

**For discussion
on 19 April 2021**

**Legislative Council
Panel on Information Technology and Broadcasting

Implementation of the Proposed Measures under the
Review of Telecommunications Regulatory Framework**

Purpose

This paper aims to brief Members that the Government will introduce a bill into the Legislative Council (LegCo) to amend relevant provisions of the Telecommunications Ordinance (Cap. 106) (TO) to implement the measures proposed in the Review of Telecommunications Regulatory Framework.

Background

2. After its launch in Hong Kong for just one year, 5G service has achieved satisfactory progress. As at March 2021, 5G coverage in Hong Kong has reached over 90% of the population, whereas the coverage of 5G networks in some core business districts or areas with high pedestrian flow has even reached 99%. To dovetail with the application of 5G services and technological advancement, our telecommunications regulatory framework has to be kept updated and be modernised from time to time.

3. In February 2019, the Government completed a three-month public consultation on the Review of Telecommunications Regulatory Framework which proposed the implementation of measures that would be conducive to the arrival of 5G and Internet of Things (IoT) technologies as well as those that would promote trade facilitation. The submissions received and the relevant stakeholders were generally supportive of the direction of the proposed measures. On 11 November 2019, we briefed Members of this Panel on the views gathered in the public consultation and the progress of the related work. Members did not have divergent views on our work and noted that we would prepare an amendment bill to provide for the implementation of the proposed measures for introduction into the LegCo for scrutiny.

4. The amendment bill that we are about to introduce aims to further facilitate the development of 5G telecommunications services and to address the views of the industry in the past on refining the telecommunications regulatory framework so as to ensure that our regulatory framework is updated to cope with the latest development.

Proposed Measures

5. The bill will cover the following measures to cater for the advancement of relevant telecommunications technologies under the 5G and IoT era, with details as follows -

Embracing the Arrival of 5G and IoT Technologies

Regulation of Telecommunications Functions of 5G and IoT Devices

6. In light of the rapid development of smart household and personal electronic devices equipped with internet connection functions in the 5G and IoT era, the relevant regulation will become more complicated. To ensure a clearer division of work among various government departments in regulating the relevant smart devices and products so as to cope with the needs of the latest development, we propose to rationalise the regulatory arrangements on telecommunications functions of 5G and IoT devices under the TO. In gist, we propose to amend section 32D of the TO which empowers the Communications Authority (CA) to prescribe telecommunications technical standards and specifications. It will clearly stipulate that the powers and duties of the CA will focus on regulating the telecommunications functions of 5G and IoT devices (i.e. including integrity of and compatibility with telecommunications networks and control of the level of non-ionising electromagnetic radiation). Non-telecommunications functions of such equipment and devices (e.g. electrical and other safety specifications and standards) will be regulated by other dedicated legislation as appropriate.

Protection of Underground Telecommunications Infrastructure

7. With the arrival of 5G services and their extensive use in smart city applications, the integrity of telecommunications infrastructure would become more important than ever. To enhance the existing protection of underground telecommunications infrastructure, we propose to amend the TO to create the following criminal offences against any person who does not take reasonable measures to protect or even causes damage to underground telecommunications facilities when carrying out works -

- (a) failure to take reasonable measures before the works begins to ascertain if any underground telecommunications line exists, and (if so) the alignment and depth of the concerned line should be liable to a fine at level 4 (i.e. \$25,000) and imprisonment for 6 months;
- (b) causing damage to underground telecommunications line due to failure to take reasonable preventive measures during the construction works should be liable to a fine at level 4 (i.e. \$25,000) and imprisonment for 6 months;
- (c) causing interruption to a telecommunications service due to failure to take reasonable preventive measures should be liable to more severe punishment i.e. a fine of \$200,000 and imprisonment for 12 months; and
- (d) if the offence of (b) or (c) above continues, an additional fine of \$10,000 per day.

Nevertheless, it is a defence to a charge under the proposed offences if the person responsible for the works can prove that the relevant guidelines issued by the CA had been complied with before or during the works (details as set out in paragraph 9).

8. During the public consultation, some stakeholders expressed that some in the construction sector were concerned about the responsibility the sector had to bear and the specific operational arrangements of the measures following the legislative amendments. In this connection, when amending the TO, we have made reference to other existing statutory protection arrangements on underground infrastructure in Hong Kong (including those concerning the electricity supply lines under the Electricity Supply Lines (Protection) Regulation (Cap. 406H) and gas pipes under the Gas Safety (Gas Supply) Regulations (Cap. 51B)). As regards the proposed levels of sanctions, we had also made reference to the practice of these existing statutory safeguards. We consider that as the construction sector has all along been carrying out works in compliance with such requirements, the above proposals should not be unfamiliar to the sector and therefore should not constitute additional burden on the sector.

9. The CA will also draw up guidelines to provide relevant stakeholders with clear specifications and guiding principles and to set out appropriate works safety guidelines and preventive measures for compliance by the sector and relevant persons, with reference to existing codes of practice related to the protection of electricity supply lines and gas pipes. When drawing up the relevant guidelines, the CA will consult the sector and relevant stakeholders so as to ensure that the guidelines are practical and align with the actual operation of the sector. The sector may also quote the relevant guidelines in appropriate circumstances as a defence when being charged for

violation of the concerned legislation. We consider that the relevant measures have struck a balance between the demands of telecommunications operators over years on strengthening the protection of underground telecommunications infrastructure and the actual situation of the construction sector in complying with the relevant requirements.

Trade Facilitation

Simplifying the Issue of Non-carrier Licences

10. To facilitate the industry to introduce innovative services promptly in the 5G era and noting the fast evolving nature and forms of such services amid technology advancement, we need a more flexible licensing framework so that the authorities can regulate emerging innovative applications that are used in different sectors (e.g. property management, parking/access control, automation in manufacturing processes, transportation, academic research and health care services, etc.) more expeditiously and effectively. Unlike the regulatory approach targeting carrier licences¹ under the TO, such innovative telecommunications services are generally smaller in scale, applicable to specific geographical settings and serve a specific group of users. Licensing for such services should therefore be more flexible than that for carrier licences and should be subject to less stringent licence conditions so as to facilitate the development of relevant businesses in Hong Kong.

11. We propose to simplify the existing requirements of the TO by empowering the Secretary for Commerce and Economic Development (SCED) to specify by notice published in the Gazette certain telecommunications licences as non-carrier licences with more restrictive scope than carrier licences in terms of geographical coverage, scope, scale or customer base of the service, etc., so as to facilitate the implementation and application of innovative telecommunications services in the 5G era.

12. The legislation will specify that the proposed simplified licensing mechanism is only applicable to telecommunications service licences fulfilling the specified conditions (i.e. more restrictive as explained in paragraph 11 above). When exercising such power, SCED will publish clearly in the Gazette to ensure that the industry and the public are aware of the

¹ Pursuant to section 2 of the TO, a carrier licence means a licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between fixed locations, between moving locations or between fixed locations and moving locations, within Hong Kong, or between Hong Kong and places outside Hong Kong, on a point-to-point, point-to-multipoint or broadcasting basis, such locations within Hong Kong being separated by unleased Government land.

telecommunications services involved. The simplified licensing mechanism proposed above will not be in conflict with the licensing mechanism and operation of carrier licences. Other telecommunications services of larger scale and coverage (e.g. general territory-wide mobile and fixed telephone services) will continue to be subject to carrier licences under the existing mechanism and be regulated thereof. The proposed arrangement will also not affect the licensing framework and regulatory requirements of other existing telecommunications services as well as telecommunications installation and apparatus.

Improving the Appeal Mechanism under the TO

13. Given the increasingly complex, vibrant and fast-developing telecommunications market nowadays, the TO needs enhancement from time to time in order to meet the regulatory needs of the telecommunications market amid technological advancement. The appeal mechanism as provided under the TO also needs relevant refinement to provide for telecommunications operators or other affected parties to express different views or objection to certain regulatory decisions as appropriate. We propose to improve the appeal arrangements under the TO by refining the existing independent appeal mechanism to deal with certain decisions of the CA. We will expand the functions and powers of the existing Telecommunications (Competition Provisions) Appeal Board so that it will also deal with certain telecommunications-related decisions of the CA under the TO, in addition to the existing decisions of the CA in relation to exploitative conduct engaged by licensee under section 7Q of the TO².

14. The appeal mechanism will be expanded to cover the following decisions of the CA under the TO -

- (i) refusal to grant telecommunications licence (section 7(5) of the TO);
- (ii) refusal to give consent on tariffs (section 7F(3) of the TO);
- (iii) suspension and/or revocation of certificate of competency and authority to operate for operating personnel (sections 32K(2) and 32K(5) of the TO);
- (iv) cancellation, withdrawal or suspension of licence, permit, permission or consent granted (section 34(4) of the TO);
- (v) determination of terms and conditions of interconnection (section 36A(1) of the TO);

² Section 7Q of the TO provides that a licensee in a dominant position in a telecommunications market must not engage in conduct that in the opinion of the CA is exploitative.

- (vi) direction on sharing of use of facilities (section 36AA(1) of the TO);
- (vii) directions by the CA (section 36B(1) of the TO);
- (viii) imposition of financial penalties (section 36C(1) of the TO); and
- (ix) requirements by the CA for disclosing information or publishing corrective advertisements (section 36C(3A) of the TO)³.

15. For further justifications and details of the various proposals mentioned above, Members may refer to the public consultation paper entitled “Review of Telecommunications Regulatory Framework” issued by the Commerce and Economic Development Bureau on 28 November 2018 (which can be downloaded from the following website - [https://www.cedb.gov.hk/assets/resources/ccib/consultations-and-publications/BOTOREview_2\(eng\).pdf](https://www.cedb.gov.hk/assets/resources/ccib/consultations-and-publications/BOTOREview_2(eng).pdf)) and the discussion paper submitted to this Panel by the Government in November 2019 (Uploaded onto - <https://www.legco.gov.hk/yr19-20/english/panels/itb/papers/itb20191111cb1-120-4-e.pdf>).

Way Forward

16. We plan to introduce the Telecommunications (Amendment) Bill into the LegCo for scrutiny soon. Given that the proposed measures above are relatively technical in nature and do not involve significant telecommunications policy change, we hope that scrutiny of the Bill could be completed as soon as possible within this legislative session, so that the above proposed measures could be timely implemented to cater for the development and needs in the 5G and IoT era.

17. Members are invited to note and comment on the content of this paper.

Communications and Creative Industries Branch Commerce and Economic Development Bureau April 2021

³ Since these decisions of the CA are also likely to affect telecommunication licensees’ civil rights and obligations and have a bearing on their businesses and operations, after consulting the Department of Justice, we propose that the appeal mechanism will also cover such decisions.