

**立法會**  
***Legislative Council***

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**Panel on Information Technology and Broadcasting**

**Meeting on 11 November 2019**

**Updated background brief on  
review of telecommunications regulatory framework**

**Purpose**

This paper summarizes previous discussions by the Panel on Information Technology and Broadcasting ("the Panel") relating to the review of telecommunications regulatory framework.

**Background**

Review of Broadcasting Ordinance and Telecommunications Ordinance

2. The Administration has embarked on an exercise to review and update the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) ("the Review"). The objective of the Review is to provide a balanced competitive environment for the broadcasting and telecommunications markets and to modernize the regulatory frameworks so as to ensure that the regulatory regimes are capable of responding to technological development and keeping pace with new trends.

3. A staged approach has been adopted for this Review. The first stage took place in 2012. As a follow up to the Review, the Communications Authority Ordinance (Cap. 616) was enacted, under which the former Broadcasting Authority and Telecommunications Authority were merged to form the Communications Authority ("CA"), as the unified regulator of the broadcasting and telecommunication sectors.

4. The second stage of the Review was conducted in two phases. The first phase, which focuses on the existing television and sound broadcasting regulatory frameworks under Cap. 562 and Cap. 106, has been completed. In the light of this phase of the Review, the Administration introduced the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 to remove certain obsolete statutory requirements in Cap. 106 and Cap. 562 and to address the imbalance between the existing regulatory control over traditional broadcasting services and the Internet media.

5. The second phase of the Review focuses on the regulation of telecommunications practice. The Administration's objective is to ensure that the current laws and regulations dovetail with the latest development in technologies to pave the way for early adoption and provision of innovative services, so that Hong Kong can consolidate its leading position as a regional telecommunications hub.

6. At the Panel meeting held on 10 December 2018, the Administration briefed members on the status of the second phase of the Review, and highlighted four areas to be examined in the second phase of the Review, as summarized in the ensuing paragraphs.

#### Regulation of telecommunications functions of devices

7. At present, CA regulates the technical standards and safety aspects of various telecommunications equipment being used in Hong Kong. With the advent of the fifth generation mobile communications ("5G") services and their application in the era of Internet of Things ("IoT"), it is anticipated that many digital products, including traditional consumer or household products, would be connected with the telecommunications network, i.e. they would be IoT devices. The Administration would explore whether the telecommunications functions of all IoT devices should be regulated under Cap. 106, while the non-telecommunications functions of these devices should continue to be regulated by the respective general or dedicated legislation as applicable to them.

#### Protection of underground telecommunications infrastructure

8. The Administration would also consider whether new criminal liabilities should be provided in Cap. 106 to increase the deterrence against damages to underground telecommunications facilities due to negligence. CA would set up, in consultation with the industry, relevant

codes of practice specifying the reasonable steps and measures to be taken to avoid violating the new provision under consideration.

#### Simplifying the issue of non-carrier licences

9. The Administration would consider how the existing mechanism of excluding certain licences from the scope of carrier licence should be simplified. Under Cap. 106, CA may issue a carrier licence for the establishment or maintenance of a telecommunications network for carrying out communications. The Secretary for Commerce and Economic Development ("SCED") may by regulations prescribe the general conditions for a carrier licence and the conditions for a carrier licence and the fees payable for its grant and renewal. CA also issues licence for certain services, such as hotel television services or radio paging services. As the scope of these services is limited and the scale of operation is relatively small, the licences for such services ("non-carrier licences") are not treated as carrier licences. Non-carrier licences are specified in Schedule 1 to Cap. 106 by way of a subsidiary legislation made by SCED.

10. Anticipating a more rapid introduction of innovative services which may be regulated under non-carrier licences in the 5G era, the Administration would consider the option of simplifying the mechanism by empowering SCED to publish non-carrier licences in the Gazette instead of by specifying them in Schedule 1 to Cap. 106.

#### Improving the appeal mechanism under the Telecommunications Ordinance (Cap. 106)

11. Another area in the Review involves the establishment of a new appeal mechanism in relation to CA's certain regulatory decisions. At present, the Telecommunications (Competition Provisions) Appeal Board handles appeals related to CA's decision under Section 7Q of Cap. 106, which provides that a licensee who holds a dominant position in a telecommunications market must not engage in conduct that, in the opinion of CA, is exploitative. Other than this, a licensee who wants to challenge any decision of CA can only seek a judicial review. The Administration would examine whether an independent appeal board should be set up to provide an appeal avenue under Cap. 106 covering the following decisions made by CA:

- (a) refusal to grant a telecommunications licence;
- (b) refusal to give consent on tariffs;

- (c) revocation of certificate of competency and authority to operate for operating personnel;
- (d) cancellation, withdrawal or suspension of licence, permit, permission or consent granted;
- (e) determination of terms and conditions of interconnection;
- (f) direction on sharing of use of facilities;
- (g) directions by the CA (on provisions subject to appeal); and
- (h) imposition of financial penalties.

### Public consultation on the second phase of the Review

12. The Administration conducted a three-month public consultation on the second phase of the Review in end-2018, with a view to introducing an amendment bill into the Legislative Council in 2019 to implement the new measures formulated in the light of the Review and the outcome of the public consultation.

### **Previous discussions**

13. At the meetings of the Panel held on 12 March 2018 and 10 December 2018, the Administration briefed members on the progress of the Review on Cap. 106 and Cap. 562. The major discussions and concerns raised by members and the Administration's response in respect of the Review on Cap. 106 are summarized in the ensuing paragraphs.

### Protection of underground telecommunications infrastructure

14. Panel members queried why the Administration would need to consider imposing criminal liability against damages to underground telecommunications facilities when the owners of the facilities could seek remedies under common law. The Administration explained that the request for such provisions was put forward by telecommunications service operators. They argued that as telecommunications had become an essential service to the community, the statutory protection of telecommunications facilities should be brought on a par with other main public utilities, such as electricity and gas where similar criminal liabilities are in force.

15. Some members queried which parties would be held liable for any damage to underground telecommunications facilities under Cap. 106. The Administration explained that it proposed to create certain criminal offences under Cap. 106 against any person, who, without taking

reasonable care in carrying out road works, caused damages to underground telecommunications facilities. The proposed provisions served to provide stronger deterrence against damages to underground telecommunications facilities and better protection for both telecommunications operators and the public from network outage.

#### Simplifying the issue of non-carrier licences

16. Some members reflected the trade's concerns on whether carrier licences and non-carrier licences would be allowed to compete on a level playing field. The trade queried whether non-carrier licences would be subject to a set of less stringent conditions as compared to those applicable to existing carrier licences. The Administration reassured members that the trade had been thoroughly consulted about the options, and these proposals could be amended as appropriate, subject to the views and suggestions from stakeholders and the public during the consultation exercise.

#### Keeping Cap. 562 and Cap. 106 in pace with the times

17. Some members asked whether the Administration would put 5G standards and services under the regulation of Cap. 106. The Administration responded that the telecommunications regulatory framework in place in Hong Kong has been technology-neutral, and that Cap. 106 already empowered CA to set technical standards. In prescribing technical standards for telecommunications networks for the provision of 5G services, reference would be made to the 5G specifications set out by the Third Generation Partnership Project, an international standardization body. Members also called on the Administration to ensure that the relevant statues of Cap. 562 and Cap. 106 would be suitably updated to dovetail with the advancement of telecommunications technologies in future.

#### **Latest position**

18. The Administration will report to the Panel the results of the public consultation on review of telecommunications regulatory framework and the way forward.

**Relevant papers**

19. A list of the relevant papers is set out in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
5 November 2019

## Appendix

### List of relevant papers

Meeting	Date of meeting	Paper
Panel on Information Technology and Broadcasting	12 March 2018	Administration's paper on review of television and sound broadcasting regulatory regimes <a href="#">LC Paper No. CB(4)701/17-18(04)</a>  Background brief prepared by the Legislative Council Secretariat <a href="#">LC Paper No. CB(4)701/17-18(05)</a>  Minutes of meeting <a href="#">LC Paper No. CB(4)1197/17-18</a>
	10 December 2018	Administration's paper on review of telecommunications regulatory framework <a href="#">LC Paper No. CB(4)283/18-19(05)</a>  Updated background brief prepared by the Legislative Council Secretariat <a href="#">LC Paper No. CB(4)283/18-19(06)</a>  Minutes of meeting <a href="#">LC Paper No. CB(1)558/18-19</a>
Council	10 January 2018	Question No. 18 raised by Hon CHAN Chi-chuen <a href="#">Billing of telecommunications services</a>