

**For Discussion on
(9 November 2015)**

**Legislative Council Panel on
Information Technology and Broadcasting**

**Review of Certain Licence Conditions in Carrier Licences Issued under
the Telecommunications Ordinance (Cap. 106)**

PURPOSE

This paper seeks to brief Members of the decisions of the Secretary for Commerce and Economic Development (“SCED”) and the Communications Authority (“CA”) in relation to the review of certain licence conditions in Carrier Licences¹ issued under the Telecommunications Ordinance (Cap. 106) (“TO”), and consult Members on the proposed legislative amendment to effect the removal of one General Condition (“GC”) from the Carrier Licences.

BACKGROUND

2. Carrier Licences containing GCs and special conditions (“SCs”) are issued under the TO for operators to provide public facilities-based telecommunications services including mobile, local fixed, external fixed, and space station related services in Hong Kong. The GCs in the Carrier Licences are prescribed by the SCED in Schedule 1 of the Telecommunications (Carrier Licences) Regulation (Cap. 106V) (“Regulation”) under section 7(2) of the TO; whereas the SCs, consistent with the TO and not inconsistent with the prescribed GCs, are attached by the CA to the Carrier Licences in accordance with section 7A of the TO.

¹ Following the expiry of the last Fixed Telecommunications Network Services Licence and Fixed Carrier (Restricted) Licence on 2 February 2015 and 19 January 2015 respectively, “Carrier Licences” covers Unified Carrier Licence (“UCL”), Fixed Carrier Licence (“FCL”), Mobile Carrier Licence (“MCL”), Mobile Carrier (Restricted) Licence (“MCRL”), and Space Station Carrier Licence (“SSCL”). Nevertheless, FCL, MCL and MCRL were no longer issued upon implementation of the UCL in 2008.

3. While the GCs and SCs in the Carrier Licences are sector-specific provisions for the regulation of the telecommunications licensees, there are also cross-sectoral legislation or regulations on specific matters which apply across the board to all sectors including the telecommunications sector. The introduction of and further enhancements to these cross-sectoral regulatory regimes over time have served to supersede some of the sector-specific controls imposed under the telecommunications licensing regime and rendered them inappropriate and unnecessary. Against this background, the SCED and the CA have conducted a public consultation with a view to removing the anomaly of subjecting telecommunications licensees to both the sectoral and cross-sectoral regulatory controls on specific matters.

THE PUBLIC CONSULTATION

4. Following a review of the relevant licence conditions in the Carrier Licences, the SCED and the CA jointly issued a consultation paper (at **Annex 1**) on 5 September 2014² to solicit the views and comments of the industry and interested parties on the proposed way forward with certain licence conditions governing road opening works and concerning restrictions on attachment to public buildings and trees.

5. The following four criteria have been adopted for identifying the GCs and SCs in the Carrier Licences which duplicate with or have been superseded by the cross-sectoral legislation or regulation:

- (a) the policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the SCED and the CA;
- (b) cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other

² The consultation paper is available at:
http://www.coms-auth.hk/filemanager/en/content_711/cp20140904_e.pdf

than the CA;

- (c) there is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; and
- (d) the CA and the Office of the Communications Authority (“OFCA”) do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

6. One GC concerning restrictions on attachment to public buildings and trees, and five SCs concerning road opening works in public streets and unleased Government land have been identified as meeting all the four criteria above (“the Identified Licence Conditions”) and were proposed in the public consultation to be removed from the Carrier Licences.

DECISIONS OF THE SCED AND THE CA

7. By close of the consultation on 20 October 2014, 11 submissions were received from carrier licensees³ and various Government departments⁴. Having carefully considered the views and comments received on the issues under consultation, the SCED and the CA issued on 10 March 2015 a joint

³ These carrier licensees are China Mobile Hong Kong Company Limited (“CMHK”), Hong Kong Broadband Network Limited, Hong Kong Telecommunications (HKT) Limited, Hutchison Global Communications Limited & Hutchison Telephone Company Limited, New World Telecommunications Limited, SmarTone Mobile Communications Limited & SmarTone Communications Limited and Wharf T&T Limited.

⁴ These Government departments are the Lands Department, the Highways Department, the Agriculture and Fisheries and Conservation Department and the Leisure, Cultural Services Department.

statement (“Joint Statement”) to promulgate their respective decisions on the matter and respond to the views and comments received. A copy of the Joint Statement is given at **Annex 2**.

8. The removal of the relevant SCs which are related to road opening works is effected by the CA and does not involve any legislative process. The CA issued a circular letter on 12 March 2015 inviting existing Carrier Licences holders to return their licences for making the amendments to the SCs. So far 19 of them have returned their licences to effect the amendments. Licence holders who do not return their licences for amendment will continue to be subject to all the licence conditions as contained in their existing licences until the expiry of those licences or the replacement with new UCLs.

The Identified GC

9. At present, GC 10 of the Carrier Licences (set out in Schedule 1 of the Regulation) requires the licensee to seek the prior written consent of the Government Property Administrator for the attachment of any part of the network to any Government building, and of the Director of Agriculture, Fisheries and Conservation or the Director of Leisure and Cultural Services for the attachment to any tree on any Government land. The full text of the relevant GC is given at **Annex 3**.

10. In fact, restrictions on attachment to Government buildings are protected by property and tort laws. In general, if any person wants to place an attachment to a property or building, including a Government building, it is subject to negotiations with the property owner, who may grant permission for the attachment in various forms, such as lease, contract, or letter of consent. Such restrictions apply not only to the attachment by telecommunications licensees but also to the attachment by other entities. Separately, restrictions on attachment to any tree on any Government land are covered by section 21 of the Forests and Countryside Ordinance (Cap. 96)⁵ (“FCO”), a breach of

⁵ According to section 21 of the Forests and Countryside Ordinance, trespass in any forest and plantation without lawful authority is prohibited and is an offence. Forest means any area of Government land covered with selfgrown trees, and plantation means any area of Government land which has been planted with trees or shrubs or sown with the seeds of trees or shrubs. Attachment to trees on any Government land without proper consent is covered by this provision.

which may constitute an offence. The Director of Agriculture, Fisheries and Conservation may under section 23 of the FCO issue special permit to any person for the act prohibited under section 21.

11. As a matter of fact, protection of forests, trees and plants, as well as government buildings from possible damage falls outside, and indeed extends beyond the telecommunications perspectives. The reason of introducing the above restriction in the telecommunications regulatory regime when the Telephone Ordinance was enacted in 1925 was that there was no cross-sectoral restriction back then: it should be noted that the Forestry Ordinance which preceded the FCO was only enacted in 1937. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to attachment to public buildings and trees. In reviewing the GCs, the SCED did not see any justification relating to the telecommunications policy or operational consideration for the co-existence of GC 10 in the Carrier Licences and the restrictions under the cross-sectoral regime.

12. In their submissions to the public consultation, all responding operators supported removing GC 10 from the Carrier Licences, save for CMHK which expressed that the removal of it may lead to the lack of guidance to operators on the relevant consent to be obtained when attachment has to be made to Government buildings and trees. However, the SCED considers that a licence condition is not and should not be kept for the sole purpose of reminding licensees of certain administrative procedures. In any event, the Office of the Communications Authority (“OFCA”) is, as it has always been, prepared to provide assistance to licensees in this matter.

13. On the basis of the justifications as set out in paragraphs 10 to 12 above and having duly considered all the submissions received, the SCED decided to affirm his proposal to remove GC 10 on restrictions on attachment to public buildings and trees from the Carrier Licences.

AMENDMENTS TO SUBSIDIARY LEGISLATION

14. As the GCs in the Carrier Licences are prescribed by the SCED

under the Regulation, it is necessary to introduce legislative amendments for the removal of GC 10 from Schedule 1 of the Regulation.

WAY FORWARD

15. We would proceed to prepare the legislative amendments to Schedule 1 of the Regulation and table it before the Legislative Council for vetting in due course. The removal of GC 10 will be effected upon completion of the legislative process.

**Commerce and Economic Development Bureau
(Communications and Technology Branch) and
Office of the Communications Authority
November 2015**

Review of Licence Conditions in Carrier Licences Issued under the Telecommunications Ordinance (Cap. 106)

Consultation Paper

5 September 2014

INTRODUCTION

Various types of carrier licences containing both general conditions (“GCs”) and special conditions (“SCs”) have been issued for the provision of local fixed, external fixed and/or mobile services in Hong Kong. Under section 7(2) of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”), the authority to prescribe, by regulations, the GCs for a carrier licence is vested on the Secretary for Commerce and Economic Development (“SCED”). Under section 7A of the Ordinance, the Communications Authority (“CA”) may attach SCs, consistent with the Ordinance and not inconsistent with the prescribed GCs, to a licence that it is empowered to issue, including SCs of a carrier licence. Set out below is an account of the evolution of our carrier licensing regime over the past two decades or so.

2. Before 1995, there was only one fixed network operator (the “Incumbent”) in Hong Kong and it held an exclusive franchise for the provision of local fixed telecommunications services to the Hong Kong community. In 1995, with the de-regulation of the local fixed telecommunications market, Fixed Telecommunications Network Services (“FTNS”) licences were issued to the Incumbent and each of the three new entrants for the establishment and maintenance of telecommunications networks in Hong Kong for the provision of public local fixed telecommunications services.

3. As to the external fixed telecommunications market, it was liberalised in January 1999, with services-based competition introduced on 1 January 1999 and facilities-based competition introduced on 1 January 2000. The FTNS licences held by the Incumbent and the three new entrants were amended to also cover the provision of external fixed services and facilities with effect from January 1999 and January 2000 respectively.

4. In 2001, Fixed Carrier Licence (“FCL”) and Fixed Carrier (Restricted) Licence (“FCRL”) as well as Mobile Carrier Licence (“MCL”) and Mobile Carrier (Restricted) Licence (“MCRL”) were introduced to license

the operation of fixed (local and/or external) and mobile services respectively, and since then FTNS licence was no longer issued. With the emergence of fixed-mobile convergence, Unified Carrier Licence (“UCL”) was created in 2008 as a single vehicle for licensing local fixed, external fixed, mobile and converged services. Since then, FCL, FCRL, MCL and MCRL were no longer issued.

5. Other than the above carrier licences which concern the provision of local and/or external fixed services and mobile services, there is another type of carrier licence, namely the Space Station Carrier Licence (“SSCL”), which allows the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications.¹

6. As at 31 August 2014, 67 carrier licences are in force, including one FTNS licence, 19 FCLs, one each of FCRL, MCL and MCRL, 37 UCLs and 7 SSCLs.

7. Alongside the evolution of the carrier licensing regime in the past years, cross-sectoral legislation or regulation on specific matters covered in the carrier licences and enhancements to those cross-sectoral regulatory regimes have come on stream, which, as times go by, have served to supersede, or render the sector-specific controls imposed under the telecommunications licensing regime increasingly inappropriate, inconsistent and unnecessary. While there have been ongoing reviews and updates of the GCs and SCs to reflect the latest developments of the telecommunications regulatory regime in general, no review has been embarked upon to specifically address those licence conditions imposing requirements which duplicate with or have been superseded by the cross-sectoral legislation or regulation, e.g. licence conditions governing road opening works. In view of the anomaly of subjecting carrier licensees to both the sectoral and cross-sectoral regulatory regimes on particular matters, the SCED and the CA consider it opportune to conduct a review of these licence conditions of carrier licences. The review is now completed.

¹ Prior to the enactment of the Telecommunication (Amendment) Ordinance 2000 and the Telecommunications (Carrier Licences) Regulation (Cap. 106V), the establishment and operation of space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications was licensed and regulated under the Space Radiocommunication Telemetry, Tracking, Control and Monitoring Station Licence (“TTC&M Licence”) which was granted by the Chief Executive in Council under the Ordinance. Since the introduction of SSCL, TTC&M Licence was no longer issued. At present, there are six TTC&M Licences which will remain valid until they expire. The review in this consultation paper does not cover TTC&M Licences.

8. This consultation paper sets out the findings of the review and the preliminary consideration of the SCED and the CA, and solicits views on the way forward with the identified licence conditions in the carrier licences. In this regard, under section 7(3) of the Ordinance, the SCED has published a notice in the gazette on 5 September 2014 inviting representations in relation to the proposal to remove the GC as discussed in paragraphs 23 to 27 below. Paragraphs 14 to 22 below explain the CA's proposals to remove certain SCs from the carrier licensing regime, on which views are also invited from the industry and interested parties.

9. For the avoidance of doubt, all the views expressed in this consultation paper are for the purpose of consultation only. Nothing in this consultation paper represents or constitutes any decision made by the SCED or the CA. The review and the recommendations proposed in this consultation paper is without prejudice to the exercise of powers by the SCED or the CA under the Ordinance or any subsidiary legislation.

SCOPE OF THE REVIEW

10. The review covers all types of carrier licences still in force, namely UCL, FCL, FCRL, FTNS licence, MCL, MCRL and SSCL (hereinafter collectively referred to as "Carrier Licences"), targeting GCs and SCs that meet the following criteria -

- (a) the policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the SCED and the CA;
- (b) cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other than the CA;
- (c) there is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; and
- (d) the CA and the Office of the Communications Authority

(“OFCA”) do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

11. The SCED and the CA have identified the GCs and SCs in Carrier Licences that meet the criteria (“Identified Licence Conditions”) and they are set out in Table 1 below.

Table 1: The Identified Licence Conditions

Item	Subject Matter	UCL	FCL	FCRL	MCL	MCRL	FTNS Licence	SSCL
(a)	Network Location	SC 14.1 SC 14.3 SC 14.4	SC 15.1 SC 15.3 SC 15.4	--	--	--	GC 28(1) GC 28(3) GC 28(4)	--
(b)	Requirements of Installation of Lines or Cables	SC 17	SC 18	--	--	--	GC 32	--
(c)	Works in Public Streets	SC 18	SC 19	--	--	--	GC 34	--
(d)	Interference with Works of Others	SC 19	SC 20	--	--	--	GC 35	--
(e)	Licensee to Alter Network on Notice	SC 20	SC 21	--	--	--	GC 37	--
(f)	Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 10	GC 10	GC 10	GC 10	GC 33	GC 10

12. Items (a) to (e) in Table 1 above concern road opening works in public streets and unleased Government land for network rollout. The full text of the relevant SCs of the UCL is given at **Annex A**.

13. Item (f) in Table 1 above concerns the restrictions on attachment to public buildings and trees. The full text of GC 10 of the UCL is given at **Annex B**.

CONSIDERATIONS OF THE SCED AND THE CA ON THE IDENTIFIED LICENCE CONDITIONS

I. The Identified Licence Conditions on Road Opening Works

14. Requirements concerning road opening works were introduced into the telecommunications regulatory regime as early as in 1925 when the Telephone Ordinance (No. 9 of 1925) (the “1925 Ordinance”) was enacted for regulating the Incumbent. At that time, there was no cross-sectoral control on road opening works and it was justified to introduce such sector-specific control under the telecommunications regulatory regime. That said, it should be noted that the road opening provisions in the 1925 Ordinance were enforced by the Director of Public Works rather than the telecommunications regulator. The 1925 Ordinance was later repealed and replaced by the Telephone Ordinance (Cap. 269) (the “Telephone Ordinance”) in 1951, and the road opening provisions were transplanted from the 1925 Ordinance to the Telephone Ordinance, with the enforcement agency subsequently changed to the Director of Highways (“DHy”), who remains to be the key enforcement agency of such provisions concerning road opening works.

15. In the early 1990s, the Government decided that network-based competition should be introduced in the local fixed market when the Incumbent’s franchise expired in 1995. As a result, multiple operators would be allowed to open roads for network rollout. Since the Telephone Ordinance applied to the Incumbent only, there was a need to issue FTNS licences with appropriate licence conditions to regulate the operations of both the Incumbent and the new entrants. Provisions in respect of road opening works for network rollout as well as other provisions were transplanted from the Telephone Ordinance to the FTNS licences to preserve the regulatory powers of the relevant authorities and ensure a fair regulatory treatment on the Incumbent and the new entrants. Most of the provisions in the Telephone Ordinance, including those in respect of road opening works for network rollout, were then repealed in 1995 when the FTNS licences were issued.² Table 2 below shows that the majority of these Identified Licence Conditions originated from the Telephone Ordinance and the 1925 Ordinance.³

² The remaining provisions of the Telephone Ordinance were repealed in 2000 when the Ordinance was amended.

³ GC 28(3) and GC 32(2) of the FTNS licence originated from Clauses 56.2 and 55.3 of the Subscription Television Licence issued to Wharf Cable Limited in 1993.

Table 2: The Origin of the Identified Licence Conditions on Road Opening Works

	UCL	FCL	FTNS Licence	Telephone Ordinance	1925 Ordinance
Network Location	SC 14.1	SC 15.1	GC 28(1)	--	--
	SC 14.3	SC 15.3	GC 28(3)	--	--
	SC 14.4	SC 15.4	GC 28(4)	section 13(2)	section 16(5)
Requirements of Installation of Lines or Cables	SC 17.1	SC 18.1	GC 32(1)	section 9	section 11
	SC 17.2	SC 18.2	GC 32(2)	--	--
Works in Public Streets	SC 18.1	SC 19.1	GC 34(1)	section 16	section 22
	SC 18.2	SC 19.2	GC 34(2)	section 16	section 22
Interference with Works of Others	SC 19.1	SC 20.1	GC 35(1)	section 17	section 23
	SC 19.2	SC 20.2	GC 35(2)	section 17	section 23
Licensee to Alter Network on Notice	SC 20.1	SC 21.1	GC 37(1)	section 20	section 27
	SC 20.2	SC 21.2	GC 37(2)	section 20	section 27

16. The statutory control by DHy and the Director of Lands (“DL”)⁴ on road opening works under the excavation permit (“XP”) regime was put in place since the enactment of the Crown Land Ordinance (Cap. 28) (“CrownLO”) in 1972, and applies to all road openers across the board including telecommunications licensees and utilities alike. CrownLO was renamed as the Lands (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”) in 1997. The LMPO was amended in 2004 to strengthen the regulatory control on road opening works in public streets and unleased Government land by inter-alia empowering DHy/DL to enforce the XP conditions against permittees and their contractors engaged to carry out excavations, to require permittees and their contractors to adopt the necessary safety precautions, and to increase the level of fine for breach.

17. The requirements as stipulated in the Identified Licence Conditions concerning road opening works are by and large enshrined in the LMPO, the excavation permit issued by the Highways Department (“XP(HyD)”), the excavation permit issued by the Lands Department (“XP(LD)”) or other legislation, and a commonality among them is that the CA is not the responsible regulatory or enforcement authority.

18. Rather, under section 10A(1) of the LMPO, it is the DHy and DL

⁴ DHy and DL have been the enforcement agencies of CrownLO concerning excavation works since its enactment in 1972. The division of labour between them has been changing over time. Currently, DHy is the statutory authority in the case of unleased land which is a public street, while DL is the statutory authority in the case of unleased Government land other than public streets.

which are empowered to attach conditions as they think fit to the XP. The conditions of XP have been amended over time to enhance the control on road opening works. For example, HyD has revised the XP 15 times since April 2004, reflecting that the XP is a dynamic tool which evolves from time to time to effectively regulate road opening works. These legislation and legal instruments provide more comprehensive and effective controls on road opening works and apply to all road openers including telecommunications licensees and utilities alike. Moreover, the breach of most of the relevant clauses of these legislation and legal instruments would constitute criminal offence. The relevant clauses of the other legislation or legal instruments that govern the same/similar activity/breach as the Identified Licence Conditions on road opening works, and whether the breach of these relevant clauses would constitute criminal offence are given at **Annex C**.

19. It is clear from the above account that the need to impose controls on road opening works in public streets and unleased Government land stems from the policy and operational considerations which fall outside, and indeed extend beyond the telecommunications perspectives. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to road opening works. In point of fact, the cross-sectoral regulatory regime which applies to all road openers is more stringent than similar activity/breach governed by the Identified Licence Conditions on road opening works, in that, as mentioned above, a breach of most of the relevant clauses of the cross-sectoral legislation or legal instruments may constitute a criminal offence (see **Annex C** for more details). Also, DHy, DL or other authorities may consider initiating amendments to the cross-sectoral legislation or legal instruments under which they are the responsible regulatory or enforcement authority to further enhance control across the board as they think fit. The CA does not see any justification from the telecommunications perspective or operational considerations for maintaining the Identified Licence Conditions on road opening works in the Carrier Licences to co-exist with the cross-sectoral controls. In addition, if a sanction has been imposed on a telecommunications licensee under the cross-sectoral regime, further sanction to be imposed by the CA under the telecommunications licensing regime for the same breach may give rise to the concern of double jeopardy and possible allegation of abuse of the process of civil (regulatory) proceedings in light of the overlapping framework under the LMPO and the telecommunications licensing regime governing the road opening works.

20. Also on a practical level, neither the CA nor OFCA has the statutory authority or the necessary expertise to determine compliance or

otherwise with the requirements in the Identified Licence Conditions on road opening works. For example –

- (a) Under SC 14.3 of the UCL, the licensee is required to consult DHy/DL, not the CA, on the map scale for drawing the route plans.
- (b) Under SC 17.1 of the UCL, the network installed in any public street or unleased Government land shall be at the depth, course, route and position as determined by DHy/DL, not the CA.
- (c) Under SC 18.1(d) of the UCL, the licensee shall reinstate the street after the completion of works to the satisfaction of DHy/DL, not the CA.
- (d) Under SC 18.2 of the UCL, the licensee shall reimburse the Government any such sum as certified by DHy/DL, not the CA.
- (e) Under SC 20.1 of the UCL, the licensee shall alter the network within such reasonable time and in such manner as directed by DHy/DL, not the CA.

Clearly, it is DHy/DL which has the statutory authority to determine compliance with the requirements of these Identified Licence Conditions, not the CA.

21. Based on the above considerations, it is proposed that the Identified Licence Conditions on road opening works, which concern the manner in which road opening works are conducted, should be removed from the Carrier Licences.

22. The CA has assumed the role in coordinating road opening works among telecommunications licensees since the deregulation of the fixed telecommunications market. Under SC 16.1 of the UCL (and its equivalence in other Carrier Licences),⁵ licensees are required to coordinate and cooperate with other carrier licensees in respect of road openings and to comply with any guidelines issued by the CA in that regard. For the purpose of setting out the principles and criteria of the CA on granting road opening authorisation as well as the coordination procedures for road opening to be followed by authorised carriers, the CA issued the “Guidelines for Application of Road Opening Authorisation and Procedure for Road Opening Works”.⁶ For the avoidance of doubt, the proposed removal of the Identified Licence Conditions on road opening works will not prejudice the CA’s power in enforcing SC 16.1

⁵ The equivalence is SC 17.1 of the FCL and GC 30 of the FTNS licence.

⁶ The guidelines are available at <http://www.coms-auth.hk/filemanager/statement/en/upload/151/gn442012e.pdf>.

of the UCL (and its equivalence in other Carrier Licences) as well as the relevant guidelines in relation to road opening coordination. It should also be pointed out that the CA in granting the authorisation mainly focuses on whether the licensee has a genuine need to conduct road opening works. More importantly, the authorisation granted by the CA does not confer any road opening right on the licensee. Under section 14(1)(a) of the Ordinance, a licensee authorised by the CA is still required to obtain consent from DL for laying telecommunications lines in unleased Government land.

Question 1: Do you agree to the removal of the Identified Licence Conditions on road opening works from the Carrier Licences?

Question 2: If you disagree, please state with justifications whether you consider that:

- (a) the Identified Licence Conditions on road opening works should remain in the Carrier Licences without any amendments; or***
- (b) the Identified Licence Conditions on road opening works should remain in the Carrier Licences with certain amendments, in which case, please propose the amendments that are required.***

II. The Identified Licence Condition on Restrictions on Attachment to Public Buildings and Trees

23. Similar to the Identified Licence Conditions on road opening works, the requirement in the Identified Licence Condition on restrictions on attachment to public buildings and trees originates from the Telephone Ordinance. Table 3 below shows the origin of this Identified Licence Condition.

Table 3: The Origin of the Identified Licence Condition on Restrictions on Attachment to Public Buildings and Trees

	UCL/FCL/FCRL/ MCL/MCRL/SSCL	FTNS Licence	Telephone Ordinance	1925 Ordinance
Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 33	section 12	section 15

24. GC 10 of the UCL (and its equivalence in other Carrier Licences) requires the licensee to seek prior consent from the relevant authorities for attachment to public buildings and trees. However, the authority to grant approval of attachment to public buildings and trees rests with the Government Property Administrator, the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services as the case may be, not the CA.

25. Restrictions on attachment to any tree on any Government land are already covered in section 21 of the Forests and Countryside Ordinance (Cap. 96),⁷ a breach of which may constitute a criminal offence. It is the Director of Agriculture, Fisheries and Conservation who may under section 23 of the Forests and Countryside Ordinance issue special permit to any person for the act prohibited under section 21. Restrictions on attachment to Government buildings are protected by property and tort laws. In general, if any person wants to place an attachment to a property or building, including a Government building, it is subject to negotiations with the property owner, who may grant permission for the attachment in various forms, such as lease, contract, or letter of consent. Such restrictions apply not only to the attachment by telecommunications licensees but also to the attachment by other entities.

26. As to protection of forests, trees and plants, as well as government buildings from possible damage, it falls outside, and indeed extends beyond the telecommunications perspectives. The reason of introducing such restriction in the telecommunications regulatory regime under the 1925 Ordinance was that there was no cross-sectoral restriction at that time. The predecessor of the Forests and Countryside Ordinance, viz. the Forestry Ordinance, was not enacted until 1937. Same as the transplant of the road opening provisions from the Telephone Ordinance, the transplant of the provision restricting attachment to public buildings and trees from the Telephone Ordinance to the FTNS licences also aimed at preserving the regulatory powers of the relevant authorities. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to attachment to public buildings and trees. The SCED and the CA do not see any justification

⁷ According to section 21 of the Forests and Countryside Ordinance, trespass in any forest and plantation without lawful authority is prohibited and is a criminal offence. Forest means any area of Government land covered with selfgrown trees, and plantation means any area of Government land which has been planted with trees or shrubs or sown with the seeds of trees or shrubs. Attachment to trees on any Government land without proper consent is covered by this provision.

relating to the telecommunications policy or operational consideration for maintaining the Identified Licence Condition on restrictions on attachment to public buildings and trees in the Carrier Licences to co-exist with the cross-sectoral regime.

27. Based on the above considerations, it is proposed that the Identified Licence Condition on restrictions on attachment to public buildings and trees should be removed from the Carrier Licences.

Question 3: Do you agree to the removal of the Identified Licence Condition on restrictions on attachment to public buildings and trees from the Carrier Licences?

Question 4: If you disagree, please state with justifications whether you consider that:

(a) this licence condition should remain in the Carrier Licences without any amendments; or

(b) this licence condition should remain in the Carrier Licences with certain amendments, in which case, please propose the amendments that are required.

IMPLEMENTATION

28. After due consideration of the submissions received, the SCED and the CA will issue a joint statement setting out their final views on the way forward with the Identified Licence Conditions. Subject to the outcome of the consultation, the SCED will proceed to prepare the amendment regulation under section 7(2) of the Ordinance to remove GC 10 from Schedule 1 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V) and table before the Legislative Council for vetting.

29. Following the amendment of the subsidiary legislation, the finalised set of licence conditions will apply to newly issued Carrier Licences, including UCLs and SSCLs. As for the existing UCLs, FCLs, FCRL, MCL, MCRL and SSCLs, the CA will issue a circular letter to invite the licence holders to return their licences for effecting the corresponding changes in the licence conditions. For the avoidance of doubt, the licence holders who do not return their licences for amendment will continue to be subject to all the licence conditions as contained in their existing licences until the expiry of

those licences or the replacement with new UCLs.

30. For the one FTNS licence remaining, it is going to expire and will be replaced with a UCL in February 2015. The changes to the Identified Licence Conditions will be effective when the new UCL is issued or subsequently returned for amendment, as appropriate.

INVITATION FOR COMMENTS

31. The SCED and the CA invite views and comments on the issues and questions raised in this consultation paper. Any person wishing to submit to the SCED and the CA views and comments on this consultation paper should do so in writing, preferably in electronic form, on or before **6 October 2014**. The SCED and the CA may publish all or any parts of the views and comments received, and disclose the identity of the source in such matter as they see fit. Any part of the submission that is considered commercially confidential should be marked. The SCED and the CA would take such markings into account in making their decision as to whether to disclose such information or not. Submissions should be sent to:

By post: Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Wan Chai, Hong Kong
(Attention: Head, Regulatory 3)

By fax: 2803 5112

By e-mail: review_lc@ofca.gov.hk

**Commerce and Economic Development Bureau
(Communications and Technology Branch) and
Office of the Communications Authority
5 September 2014**

**Full Text of the Identified Licence Conditions on
Road Opening Works**

SC 14.1, SC 14.3 and SC 14.4 of UCL (equivalent to SC 15.1, SC 15.3 and SC 15.4 of FCL and GC 28(1), GC 28(3) and GC 28(4) of FTNS licence)

14 NETWORK LOCATION

- 14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.
- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

SC 17 of UCL (equivalent to SC 18 of FCL and GC 32 of FTNS licence)

17 REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

- 17.1 The network, or any part of it, if installed under, in, over or upon any

public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

SC 18 of UCL (equivalent to SC 19 of FCL and GC 34 of FTNS licence)

18 WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and

- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.
- 18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

SC 19 of UCL (equivalent to SC 20 of FCL and GC 35 of FTNS licence)

19 INTERFERENCE WITH WORKS OF OTHERS

- 19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.
- 19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

SC 20 of UCL (equivalent to SC 21 of FCL and GC 37 of FTNS licence)

20 LICENSEE TO ALTER NETWORK ON NOTICE

- 20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.
- 20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

**Full Text of the Identified Licence Condition on
Restrictions on Attachment to Public Buildings and Trees**

GC 10 of UCL (equivalent to GC 10 of FCL, FCRL, MCL, MCRL and SSCL as well as GC 33 of FTNS licence)

**10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS
AND TREES**

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

Legislation or legal instruments⁸ governing the same/similar activity/breach as the Identified Licence Conditions on road opening works of UCL (and their equivalence in other Carrier Licences), and whether the breach would constitute criminal offence

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 14.1	Section 10(1) of LMPO	Yes , a fine at level 5 and imprisonment for 6 months
SC 14.3	Condition 13 of XP(HyD) ⁹	Yes , a fine at level 5 ¹⁰
SC 14.4	Condition 12(A) and Condition 20(B)(I) of XP(HyD) ¹¹	Yes , a fine at level 5

⁸ The latest as well as the previous 15 versions of XP(HyD) are available at: http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/index.html.

According to LD, conditions of XP(LD) are not available to the public. As such, the relevant clauses of XP(LD) are not included in this Annex.

⁹ According to the Excavation Permit Administration Procedure issued by HyD, applicants for XP(HyD) are required to provide details of the proposed excavation works including the alignment of trench or excavation where the XP is to cover in form of a digital format through the Excavation Permit Management System managed by HyD, or a softcopy of a 1:1000 sketch in their applications. Similarly, according to the application form of XP(LD), applicants for XP(LD) are required to provide details of the proposed excavation works, including the indication of location of the proposed excavation on a survey plan of 1:1000 scale.

¹⁰ Under section 10(3) of the LMPO, breach of conditions of XP is a criminal offence.

¹¹ Under SC 14.4, the licensee may be required to provide network location information to DHy, DL, the CA or any person who intends to undertake works in the vicinity of the licensee's network. The requirement for a road opener, be it a telecommunications licensee or other utility, to provide information on its excavation work on unleased Government land to DHy, DL and other parties as determined by DHy or DL is regulated under the XP regime enforced by DHy/DL. While SC 14.4 also empowers DHy and DL to require the licensee to provide network location information on areas other than unleased Government land, the CA does not see a justification to mandate the licensee to provide network location information in areas that fall outside the jurisdiction of DHy/DL. While the licensee may be required by the CA under SC 14.4 to provide information about its network location, it should be noted that the CA can rely on other conditions in the UCL to request such information from the licensee. For example, the CA is empowered under GC 8 of UCL to require the licensee to provide network information, including but not limited to overall network plans and cable route maps; SC 6 of the UCL to require the licensee to provide information, including technical information, as the CA may reasonably require in order to perform its functions under the Ordinance and the UCL; and section 7I of the Ordinance to require the licensee to provide information that the CA may reasonably require in order to ensure the licensee's compliance with the Ordinance, licence conditions, and the determinations and directions of the CA, applicable to the licensee.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 17.1	Conditions 10 and 18(A) of XP(HyD)	Yes , a fine at level 5
SC 17.2	Section 10T(1) of LMPO	Yes , a fine of \$200,000
	Section 10Q(1) of LMPO	No
	Section 60(1) of the Crimes Ordinance (Cap. 200) ¹²	Yes , imprisonment for 10 years
	Conditions 11(B), 20(G), 33(A) and 39 to 45 of XP(HyD)	Yes , a fine at level 5
	Persons having interests in private land are also protected under civil laws such as Tort Law and Contract Law ¹³	
SC 18.1	Section 10(1) of LMPO	Yes , a fine at level 5 and imprisonment for 6 months
	Section 10A(3) of LMPO, Schedule 3 of Land (Miscellaneous Provisions) Regulations ¹⁴	No
	Section 10T(1) of LMPO	Yes , a fine of \$200,000
	Section 10Q(1) of LMPO	No
	Conditions 26(A) and 38 to 45 of XP(HyD)	Yes , a fine at level 5

¹² Section 60(1) of the Crimes Ordinance prohibits destroying or damaging of property.

¹³ The remedies available in civil laws include damages, injunction, specific performance, rescission of contract, etc.

¹⁴ Extension of validity period of an XP would be subject to fees as prescribed under Part 1 of Schedule 3 of the Land (Miscellaneous Provisions) Regulations. The prescribed fees include a component called economic cost. The economic cost for each extended day for a strategic street, a sensitive street and the remaining street would be HK\$18,000, HK\$7,000 and HK\$1,500 respectively. This provides an effective measure to ensure that road openers would complete their works within the specified period.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 18.2	Section 10S of LMPO	No
	Section 10Q (2) and (3) of LMPO	No
SC 19.1¹⁵	Condition 20(A) of XP(HyD)	Yes , a fine at level 5
	Regulation 23A of Gas Safety (Gas Supply) Regulations (Cap. 51B)	Yes , <ul style="list-style-type: none"> - for breach of Reg 23A(1), a fine at level 4 and imprisonment for 6 months; - for breach of Reg 23A(2), a fine of \$200,000 and imprisonment for 12 months; and a daily penalty of \$10,000 in the case of a continuing offence
	Regulation 10(1)&(2) of Electricity Supply Lines (Protection) Regulation (Cap. 406H)	Yes , a fine at level 4 and imprisonment for 6 months
	Section 31 of Waterworks Ordinance (Cap. 102)	Yes , a fine at level 4
	Section 27(1) of Land Drainage Ordinance (Cap. 446)	Yes , a fine not exceeding \$50,000
SC 19.2	This SC is not an obligation to licensees	Not applicable

¹⁵ While SC 19.1 requires the licensee not to remove, displace or interfere with any telecommunications line installed by any other person without that other person's consent, similar requirement is also imposed under section 18 of the Ordinance, which requires any person who proposes to carry out any work that may affect a telecommunications line or radiocommunications installation to give notification to the CA or a licensee who maintains such line or installation; and take all reasonable precautions in carrying out the work to prevent damage to such line or installation. It allows the affected party to recover from the person who carries out the work any expenses incurred in making good any damage to such line or installation caused by a failure to take such precautions.

Identified Licence Conditions of UCL	Legislation or legal instruments governing the same/similar activity/breach as the Identified Licence Conditions of UCL	Whether a breach of the relevant clauses in the legislation or legal instruments would constitute criminal offence
SC 20.1	Conditions 10 & 18(C) of XP(HyD)	Yes , a fine at level 5
SC 20.2	Sections 10(1), 10T(1), 10Q(1)(2)(3) and 10S of LMPO, and Conditions 26(A) and 38 to 45 of XP(HyD)	Yes <ul style="list-style-type: none"> - for breach of section 10(1), a fine at level 5 and imprisonment for 6 months - for breach of section 10T(1), a fine of \$200,000 - for breach of conditions of XP, a fine at level 5 <p>Breach of section 10Q or 10S is not a criminal offence</p>

**Review of Licence Conditions in Carrier Licences Issued under the
Telecommunications Ordinance (Cap. 106)**

**Joint Statement of
the Secretary for Commerce and Economic Development and
the Communications Authority**

10 March 2015

INTRODUCTION

Carrier Licences¹ are issued under the Telecommunications Ordinance (Cap. 106) (“TO”) for operators to provide public facilities-based telecommunications services including mobile, local fixed, external fixed, and space station related services in Hong Kong. The general conditions (“GCs”) in the Carrier Licences are prescribed by the Secretary for Commerce and Economic Development (“SCED”) in Schedule 1 of the Telecommunications (Carrier Licences) Regulation (Cap. 106V) (“Regulation”) under the TO; whereas the special conditions (“SCs”), consistent with the TO and not inconsistent with the prescribed GCs, are attached by the Communications Authority (“CA”) to the Carrier Licences in accordance with section 7A of the TO.

2. While the GCs and SCs in the Carrier Licences are sector-specific provisions for the regulation of the telecommunications licensees, there is also cross-sectoral legislation or regulation on specific matters which applies across the board to all sectors including the telecommunications sector. The introduction of and further enhancements to these cross-sectoral regulatory regimes over time have served to supersede the sector-specific controls imposed under the telecommunications licensing regime and rendered them inappropriate and unnecessary. Against this background, the SCED and the CA have conducted a review of the relevant licence conditions in the Carrier Licences, with a view to removing the anomaly of subjecting telecommunications licensees to both the sectoral and cross-sectoral regulatory controls on specific matters. On 5 September

¹ Following the expiry of the last Fixed Telecommunications Network Services Licence and Fixed Carrier (Restricted) Licence on 2 February 2015 and 19 January 2015 respectively, “Carrier Licences” in this joint statement covers Unified Carrier Licence (“UCL”), Fixed Carrier Licence (“FCL”), Mobile Carrier Licence (“MCL”), Mobile Carrier (Restricted) Licence (“MCRL”), and Space Station Carrier Licence (“SSCL”). Nevertheless, FCL, MCL and MCRL were no longer issued upon implementation of the UCL in 2008.

2014, they jointly issued a consultation paper² (“Consultation Paper”) to set out the findings of the review, and solicit the views and comments of the industry and interested parties on the proposed way forward with certain licence conditions governing road opening works and concerning restrictions on attachment to public buildings and trees.

3. By the close of the consultation on 20 October 2014, submissions had been received from the following 11 respondents³ on the issues under consultation:⁴

Network Operators

- China Mobile Hong Kong Company Limited (“CMHK”)
- Hong Kong Broadband Network Limited (“HKBN”)
- Hong Kong Telecommunications (HKT) Limited (“HKT”)
- Hutchison Global Communications Limited & Hutchison Telephone Company Limited (“Hutchison”)
- New World Telecommunications Limited (“NWT”)
- SmarTone Mobile Communications Limited & SmarTone Communications Limited (“SmarTone”)
- Wharf T&T Limited (“WTT”)

Government Departments

- Agriculture, Fisheries and Conservation Department (“AFCD”)
- Highways Department (“HyD”)
- Lands Department (“LandsD”)
- Leisure and Cultural Services Department (“LCSD”)

4. Having carefully considered the views and comments received on the issues under consultation, the SCED and the CA set out in this joint statement their respective responses to the submissions and their respective decisions on the matter. To facilitate discussion, the sections below begin with a recapitulation of the scope of the review. The feedback and responses of the SCED and the CA to the submissions received are grouped under two broad categories, namely SCs on road opening works and GC on restrictions on attachment to public buildings and trees.

² The consultation paper is available at:
http://www.coms-auth.hk/filemanager/en/content_711/cp20140904_e.pdf.

³ The submissions are available at:
http://www.coms-auth.hk/en/policies_regulations/consultations/completed/index_id_288.html.

⁴ Some respondents also provided in their submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present consultation exercise.

For the avoidance of doubt, the SCED and the CA have taken into account and given all of the submissions careful consideration even if they are not specifically addressed herein.

SCOPE OF THE REVIEW

5. As stated in the Consultation Paper, the present review focuses on addressing those licence conditions imposing requirements which duplicate with or have been superseded by the cross-sectoral legislation or regulation. The following four criteria have been adopted for identifying the relevant SCs and GCs:

- (a) the policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the SCED and the CA;
- (b) cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other than the CA;
- (c) there is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; and
- (d) the CA and the Office of the Communications Authority (“OFCA”) do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

6. On this basis, five SCs and one GC (“the Identified Licence Conditions”) have been identified as meeting all the four criteria above and are listed out in Table 1 below.

Table 1: The Identified Licence Conditions

Item	Subject Matter	UCL	FCL	MCL	MCRL	SSCL
(a)	Network Location	SC 14.1 SC 14.3 SC 14.4	SC 15.1 SC 15.3 SC 15.4	--	--	--
(b)	Requirements of Installation of Lines or Cables	SC 17	SC 18	--	--	--
(c)	Works in Public Streets	SC 18	SC 19	--	--	--
(d)	Interference with Works of Others	SC 19	SC 20	--	--	--
(e)	Licensee to Alter Network on Notice	SC 20	SC 21	--	--	--
(f)	Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 10	GC 10	GC 10	GC 10

Items (a) to (e) in Table 1 above concern road opening works in public streets and unleased Government land for network rollout. The full text of the relevant SCs of the UCL is given at **Annex A**. Item (f) in Table 1 above concerns the restrictions on attachment to public buildings and trees. The full text of GC 10 of the UCL is given at **Annex B**.

SPECIAL CONDITIONS ON ROAD OPENING WORKS

7. In the Consultation Paper, the CA proposed to remove the Identified Licence Conditions on road opening works from the Carrier Licences, i.e. items (a) to (e) in Table 1 above. Both the general comments as well as comments specific to individual SCs as raised by the respondents are discussed in the following paragraphs.

General

Views and Comments Received

8. All the responding operators supported the proposed removal of all the Identified Licence Conditions on road opening works, save for HKT which suggested retaining SC 17.2 of the UCL as detailed in paragraph 21 below. In

commenting on SC 16⁵, which was not one of the Identified Licence Conditions proposed to be removed from the Carrier Licences, WTT supported its retention so that the CA may continue its coordinating role in road opening works in the light of the existing road opening guidelines as set out in that SC.

9. As for the Government departments, HyD expressed strong reservation about removing the Identified Licence Conditions on road opening works. It considered those conditions much more powerful than the Lands (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”)⁶ in ensuring compliance with the requirements for telecommunications installations, on the ground that the Carrier Licences can be cancelled or suspended in the event of any contravention of the licence conditions and the maximum financial penalty that the CA can impose is much higher than that under the LMPO. LandsD was concerned that the cross-sectoral controls provided by the LMPO might not fully achieve the purpose as originally intended under the Identified Licence Conditions in regulating the telecommunications licensees.

Responses of the CA

10. The CA notes the support of the responding operators for the removal of the Identified Licence Conditions on road opening works. It also affirms the continued operation of SC 16 of the UCL (and its equivalence in other Carrier Licences) regarding coordination and cooperation among carrier licensees in respect of road opening works according to the relevant guidelines.

11. On the effectiveness of the Identified Licence Conditions relative to the LMPO in ensuring compliance with the requirements for telecommunications installations, the CA wishes to point out that the most severe sanction under the TO, such as cancellation or suspension of a carrier licensee, is very rarely imposed by the CA, and it should only be considered in the event of very serious breaches by the telecommunications licensees, having the effect of adversely affecting the provision of the licensed services. Besides, that the CA is empowered under section 36C(3) of the TO to impose a higher maximum level of financial penalty than that prescribed under the LMPO must be seen against the proper context that under

⁵ SC 16 REQUIREMENTS FOR ROAD OPENING

16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

⁶ The Lands (Miscellaneous Provisions) Ordinance (Cap. 28) is available at:

http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&vwpg=CurAllEngDoc*7*100*28#28.

section 36C(4) of the TO, the CA is duty bound to, when the circumstances so demand the imposition of a financial penalty on a licensee as sanction, impose a penalty that is proportionate and reasonable in relation to the breach concerned. In fact, of all the cases over the past few years relating to breaches of the Identified Licence Conditions governing road opening works, the CA had decided that as sanction, even in the most serious case, the issue of a warning to the concerned licensee was proportionate and reasonable in relation to the breach concerned. For the rest of the contraventions, the CA considered the issue of an advice to the carrier licensees in breach of SC 17.1 was sufficient.⁷ No financial penalty was ever imposed on the carrier licensees in these cases. Comparatively speaking, the penalty under the LMPO is not insignificant. Under the LMPO, a breach of the relevant provisions on road opening works may constitute a criminal offence liable to imprisonment.

12. On LandsD's concern that the cross-sectoral controls may not achieve the same purpose originally intended under the Identified Licence Conditions on road opening works, the CA has already carefully considered those licence conditions along with the cross-sectoral legislation and regulation,⁸ and has come to the conclusion that the removal of the Identified Licence Conditions from the Carrier Licences is unlikely to adversely impact on the effectiveness of the cross-sectoral controls. More importantly, from the perspective of the CA, as the sectoral regulator of the telecommunications sector, there is really no justification on telecommunications policy or regulatory grounds to subject carrier licensees to sector-specific controls on top of the cross-sectoral legislation or regulation on road opening works.

SC on Network Location

(SC 14.1, 14.3 and 14.4 of UCL as extracted below, and their equivalence in other Carrier Licences)

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map

⁷ In these cases, the carrier licensees violated the minimum depth requirement as stipulated in the excavation permit issued under the LMPO. The decision of the CA is available at:

http://www.coms-auth.hk/en/policies_regulations/ca_decisions/index_yr_all-ca_58-sb_65-p_1.html.

⁸ Please see paragraphs 16 – 21 of the Consultation Paper.

background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.

- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

13. In gist, the concerned SC requires the licensee to obtain consent of the Director of Lands (“DL”) before commencing any installation works, record network information on route plans of a scale in consultation with Director of Highways (“DHy”) and DL, and provide such network location information free of charge to relevant parties. The licensee is also required to make trained staff available on site to indicate the location and nature of the network to relevant parties.

Views and Comments Received

14. All the responding operators agreed to the proposed removal of SCs 14.1, 14.3 and 14.4 from the UCL. HKT, Hutchison and WTT suggested removing also SC 14.2,⁹ which requires the licensee to keep accurate records of the network location installed under, in, over or upon any land, either because it duplicated with the requirements of the excavation permit (“XP”) issued under the LMPO or GC 8 of the UCL on records and plans of network.

15. LandsD opined that SC 14.1 should be retained to ensure that the Government’s overall enforcement power in relation to road opening works would not be jeopardised. It also advised that section 6(1) of the LMPO that set out the regulation on occupation of unleased land was more relevant to SC 14.1. LandsD further considered that SC 14.3 should be retained, because it referred to records of the location of the network that had been installed (i.e. as-built plan), which was not

⁹ Extract of SC 14 on Network Location:

14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.

covered by the information provided in an XP application. LandsD also indicated that without SC 14.4, the CA could still rely on other conditions to request information about network location, but it doubted whether the CA could ensure the licensee would provide trained staff on site to indicate the location and nature of the network.

Responses of the CA

16. On the suggestion by the responding operators to remove also SC 14.2 from the UCL, it should be pointed out that SC 14.2 assists the implementation of SCs 14.5 and 14.6¹⁰ which are necessary for the smooth operation of the telecommunications networks, and they do not fall within the scope of the present review with the criteria as set out in paragraph 5 above.

17. The CA is of the view that the LMPO (or more particularly section 6 thereof as suggested by LandsD) and the XP issued under it together with the block licence already provide a comprehensive regulatory framework for dealing with land and road opening matters. As such, it does not see how the removal of SC 14.1 in the UCL, which does not affect the LMPO regime, will jeopardise the Government's overall enforcement power in this respect. In any case, telecommunications licensees are required to comply with all the relevant cross-sectoral legislation and regulation.

18. On the need to retain SC 14.3 about recording route plans of suitable scale or as-built plans as referred to by LandsD, the CA notes that in the block licences issued by LandsD for regulating the installation of telecommunications systems and associated facilities on unleased Government land, block licensees are required to maintain and update the master plans to show all approved amendments including but not limited to new installation, diversion, reinstatement or removal. That means the master plans at the licensees' office should reasonably cover networks that have already been installed. Licensees are required to supply copies of the master plans and other relevant documents at no cost to the Government upon the request of LandsD as the licensor. As such, the CA fails to see any need to retain SC 14.3 in the Carrier Licences. Furthermore, the CA wishes to draw the

¹⁰ Extract of SC 14 on Network Location:

14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.

14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

attention of LandsD to GC 8 of the UCL, requiring licensees to keep records and plans of overall network as well as cable route maps and to provide such information to the CA upon its request. GC 8 will remain in force. As to the availability of trained staff on site to indicate the location and nature of the network, licensees shall continue under SC 16 of the UCL to coordinate and cooperate among themselves and any other authorised person in respect of road opening. Being the authorities authorising and regulating road opening works, HyD and LandsD may from time to time seek reasonable cooperation of telecommunications licensees in this aspect.

19. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SCs 14.1, 14.3, 14.4 of the UCL (and their equivalence in other Carrier Licences), viz. item (a) in Table 1, should be removed from the Carrier Licences.**

SC on Requirements of Installation of Lines or Cables

(SC 17 of UCL as provided below, and its equivalence in other Carrier Licences)

- 17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.
- 17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –
- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
 - (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

20. In gist, SC 17 requires the licensee to install the network at a depth, course, route and position as may be determined by DHy or DL, exercise all reasonable care in establishing and maintaining its network, and to make good any physical damage caused including payment of compensation in lieu.

Views and Comments Received

21. All the responding operators agreed to the proposed removal of SC 17 from the UCL, except HKT which suggested retaining SC 17.2, which requires the licensee to make good any physical damage caused, on the grounds that neither the cross-sectoral legislation nor section 18 of the TO could provide the same degree of recompense for the damage caused in the course of establishing and maintaining the telecommunications network. It considered that SC 17.2 allowed the harmed party to seek damage including financial compensation for loss of business, in addition to reimbursement of the expenses incurred in rectifying the physical damage.

22. LandsD considered that the entire SC 17 should stay put in the UCL. The reasons are first, the conditions in the XP issued by HyD referred to in the Consultation Paper were irrelevant since SC 17.1 covers both underground and above ground installations. Second, the reinstatement and safety precaution provisions under the LMPO did not cover private properties as SC 17.2 does.

Responses of the CA

23. On SC 17.1 of the UCL, it is not inaccurate to say that it covers both underground and above ground installations, but to put things in their proper context, virtually all the above ground telecommunications installations contain an underground element involving road opening works. For instance, telephone poles are partially underground and overhead cables are hanged over two telephone poles. Irrespective of SC 17.1, the DL or DHy regulates the minimum depth and related requirements for underground services and installations based on the XP regulatory regime. As such, the proposed removal of the concerned SC from the UCL will not prejudice the power of the Government in regulating road opening works. Meanwhile, the CA, in granting authorisation under section 14(1) of the TO, will determine whether the licensee has a genuine need to conduct road opening works.

24. On SC 17.2 of the UCL, the requirements of exercising reasonable care in the course of establishing and maintaining telecommunications installations and making good any damage caused in public streets and unleased Government land are enshrined in the LMPO and the XP issued under it. According to section 18 of the

TO, any person who carries out any work and affects a telecommunications line or radiocommunications installation shall take all reasonable precautions to prevent damage to such line or installation. The provision also allows the affected party to recover from the person who carries out the work any expenses incurred in making good any damage to the line or installation caused by a failure to take such precautions. As to damages caused on private land, the aggrieved party can always seek remedy according to the civil law. Regarding HKT's suggestion of retaining SC 17.2 to enable operators whose networks are damaged by reckless parties undertaking excavation works to seek the required financial compensation resulting from loss of telecommunications services to its customers, it is doubtful whether the clause could achieve such a purpose as the SC imposes an obligation on the licensee to make good any physical damage to any person having a lawful interest in the land rather than conferring the right for the licensee to claim the financial loss from any person undertaking excavation works. In any event, SC 17.2 does not extend the jurisdiction of the CA to non-licensees regarding their liability for any damage to a telecommunications network.

25. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 17 of the UCL (and its equivalence in the other Carrier Licences), viz. item (b) listed in Table 1, should be removed from the Carrier Licences.**

SC on Works in Public Streets

(SC 18 of UCL as provided below, and its equivalence in other Carrier Licences)

- 18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –
- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
 - (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
 - (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
 - (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

26. In gist, SC 18 requires the licensee to obtain the approval of the DHy or DL when its needs to open or break up any public street. The licensee is also required to maintain the site of works in a safe manner, complete the works with all due speed and diligence, and reinstate the street to the satisfaction of the DHy or DL.

Views and Comments Received

27. All the responding operators agreed to the proposed removal of SC 18 from the UCL. LandsD did not have comments on the proposal.

Responses of the CA

28. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 18 of the UCL (and its equivalence in other Carrier Licences), viz. item (c) in Table 1, should be removed from the Carrier Licences.**

SC on Interference with Works of Others

(SC 19 of UCL as provided below, and its equivalence in other Carrier Licences)

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to

in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

29. In gist, SC 19 requires the licensee not to remove, displace or interfere with any telecommunications line and other utility installations (e.g. gas pipe, water pipe, drain, wire, etc.) located in any public street, unless it has obtained the proper consent from the relevant parties or the approval of the DHy.

Views and Comments Received

30. All responding operators agreed to the proposed removal of SC 19. LandsD noted that as utility installations like gas pipe and electricity supply lines were protected under the relevant ordinances, the CA might consider if telecommunications lines would be subject to similar protection under the TO.

Responses of the CA

31. As explained in the paragraph 24 above, protection of telecommunications lines is provided under section 18 of the TO. It allows the licensee to recover from the person any expenses incurred in making good any damage to a telecommunications line or radiocommunications installation caused by a failure to take the necessary precautions in work affecting such lines and installations.

32. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 19 of the UCL (and its equivalence in other Carrier Licences), viz. item (d) in Table 1, should be removed from the Carrier Licences.**

SC on Licensee to Alter Network on Notice

(SC 20 of UCL as provided below, and its equivalence in other Carrier Licences)

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

33. In gist, SC 20 requires the licensee to alter the course, depth, position or mode of attachment of any apparatus forming part of the network at its own expense, and within the time and in such manner as directed by the DHy or DL.

Views and Comments Received

34. All the responding operators agreed to the proposed removal of SC 20 from the UCL. Conversely, LandsD suggested retaining the SC in order not to jeopardise the overall control of the Government in requiring the licensee to alter the alignment and position of any telecommunication installation, if required.

Responses of the CA

35. The requirement on licensees under SC 20 falls within the power of DHy and DL. The XP issued by HyD and LandsD under the LMPO requires that all pipes, cables, ducts, etc. laid by the permittee shall be adjusted, realigned or removed at no expense to the Government whenever deemed necessary by the Government.¹¹ In addition, DL has full power under the block licence to require the licensee to remove, divert, reinstate or otherwise change or alter the position of the installations at his own expense and within the time limit as may be imposed by the licensor. Therefore, the CA does not agree that the proposed removal of SC 20 in the UCL, which does not affect the LMPO regime, will jeopardise the overall control of the Government on the relevant matter.

36. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 20 of the UCL (and its equivalence in other Carrier Licences), viz. item (e) in Table 1, should be removed from the Carrier Licences.**

¹¹ The XP issued by LandsD is not a public document, but reference can be made to the XP issued by the HyD which is available at:
[http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/doc/XP%20conditions%20\(Normal\)%20Ver%2017.0.pdf](http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/doc/XP%20conditions%20(Normal)%20Ver%2017.0.pdf).

GENERAL CONDITION ON RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

37. The Identified Licence Condition on restrictions on attachment to public buildings and trees was proposed to be removed from the Carrier Licences, i.e. item (f) in Table 1 above. Comments were received from the operators and relevant Government departments.

GC on Restrictions on Attachment to Public Buildings and Trees

(GC 10 of the Carrier Licences is provided below)

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

38. In gist, GC 10 of the Carrier Licences requires the licensee to seek the prior consent of the Government Property Administrator for the attachment of any part of the network to any Government building, and of the Director of Agriculture, Fisheries and Conservation or the Director of Leisure and Cultural Services for the attachment to any tree on any Government land.

Views and Comments Received

39. All the responding operators supported the proposal, save for CMHK which expressed reservation on the removal of GC 10 as it considered the GC as useful in providing guidance to operators on the relevant consent to be obtained when attachment has to be made to Government buildings and trees. Regarding the Government departments, AFCD and LCSD expressed that they had no objection or no objection in principle to the proposed removal. Yet LCSD suggested consultation be conducted with other core tree maintenance departments and the bureau on tree management policy, as LCSD is only one of the many tree maintenance departments.

Responses of the SCED

40. The SCED notes the position of CMHK in retaining GC 10 in order to ensure compliance with the requirement of various Government departments. However, it has to be pointed out that a licence condition is not and should not be

kept for the sole purpose of reminding licensees of certain administrative procedures. OFCA is, as it has always been, prepared to provide assistance to licensees in regard to regulatory compliance with the requirements of various Government departments, where necessary.

41. In regard to the proposal to consult other core tree maintenance departments and the bureau on tree management policy, given that among them, only AFCD and LCSD are the relevant authorities named in GC 10, which is proposed to be removed from the Carrier Licence, the SCED does not see any need to involve parties other than the two departments in the consultation exercise.

42. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the SCED remains of the view that GC 10, viz. item (f) in Table 1, should be removed from the Carrier Licences.**

IMPLEMENTATION

43. The SCED will proceed to prepare the amendment regulation under section 7(2) of the TO to remove GC 10 from Schedule 1 of the Regulation and table it before the Legislative Council for vetting. The removal of GC 10 will be effected upon completion of the legislative process.

44. The removal of the five SCs of the Identified Licence Conditions does not require any legislative process and the CA intends to implement them as soon as possible. Such an arrangement should be welcomed by the industry judging from the general support expressed by network operators in their submissions. The CA will exclude the five SCs from any UCLs issued after the date of publication of this joint statement. As for the existing Carrier Licences, the CA will issue a circular letter to invite the licence holders to return their licences for effecting the corresponding removal of the SCs. For the avoidance of doubt, licence holders who do not return their licences for amendment will continue to be subject to all the licence conditions as contained in their existing licences until the expiry of those licences or the replacement with new UCLs.

OTHER LICENCE CONDITIONS

45. The Consultation Paper solicits the views of the industry and interested parties on the way forward with the Identified Licence Conditions as identified based on the criteria as set out in paragraph 5 above. Some of the respondents provided in the submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present review. We have set out in **Annex C** the responses of the SCED and the CA to these views.

Secretary for Commerce and Economic Development
Communications Authority
10 March 2015

**Full Text of the Identified Licence Conditions on
Road Opening Works**

SC 14.1, SC 14.3 and SC 14.4 of UCL (equivalent to SC 15.1, SC 15.3 and SC 15.4 of FCL)

14 NETWORK LOCATION

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.

14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

SC 17 of UCL (equivalent to SC 18 of FCL)

17 REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance,

in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

SC 18 of UCL (equivalent to SC 19 of FCL)

18 WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government

any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

SC 19 of UCL (equivalent to SC 20 of FCL)

19 INTERFERENCE WITH WORKS OF OTHERS

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

SC 20 of UCL (equivalent to SC 21 of FCL)

20 LICENSEE TO ALTER NETWORK ON NOTICE

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

**Full Text of the Identified Licence Condition on
Restrictions on Attachment to Public Buildings and Trees**

GC 10 of UCL (equivalent to GC 10 of FCL, MCL, MCRL and SSCL)

10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

- 10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

**Summary of Views and Comments Received
on Other Licence Conditions and
the Responses of the SCED and the CA**

Some of the respondents provided in the submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present review. A summary of their views and the responses of the SCED and the CA to these views are set out below.

Views and Comments Received

2. HKBN, HKT, Hutchison, SmarTone and WTT regarded the scope of the present review as too limited. They urged for a more comprehensive review of all the conditions in the Carrier Licences, considering that the need to comply with licence conditions which were not necessary would add to the compliance cost of the licensees. They pointed out that the competitive landscape of the telecommunications market had undergone significant changes over the past two decades, which rendered some of the licence conditions inapplicable. Some other licence conditions were considered as duplicating or conflicting with the provisions in some other cross-sectoral legislation, including the Competition Ordinance (Cap. 619) (“CO”), Trade Descriptions Ordinance (Cap. 362) (“TDO”), and Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). HKT, Hutchison and WTT also claimed that there were duplications in the conditions in the Carrier Licences with the provisions under the TO and laws relating to health and safety, including the Occupational Safety and Health Ordinance (Cap. 509) (“OSHO”). They therefore suggested removing a number of the GCs and SCs from the Carrier Licences. On the other hand, HKT suggested strengthening SC 34 of the UCL on channels within the in-building coaxial cable distribution systems (“IBCCDS”) in order to ensure that other carrier licensees would not be obstructed by the owner of the IBCCDS when seeking access to provide services to end users.

Responses of the SCED and the CA

3. The CA is the statutory authority enforcing the TO in regard to the provision of telecommunications services in Hong Kong. Regarding the comments concerning the possible overlapping of the licence conditions in the Carrier Licences with the provisions under the TO, it has to be pointed out that the TO sets out the general regulatory principles while conditions prescribed in the Carrier Licences serve to specify the detailed requirements, which are in line with the relevant

provisions in the TO, to enable effective enforcement of the TO. It is hence reasonable and necessary to have similarities between some of the provisions in the legislation and the licence conditions albeit the latter contains more detailed regulation developed in line with the overarching statutory provisions.

4. On the possible overlapping of GC 7¹ of the UCL on confidentiality of customer information with the PDPO, it should be noted that the scope of “customer information” as referred to under GC 7 of the UCL covers non-personal data of residential customers and information of corporate customers, which may not be entirely covered by the PDPO which governs only personal data of individuals.

5. As to the suggestion of removing GC 14² on safety from the UCL due to its overlapping with laws relating to health and safety, taking the OSHO as an example, it aims to provide safety and health protections to employees at workplace, the purpose of GC 14 is to safeguard life and property in relation to the installation and operation of all telecommunications equipment. Furthermore, some of the safety concerns like electrical and radiation hazards are specific to the telecommunications industry warranting separate regulation.

6. In regard to HKT’s suggestion of strengthening SC 34³ of the UCL on channels within the IBCCDS, it should be noted that SC 34 deals with the

¹ GC 7 CONFIDENTIALITY OF CUSTOMER INFORMATION

7.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.

7.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

² GC 14 SAFETY

14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.

14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

³ SC 34 CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEM

34.1 Subject to Special Conditions 34.2, 34.3, 34.4, 34.5, 34.6 and 34.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.

34.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.

34.3 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make

assignment and usage of the IBCCDS channels by carrier licensees, which are not necessarily the infrastructure owner of the IBCCDS. The SC is considered sufficient for general regulation on the use of IBCCDS channels for service provisioning. In the case where the carrier licensee is an infrastructure owner of the IBCCDS, it would be governed by additional non-standard SCs in order to facilitate access by other carrier licensees to its IBCCDS for the provision of services to end users.⁴

7. Having said that, the SCED and the CA agree that the licence conditions in the Carrier Licences may warrant a further review in its own right at a later stage to take into account the changing market environment, the emergence of new legislation such as the amended TDO and the CO, as well as the Government's plan to review the TO and the Broadcasting Ordinance (Cap. 562). While we will consider when it will be an opportune and appropriate time to conduct another round of review on the licence conditions, the present review with specific assessment criteria focuses on the Identified Licence Conditions only.

Secretary for Commerce and Economic Development
Communications Authority
10 March 2015

representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.

34.4 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.

34.5 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.

34.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under Special Condition 34.

34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

⁴ Reference can be made to the UCL No. 042 of the Hong Kong Cable Television Limited, which establishes and maintains its own IBCCDS at buildings, as provided in the link below:
http://app1.coms-auth.hk/apps/telecom_lic/doc/licence/ucl_042.pdf.

**Full Text of the Identified Licence Condition on
Restrictions on Attachment to Public Buildings and Trees**

GC 10 of UCL (equivalent to GC 10 of FCL, MCL, MCRL and SSCL)

10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.