



LegCo Panel on Planning, Lands and Works

**Proposed Charging and Penalty System
for Street Excavation Works (“Proposed System”)**

1. Street excavation works (“Works”) are carried out by telecommunications operators (“Operators”) for the purposes of providing and maintaining telecommunications services to the general public. The administrative costs incurred by the Government under the Proposed System should be paid out of the general revenue, not by the Operators. Should the Proposed System be introduced, the extra costs and expenses incurred by the Operators under the Proposed System may, in whole or in part, be borne by the customers of the Operators. In view of the recent economic downturn and the intense competition in the telecommunications market, it is undesirable to introduce such a scheme which adds extra and unreasonable burden to the Operators and the general public.
2. Even if the Operators intend to complete the Works within the original time limit provided in the excavation permit (“E Permit”), there are certain uncontrollable and unpredictable factors that affect the timely completion of the Works. Such factors include:-
 - adverse weather conditions;
 - the soil or rock types of the work sites;
 - unforeseeable underground conditions in the work sites;
 - objection from the local communities;
 - the location of the work sites;
 - the processing time for further approvals from various Government Departments (see point 3 below); and
 - the restrictions on working hours imposed by certain Government Departments (see point 3 below).

In view of the above, it is absolutely unfair for the E Permit holders to bear the costs and expenses under the Proposed System for circumstances or events beyond their control.

3. The proposed daily fee charged for the entire E Permit period (including the relevant extended period) is considered unfair. In general, Works cannot begin immediately upon the issue of the E Permit. Further approvals of the Environmental Protection Department (“EP Department”) and the Police are required for the commencement of the Works. The

processing time for such approvals is uncertain and beyond the control of the E Permit holders. Moreover, the EP Department and the Police impose certain time restrictions on the Works. As a result, the Works can only be carried out within a few hours (say, 1 to 2 hours) per day.

If the Proposed System is to be implemented, better co-ordination between the relevant Government Departments is required for the accurate, realistic and reasonable assessment of the original validity period granted under the E Permit. In this respect, a “one-stop-shop E Permit application” (which is supported by all the participants of the “Regulatory Impact Assessment Study Workshop”) should be a prerequisite for the introduction of the Proposed System.

4. In the absence of clear and elaborate criteria or guidelines for the assessment of the validity period granted under the E Permit and the extension E Permit, the Proposed System, if not properly monitored by the Government, may be abused.
5. Since the charges imposed under the Proposed System are based on a “user-pays” principle, the Government should provide the Operators with a detailed cost breakdown in respect of all the charges payable under the Proposed System (including the E Permit issue fee, the extension E Permit issue fee and the relevant daily charges).

In the absence of detailed cost breakdown, the Operators are difficult if not impossible to comment on the charging scheme and to ensure that the charges imposed under the Proposed System are on a “cost recovery basis”. Incidentally, the Proposed System should also provide for a mechanism for the periodic review of the charges payable thereunder.

6. Although an appeal mechanism is apparently provided under the Proposed System, we foresee that such an arrangement will be time consuming and will cause unnecessary delay for the provision of telecommunications and other utility services to the general public.
7. It appears that more than 50% of the Works is routinely carried out by the Government. We see no reason why Government Works should be exempted or excluded from the Proposed System. If the Government is of the view that reporting mechanism is sufficient for the monitoring of Government Works, why should the Works carried out by the Operators and other utility companies be treated differently? We trust that Government Works and the Works carried out by the Operators and other utility companies should be treated alike.
8. For the fair administration of the Proposed System, an enforcement agency (in particular, the prosecution team referred to in paragraph 27 of

the Information Paper for LegCo Panel on Planning, Lands and Works Special Meeting on 12 December 2001) independent of the Highways Department should be established for the enforcement of the Proposed System.

9. It is unfair and unreasonable for the Operators to pay the charges under the Proposed System for those diversion Works performed at the request of the Government, MTR Corporation Limited and Kowloon-Canton Railway Corporation. The Proposed System should not apply to these diversion Works.