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The Closer Economic Partnership Agreement (CEPA) between China and Hong Kong SAR: From gesture to commitment



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ABSTRACT

On 29 June 2003, Hong Kong Special Administrative Region (SAR) and the Mainland China signed the Closer Economic Partnership Arrangement (CEPA) which opened 18 service sectors including certain telecommunications services to Hong Kong investors. However, the response from Hong Kong's telecommunications sector has not been enthusiastic. This paper, with the support and sponsorship by the Communications Association of Hong Kong, provides a panorama review of the CEPA within the context of telecommunications and argues that CEPA has been a political gesture of the Mainland to comfort Hong Kong while the future is becoming optimistic as the Chinese central government has been witnessed to change its policy stance from protectionism towards pro-liberalization. The CEPA Supplement XI which has been implemented since March 2015 would be a milestone in opening China's domestic telecommunications market to overseas investors.

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1. Introduction

After 17 months of consultation, agreement on the main parts of the Closer Economic Partnership Arrangement (CEPA) between Hong Kong Special Administrative Region and the Mainland China (Mainland) was finally reached and signed on 29 June 2003. Six annexes, which opened up 18 services sectors including telecommunications to Hong Kong Service Suppliers (HKSS), were signed subsequently on 29 September 2003. The main purpose of CEPA was to promote co-operation in trade and investment facilitation between Hong Kong and the Mainland.

Under the framework of the CEPA, the Mainland government committed to open five value-added services to Hong Kong's telecommunications services suppliers. Detailed terms are defined in Annex 4 of the CEPA as shown in Table 1.

Hong Kong's telecommunications market has been fully liberalized since 2002. Investors from any part of the world, including those from the Mainland, can easily obtain a license and provide telecommunications services in Hong Kong without any policy constraints. In this case, the CEPA mainly concerns accession to the Mainland's telecommunications market. For those Hong Kong investors who had operated in gray areas in the Mainland before the CEPA was signed, they can now get a legal status without suffering policy risks any more. For instance, 800 TELESERVICE, a Hong Kong call center service provider that has moved to the Mainland since 1997 in the way of cooperating with a domestic partner without any registered capital can now own 50% of the company legally.

According to the fieldwork study, it is believed that the CEPA will benefit the Mainland service suppliers too in terms of efficiency improvement and competitiveness enhancement by partnering with Hong Kong service suppliers. The highly

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Table 1

The mainland's CEPA commitments on telecommunications.

Source: Annex 4 of CEPA, <http://www.tid.gov.hk/english/cepa/files/annex4.doc>.

Sectors or sub-sectors	2. Communications services C. Telecommunications services Valued-added services
Specific commitments	<p>1. As from 1 October 2003, to allow Hong Kong service suppliers to set up joint venture enterprises in the Mainland to provide the following five types of value-added telecommunications services^a:</p> <p>(1) Internet data center services; (2) Store and forward services; (3) Call center services; (4) Internet access services; (5) Content services.</p> <p>2. Hong Kong service suppliers' shareholding in the joint venture enterprises engaging in the value-added telecommunications services mentioned in item 1 above should not exceed 50%.</p> <p>3. There will be no geographic restriction for the joint venture enterprises formed by Hong Kong service suppliers and the Mainland to provide value-added telecommunications services mentioned in item 1 above.</p>

^a To implement in accordance with the Mainland's "Telecommunications Services Catalog".

competitive telecommunications market in Hong Kong has strengthened the market and technology responsiveness of Hong Kong service suppliers. They are particularly strong in business intelligence, marketing strategies and technological expertise. In many instances, Hong Kong acts as a show window for new services and new technologies. Hong Kong Service Suppliers are also good at project management due to the fact that all telecom companies in Hong Kong are owned by private investors. By setting up joint ventures, these experiences will be transferred to their Mainland partners. According to Blomstrom (1991), the transference of experience and expertise is perhaps the most significant externality of foreign or overseas direct investment. Since the Mainland market is going to open gradually to all countries according to its WTO commitments, the experience gained from Hong Kong partners would be certainly valuable for the Mainland companies to face the future intensified competition.

It may not be premature to claim that a smooth cooperation between Hong Kong and the Mainland's telecommunications sector will be beneficial to both parties. The question is: has the CEPA provided an ideal framework to pave the way for this cooperation?

Reflected in a survey conducted by PricewaterhouseCoopers Hong Kong, it was generally agreed (77% of the respondents) that CEPA could bring economic benefits to Hong Kong. Among the various proposed benefits of CEPA, 'earlier set-up of wholly owned foreign enterprises' and 'lowering of entry requirements' were most favored (PricewaterhouseCoopers Hong Kong, 2003).

Disappointingly, these two benefits would not apply to the telecommunications sector under the CEPA arrangement. According to CEPA, Hong Kong service suppliers were only allowed to set up joint ventures with not more than 50% shareholding to provide value-added services, while the liberalization of the basic fixed and mobile telecommunication services sectors will follow the schedule under the WTO accession agreement. In addition, the entry requirements for telecommunication joint ventures, e.g. minimum registered capital of the joint venture, remain the same as under the WTO.

Table 2 compares the commitments of the Mainland Government under the CEPA and the WTO in accordance to the revised service catalog of the Ministry of Industry and Information Technology (MIIT) since 1 April 2003.

Compared with China's WTO commitments to all overseas service suppliers, Hong Kong service suppliers have obtained the following relative advantages from the CEPA:

1. 71 days ahead of other overseas investors to enter the Mainland's telecommunications market for three out of the four value-added services committed by the Chinese government under the WTO accession, namely store and forward services, Internet access services and content services;
2. Hong Kong's service suppliers are exclusively entitled to provide, via joint venture, the Internet data center services and call center services which have not been committed by the Chinese government to open to other overseas service suppliers yet.

In order to enter the Mainland market under the CEPA, Hong Kong companies must first certify themselves as Hong Kong Service Suppliers (HKSS). Only after the certification can Hong Kong companies form joint venture with Mainland companies under the CEPA, while their Mainland partner(s) will apply for the corresponding local license(s). In fact, some companies have already formed joint ventures with Mainland companies outside of the CEPA framework previously. In this case, no certification for HKSS is needed, but only the relevant local licenses to operate in the Mainland.

Right after the six annexes of CEPA were signed, six Hong Kong companies had immediately shown their interests in obtaining the HKSS certification (Table 3). These companies have been working very closely with the departments involved,

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