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Convergence and
Telecommunications Regulation in
Hong Kong

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- **The phenomenon of Convergence**
- Technological Level
 - **Digital Technology** – converting information into a sequence of “binary bits” (also called “bits” – either 0 or 1)
 - **Compression Techniques**

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- Implications beyond a technological level:
 - **European Commission:** Convergence involves the *coming together of the following* -
 - content from the audiovisual and publishing industries;
 - potentially separate physical infrastructures (such as all those supporting broadcast television or telecommunications services) able to carry similar sorts of information at increasingly lower costs;
 - the interactive information storage and processing capabilities of the computer world;
 - the ubiquity, improving functionality and ease of use of consumer electronics

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- **Social Implications:**
- Convergence of the media - different forms of communication can be converted and delivered through a single multi-media technology

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- **Convergence: Concerns and Issues for Regulators**
- Office of the Telecommunications Authority (OFTA)
- Broadcasting Authority
- Information Technology and Broadcasting Bureau (ITBB)

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- The responsibilities of OFTA include:
 - enforcing fair competition rules
 - setting technical standards coordinating the development of the telecommunications infrastructure
 - investigating consumers and industry complaints
 - managing the radio spectrum,
 - providing advice to the Government on telecommunications matters
 - representing Hong Kong in international telecommunications organizations

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- **Measures to promote competition:**
- **Examples: Numbering and Portability**
- OFTA has 'nationalized' the numbering plan and in addition to geographical portability, numbers will also be portable between operators to allow customers who wish to switch operators to take their existing numbers with them.

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- **Government Policy Objectives**
- Hong Kong SAR Government's main policy objectives:
- "that the widest range of quality telecommunications services should be available to the community at reasonable costs;
- that telecommunications services should be provided in the most economically efficient manner possible; and
- that Hong Kong should serve as the pre-eminent communications hub for the region now and into the next century."

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- **Monopoly vs Competition**

- efficiency
- prices
- innovation
- widening supply
- promoting better customer service

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- **From Monopoly to Competition**
- **Pro-Competition Legislation**

- **Hong Kong**
- **No general competition law**
- **Sector-specific regulation**

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- **Non-economic public policy issues, for example:**

- **“universal service obligation”**
- **s. 2 Telecommunications Ordinance**
 - **"universal service obligation" means the provision of a good, efficient and continuous basic service by a carrier licensee subject to a universal service obligation to all persons within the areas of Hong Kong covered by that obligation**

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- The new entrants to the market have special conditions including an obligation to contribute to the Universal Service Obligation as determined annually by the Telecommunications Authority.
- Universal Service Contribution is that sum calculated in accordance with a formula adopted annually by the Authority.

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- PCCW-HKT Telephone Ltd is under the obligation to provide universal service.
- The most important special condition in the PCCW-HKT licence is an obligation to continue to maintain and operate its network and to provide basic telephone services (the Universal Service Obligation).

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- **Prohibition of Anti-Competitive Conduct**
- **Licence Conditions:**
- **e.g. for Fixed Telecommunication Network Services (FTNS) Licences issued under the Telecommunications Ordinance, there are mandatory standard licence conditions prohibiting:**
- **(i)“anti-competition” - Condition 15(1)(a) of the Standard Conditions of Fixed Telecommunication Network Services Licences in Schedule 3 Telecommunications Regulations, Telecommunications Ordinance (“the Standard Conditions”) and**
- **(ii)“abuse of dominant position” - Condition 16 (1) of the Standard Conditions**

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- Telecommunications Ordinance
 - primary legislation for telecommunications activities in HK
 - came into force in 1963
 - numerous amendments, major recent amendment – Telecommunications (Amendment) Ordinance 2000

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- In its Sept 1998 review of fixed telecommunications, the government identified the following regulatory aims:
 - to consolidate the fair competition provisions in the licence conditions
 - to provide and clarify provisions relating to access to land (with a proposal to extend these to mobile operators) and interconnection
 - to streamline licensing procedures
 - to provide OFTA with explicit powers for radio spectrum management and technical standards

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- Telecommunications (Amendment) Ordinance 2000

- a new licensing regime
- TA will be given stronger powers to make determinations about the terms and conditions of interconnection agreements among operators
- Statutory prohibition of anti-competitive conduct
- Statutory right of access to certain land will be given to mobile operators

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- In the new Telecommunications (Amendment) Ordinance 2000, there are provisions (s7K to s7N) prohibiting for example:

- **Anti-competitive conduct**
- E.g. price-fixing
- **Abuse of dominant position**
- E.g. predatory pricing

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- TELECOMMUNICATIONS ORDINANCE
- Section: 7K Heading: Anti-competitive practices
- (1) 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.
- (2) The Authority in considering whether conduct has the purpose or effect prescribed under subsection (1) is to have regard to relevant matters including, but not limited to-
 - (a) agreements to fix the price in a telecommunications market;
 - (b) an action preventing or restricting the supply of goods or services to competitors;
 - (c) agreements between licensees to share any telecommunications market between them on agreed geographic or customer lines;
 - (d) the conditions of relevant licences.

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- **Sector-specific regulations**
- **Problems:**
 - Wharf Cable Limited v The Attorney General and Hong Kong Telephone Company Limited
- **Competition Law and Policy**
- **Multiple Regulator vs Single Regulator**

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- Readings:
- “Convergence or Collision: The Regulatory Treatment of Video-on-Demand in Hong Kong Wharf Cable Limited v The Attorney General and Hong Kong Telephone Company Ltd [1996] 2 (4) Computer and Telecommunications Law Review 160
- “Media Policy and Regulation in the Age of Convergence – The Hong Kong Perspective”, Richard Wu Wai Sang and Grace Leung Lai Kuen, Vol 30, Part 3 (2000) Hong Kong Law Journal 454
- Office of the Telecommunications Authority website: <http://www.ofta.gov.hk> The website contains a lot of useful information, for example, under the heading “TELECOM FACTS” and “TELECOM LEGISLATION”
- Broadcasting Authority website: <http://www.hkba.org.hk> - “Hong Kong Broadcasting Authority Annual Reports”