market. Higher HHI readings indicate high levels of concentration and potentially greater concern over future abuses of market power and co-ordinated conduct.

6.13 The post-Transaction HHI reading for a combined fixed-line and mobile market in Hong Kong is 1,678. This reading suggests a moderate level of market concentration with no acute competition issue. However, it is not necessary for the HHI safe harbour conditions to be satisfied in this instance since satisfaction of the CR4 test is alone sufficient to indicate that further investigation of the Transaction is not required.

6.14 In relation to other services offered by both PCCW and SUNDAY, which include Internet value-added network services and IDD services, OFTA statistics indicate that SUNDAY holds less than 1% of the most narrowly defined markets including these services. This ostensibly reflects SUNDAY's overwhelming focus on its mobile telephony business; which is also the apparent focus of PCCW's strategy in acquiring SUNDAY. Accordingly, these other services – the licences for which are listed in full in the Annexure to this report – are not analysed further in this competition impact report.

6.15 In conclusion, market concentration is not of sufficient concern in itself for the Authority to initiate further investigation of the Transaction under section 7P(1). Moreover, the only concern that might exist depends on the treatment of fixed-line and mobile telephony services being in the same market. While there is anecdotal evidence that business and consumers are substituting mobile for some fixed line use, it is by no means certain that fixed and mobile are to be regarded as substitutable services for competition law purposes.

Independent entry

6.16 The Transaction can also be considered in the context of distinct fixed-line and mobile telephony markets. This is not an approach necessarily preferred by the Authority in this instance, but it is a logical further step given the lack of apparent concern in relation to a combined market discussed above. If concerns are highlighted by this means, then further analysis of the substitutability of fixed-line and mobile telephony services will be necessary. On the other hand, the absence of concerns based on an assumption of separate markets makes further analysis redundant.

6.17 Whereas market concentration was the primary issue to investigate when considering a combined fixed-line/mobile telephony market, in this section the analytical focus is the likelihood of independent entry by PCCW into the mobile telephony market apart from the Transaction and, to the extent necessary, whether or not such entry would have improved competition (through a reduction in prices and increase in supply) to the benefit of the Hong Kong community or a segment of it.[4]

6.18 As previously mentioned, PCCW was a supplier of mobile telephony services in Hong Kong through its CSL business. Since selling that business in 2002, PCCW has not offered any mobile telephony services in the Hong Kong market. Re-entry into the mobile area will require PCCW, and any other prospective entrant, to obtain relevant mobile licences. These licences are – largely for technical/spectrum reasons – limited in number, both for 2G and 3G mobile services, and are all presently held by existing mobile operators.

6.19 Given the requirement to be licensed to participate as a supplier in a mobile telephony market and the limited availability of appropriate licences, PCCW cannot contemplate entry unless it can obtain a licence (for itself or via one of its related entities) and spectrum either by direct acquisition or by acquiring a current holder of a licence. It is clear from the public announcement made by PCCW on 13 June 2005 that this is a key motivating factor behind the Transaction.[5]

6.20 It is equally clear that had PCCW not sought to acquire SUNDAY, it would have needed to acquire another existing mobile operator or at least its licence. Either way, its entry into the mobile market would not increase the overall number of competitors holding such licences. This indicates that the concept of "independent entry" as usually assessed under section 7P, is not as significant an issue in the present matter as it may be in other contexts where market entry does not depend on arrangements with or the acquisition of existing players/spectrum.

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[4] This formulation is the same as that adopted by the Authority in its *Report on the competition impact of the acquisition of shares in PCCW by China Netcom*, 1 April 2005, (CDN0190), paragraph 6.23.

[5] A third method of entry into the mobile market is by becoming an MVNO. However, this would not provide PCCW with the degree of flexibility and control over network innovations required to implement its business strategies. Without control over its own network and spectrum, it would also not be on equal footing with its key rivals. For these reasons PCCW's entry as an MVNO is not considered a viable alternative entry option. Nevertheless, for completeness the analysis above does briefly consider PCCW's entry as a "new" licence holder (see paragraph 6.21) and concludes that no competition issue arises when the Transaction is compared against that alternative scenario.

6.21 Whether PCCW acquires SUNDAY or obtains a mobile licence from another operator, competition in the mobile services market is unlikely to be dramatically different. If PCCW were to be considered less effective as a competitor than the licence holder it replaces, then competition may be reduced. However, such an assessment is problematic. It is just as easy to predicate that PCCW might be a more competitive mobile operator, and therefore the Transaction will have positive competition effects. This may turn out to be the case, but it is not a factor that by itself can be given weight in the current assessment under section 7P(2).

6.22 There is no obvious difference in competition terms between the Transaction and any alternative approach to market entry by PCCW. PCCW's plan to cross sell mobile services to improve its ability to serve customer needs[6] would presumably be the same by whichever method or means of entry to the mobile services market it chose. The fact that its acquisition of a controlling interest in SUNDAY precludes other entry strategies is therefore not materially significant.

6.23 Moreover, even if PCCW were able to have entered the mobile market using a newly created licence or as an MVNO and therefore increase the number of competitors by one, it is difficult to see how its entry could significantly improve the already generally acknowledged intense competition between the 6 pre-existing mobile phone operators and **7** current MVNOs. However, it is not necessary for the Authority to form a view on this hypothetical scenario to be satisfied that further inquiry into PCCW's possible alternative entry strategies is not required.

6.24 The possible emergence of BWA services in Hong Kong is another topic which warrants brief mention. While BWA is considered to be a possible alternative to conventional wireline technologies (including digital subscriber line, fibre-to-the-building, cable modem and metro Ethernet), it may eventually have the potential to support fully-fledged mobile services.[7] Accordingly, it raises the question whether the Transaction might make PCCW less interested in providing BWA services to the detriment of future competition.

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[6] See the official public announcement of PCCW on 13 June 2005.
[7] OFTA Consultation Paper on the Licensing Framework for Deployment of Broadband Wireless Access, 12 December 2004, p.2.

6.25 By the time BWA becomes operational in Hong Kong for both fixed and mobile services (which is not expected within the next several years), identification of a narrow mobile services market (or a combined fixed-line/mobile services market) may not be justified. This is because technologies like BWA could hasten the convergence of a number of telecommunications services that are presently considered distinct, so that, for instance, the pricing of mobile services becomes closely related to the prices of fixed-line, broadband and other services that through substitution possibilities constrain the pricing and output discretion of mobile operators.

6.26 If PCCW does show less interest in BWA services (which has not been indicated by PCCW itself and may not be a logical conclusion given the more immediate substitution possibilities expected between BWA and wireline technologies), this could be a positive development in competition terms (ie, increased inter-modal competition) if it facilitates fresh entry from outside the telecommunications industry or the expansion of smaller players already present. It is far from certain that PCCW's putative lack of interest towards BWA would be detrimental to competition. On the other hand, user requirements and competitor innovations could act to encourage PCCW to employ BWA even though it has both fixed and mobile assets.

6.27 In any event, a time horizon of more than two years is difficult to accept any definitive analysis relating to the introduction of BWA technology. Generally, in merger review cases in other jurisdictions a 2-year time projection is a commonly adopted rule of thumb. Concerns beyond this time horizon are considered less relevant to the competition authority's decision making because they are inherently speculative and less reliable, even in mature and stable markets such as manufacturing and transportation.

6.28 In the present context, not only are the full capabilities of BWA not known, the possible business strategies that PCCW and other market participants may seek to implement in a dynamic and technology driven mark cannot be predicted. Even though strategic positioning is occurring now, it will be a number of years before their impact on competition can be discerned.

Anti-competitive service bundling

6.29 The Authority has indicated that service bundles which substantially restrict competition in a telecommunications market can be objectionable. However, only a limited number of bundling strategies involving the use of significant market power are likely to have such effects.[8] These are typified by the "leveraging" of market power from one market to another by means of "tying" or "mandatory bundling".[9] Most service bundling is pro-competitive and offer consumers attractive discounts and the convenience of a "one-stop-shop".

6.30 On the supplier side, bundling produces 'revenue enhancing' and 'cost-saving" benefits via the sharing of network investment and operating expenses, consolidated sales channels creating scale and scope economies, product differentiation, enhanced competitiveness, improved customer loyalty and new market opportunities to reinforce and broaden sources of income.[10] In a limited number of circumstances, they can also create the means to reducing competition.

6.31 The benefits of bundling SUNDAY's mobile services with those of PCCW's service offerings are an important driver behind the Transaction. This was highlighted in the following extract from PCCW's public statement of 13 June 2005:

> *"PCCW believes that the entering into of the Agreement [leading to the control of SUNDAY] is an important strategic step in PCCW's future development and will allow the PCCW Group to enter into wireless communications, data services and 3G markets in Hong Kong. It would also allow the PCCW Group to expand its product and service offerings into the mobile market, and cross sell such products and services so as to improve its*

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8 Telecommunications Authority, *Telecoms Perspectives*, "On the Question of 'Bundling' Again," 1 May 2005. Article available at www.ofta.gov.hk

9 "In this form of bundling, [service] A cannot be purchased alone. To purchase A, the customer must at the same time purchase B. Like other competition authorities, OFTA is more concerned about this form of bundling. The mandatory inclusion of telecommunications services in building management fees is an example of "tying" – the management service cannot be purchased alone. At present, some pay-TV services in the market cannot be purchased alone. They must be purchased together with the broadband services of the same company. However, for the companies which are now engaged in these tying practices, they are not dominant in the pay-TV services market. Therefore the tying practices have so far not aroused any anti-competitive concerns." Telecommunications Authority, *Telecoms Perspectives*, "On the Question of 'Bundling' Again," 1 May 2005.

10 Telecommunications Authority, *Telecoms Perspectives*, "Looking at Bundling from Different Perspectives," 9 January 2005. Article available at www.ofta.gov.hk

ability to serve customer needs. This would diversify the PCCW Group's existing business and enhance growth prospects."[11]

6.32 It is not possible, however, at the present time to determine either the precise form of the service bundling PCCW may be contemplating (and even its own thinking may change over time) or the effects both positive and negative on competition in a relevant market. While it might be argued that PCCW's incumbency is a dominant position within a discrete fixed-line telephony market and that its bundling strategies may therefore potentially make use of this position to the detriment of competition, that is not a scenario based on current established facts and cannot by itself form the basis for preventing or modifying the Transaction.

6.33 Consideration also needs to be given to the fact that there are other laws to deal with various forms of anti-competitive behaviour as and when they arise on an *ex post* basis. The most relevant of these is section 7L, which prevents abuses of a dominant position that have the purpose or effect of preventing or substantially restricting competition in a telecommunications market. Anti-competitive bundling practices are, in the normal course, subject to assessment by the Authority under this prohibition.

6.34 As noted in paragraph 1.23 of the M&A Guidelines, section 7L (and the more general prohibition against anti-competitive conduct in section 7K) remains in full force following the assessment of every transaction under section 7P and licensees remain obliged to comply with it. A transaction that avoids or passes review under section 7P(1) will not be saved further scrutiny under the *ex post* competition regime established under the Ordinance. Section 7P is not intended to "cover the field" of all potential abuses of market power that could occur following a merger or acquisition.

6.35 While increased service bundling by PCCW – from "triple play" to "quadruple play" and possibly more – is an intended and likely consequence of the Transaction, it cannot be determined on the balance of probabilities at this stage whether this will have any adverse competition consequences.

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[11] PCCW Limited, *Announcement (1) Conditional Sale and Purchase Agreements Relating to 1,790,134,000 Ordinary Shares in Sunday Communications Limited (2) Possible Mandatory Cash Offer by Citigroup Global Markets Asia Limited on Behalf of the Offeror for All the Issued Share Capital in Sunday Communications Limited Other Than Those Already Owned or Agreed to be Acquired by the Offeror and Parties Acting in Concert with It and (3) Discloseable Transaction of PCCW Limited*, 13 June 2005, page 11.

Concern over such potential (but as yet unrealised) adverse affects cannot be allayed by further investigation under section 7P(1). However, where such effects are identified subsequently, they will be fully assessable under section 7L indicating that little if anything can be added by attempted *ex ante* regulation – yet much might be lost in the form of efficiencies and consumer benefits left unrealised because of premature censure of bundling arrangements that promote competition and increase consumer satisfaction.

6.36 In other words, possible anti-competitive conduct arising from bundling activities that can be proven to distort the market and substantially restrict competition to the detriment of overall economic efficiency, will risk direct legal action under the competition law provisions of the Ordinance.

6.37 Accordingly, OFTA finds no basis for further investigation of the Transaction under section 7P on the basis of future speculative concerns over potentially anti-competitive service bundling by PCCW.

7. CONCLUSION

7.1 Based on the above analysis, it is not considered that any aspect of the Transaction is likely to substantially lessen competition in a relevant telecommunications market in Hong Kong.

8. NO INVESTIGATION UNDER SECTION 7P(1)(a) REQUIRED

8.1 The central issue is any analysis pursuant to section 7P of the Ordinance is whether any aspect or implication of a merger or acquisition is likely to substantially lessen competition in a Hong Kong telecommunications market, which is the formal legal test in section 7P(1)(a).

8.2 Section 7P(2) provides the Authority with the opportunity to initiate a full section 7P analysis within two weeks of a change in a carrier licensee occurring. Having undertaken an initial analysis of the Transaction on this basis and having formed the conclusion stated above, the Authority does not consider that an assessment of the Transaction under section 7P(1)(a) is required.

9. DECISION

9.1 Having regard to the conclusion given above, the Authority has decided not to proceed with an investigation into the Transaction under section 7P(1)(a) of the Ordinance.

5 July 2005

ANNEXURE 1

Telecommunications licences held directly or indirectly by PCCW

Licensee	Licence	Business
PCCW-HKT Telephone Ltd.	Fixed Carrier	local fixed line services
Reach Networks Hong Kong Ltd &		E-FTNS external telecom
& Reach Cable Network Ltd.*		facilities & services
PCCW IMS Ltd	ISP no.219, ETS no.1014	internet services
PCCW Business eSolutions	IVANs & ISP no.919	business e-Solution
PCCW-HKT Business Services	IVANS & ISP no.932	business services in Cyberport
PCCW-HKT Network Services	IVANS & ISP no.056	valued-added services
	VPN no.375, ETS no.984	
PCCW Powerbase Data Center	IVANS & ISP no.839	data center services
PCCW Media Ltd	IVANS no.342	pay TV service
Powerbase Engines Co Ltd	IVANS & ISP no.814	data center services
Beyond the Network Ltd	IVANS & ISP no.901	Internet Protocol based service

Telecommunications licences held directly or indirectly by SUNDAY

Licensee	Licence	Business
SUNDAY 3G (Hong Kong) Ltd	Mobile carrier no.080	3G services
Mandarin Communications Ltd	PRS no.061	2G mobile services
Mandarin Communications Ltd	ETS no.414	IDD services
Mandarin Communications Ltd	IVANS & ISP no.316	internet services

Remarks: * both companies are 50% owned by PCCW