

IMPACTS OF SMARTONE NEW INTERCONNECTION CHARGES DERIVED FROM DE-REGULATION OF FMIC

Statement of the ETS Society

5 May 2009

Background

1. Pursuant to the notice posted by Smartone Mobile Communications Limited and Smartone 3G Limited (collectively referred as “Smartone”) in SCMP on 25 April 2009, the new interconnection charges (\$0.15 per occupancy minute) imposed on all the Fixed Telecommunications Network Services Licensees, Fixed Carrier Licensees and Unified Carrier Licensees (collectively referred as “FTNS”) directly or indirectly connected to Smartone network has been taken immediate effect on 27 April 2009.
2. The type of calls include
 - (a) Incoming external telecommunication calls terminated on Smartone network.
 - (b) Outgoing external telecommunication calls originated from Smartone network.
 - (c) For all local calls originated from Fixed Network Operators network and terminated on Smartone network.
3. With this new interconnection charges imposed, Wharf T&T has sent notice to most External Telecommunications Services (ETS) operators that Wharf T&T will pass the new charges of the call types (a) and (b) mentioned above onto ETS operators.

The ETS Society’s Position

1. The ETS Society strongly objects to the new interconnection charge imposed on the call type (b) which is the outgoing external telecommunication calls originated from Smartone network.
2. In the paragraph 61 of Statement of the Telecommunications Authority (TA) dated 25 November 1998, the TA stated clearly as below that the setting of local interconnection charge for traffic in the outgoing direction would not be required as the mobile customers have already paid for the usage charges.

“As for Category A traffic, the setting of local interconnection charge for Category A

traffic in the outgoing direction would not be required as the costs of the mobile networks are covered by usage charges paid by mobile customers and the mobile operators are not authorized under their licences to deliver traffic to and from fixed line customers.”

In accordance with the above TA statement, it is obvious that the mobile network usage charges of delivering outgoing external telecommunication calls from the mobile network have been paid by the mobile customers, and incurring additional charge for making an IDD call is very uncommon in many countries. Undoubtedly, no additional interconnection charge should be incurred for all outgoing external telecommunication calls originated from Smartone network and terminated on all FTNS networks and at last transit to ETS.

In respect of the local access charge (LAC) for Mobile Network Operators (MNO), the LAC has been set to be \$0 by market since the liberalization of the ETS market in 1999. It is not reasonable for ETS operators to pay LAC to MNO after 10 years where prices for ETS have been driven down significantly by competition.

3. Calling Party's Network Pay (CPNP) is the international standard in most advanced economies with open and competitive markets. Under CPNP, the call originating network should pay. In view of this, MNO should pay FTNS outgoing calls originated from Smartone network. Thus, Smartone doesn't have any ground to impose the interconnection charge on the outgoing external telecommunication calls originated from Smartone network.
4. Under the section 7K (1) of the Telecommunications Ordinance (TO), it states clearly that a licensee should not restrict competition in the telecom market.

“A licensee shall not engage in conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.”

Giving the fact that MNOs are competing with ETS operators in the IDD market where profit margin is minimal. With the new interconnection charge, ETS operators will have no choice but pass the incremental cost onto consumers. MNO will use the margins from the interconnection charge to offer a more competitive IDD service to their subscribers, resulting in an unfair advantage against ETS operators who must depend on third parties for local traffic delivery.

Being the regulatory authority for Hong Kong telecom industry, the TA should indeed provide a fair, open and competitive environment for all operators. Undoubtedly, the implementation of the new interconnection charge could eventually rule out all ETS operators from the IDD market which could be considered as a sign of “market failure”. The outcome could potentially be anti-competitive under section 7K of the TO which would be strongly opposed by the TA.

5. The new interconnection charge imposed by Smartone violates the Government’s policy objectives for the de-regulation for Fixed-Mobile Convergence (FMC). According to the TA, the FMC is expected to bring cost saving to operators, as well as increased convenience and various innovative services to end-users. Nevertheless, under the new charging scheme from Smartone, the cost of all external telecommunication calls originated from Smartone will be increased, and ultimately ETS operators will pass the charge on to end-users. Neither ETS operators nor end-users are able to enjoy cost saving, increased convenience and various services as expected. Hence, we would like to request the TA to make a determination and an arbitration to the terms and conditions of interconnection under section 36A (10) of the TO as it could severely affect the interest of the public.
6. The new interconnection charges will undermine consumer interests. Being unable to absorb the new charges, ETS operators will pass the incremental charge immediately on to their customers in which consumers will no longer be able to enjoy the inexpensive external telecommunication services as of today. In view of paying regard to consumer interest is one of the TA’s objectives, we strongly urge the TA to retain the old charging scheme, i.e. \$0 for the access charge of the MNO network, for ETS operators until there is a common consent reached by all parties and operators, and ensure that no retroactive payment for the new interconnection charges will be requested by Smartone.

Objective Summary

In accordance with the ETS Society’s position mentioned above, we would like to summarize our objectives as below:

1. To maintain the status quo of MNO access charge, i.e. \$0, during the course of the determination.
2. No retroactive payment for the interconnection charges will be requested by Smartone.