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Panel on Information Technology and Broadcasting

Meeting on 19 April 2021

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

Purpose

This paper provides updated background information on the review of telecommunications regulatory framework and summarizes previous discussion on the subject by the Panel on Information Technology and Broadcasting ("the Panel").

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") since 2018. 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.

First phase of the Review

3. The Review was conducted in two phases. The first phase, which focused 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 Broadcasting and Telecommunications

Legislation (Amendment) Ordinance 2020 was enacted to amend Cap. 562 and Cap. 106 to remove obsolete statutory requirements, rationalize the regulatory frameworks amidst blossoming of Internet-based media platforms and address the imbalance between the existing regulatory control over traditional broadcasting services and Internet media and remove obstacles for the traditional broadcasting sector. The Amendment Ordinance came into operation on 5 February 2021.

Second phase of the Review

4. The public consultation on the second phase of the Review was completed in February 2019. This phase of the Review aims to set out proposals pertaining to the improvement of the telecommunications regulatory framework to prepare for the arrival of fifth generation mobile communications ("5G") and Internet of Things ("IoT") technologies, and to facilitate the development of the telecommunications industry in Hong Kong. Following the Review, the Administration proposes the implementation of the following four measures under two themes, namely, "Embracing the arrival of 5G and IoT technologies" and "Trade facilitation":

Embracing the arrival of 5G and IoT technologies

- (a) Regulation of telecommunications functions of devices in the 5G and IoT era: the Administration considers that the telecommunications functions of IoT devices should continue to be regulated by Cap. 106 and proposes that the regulatory powers and duties of the Communications Authority ("CA") should focus on the telecommunications functions of telecommunications equipment and 5G and IoT devices (i.e. integrity of and compatibility with telecommunications networks and the level of non-ionising electromagnetic radiation). The non-telecommunications functions of such equipment and devices (e.g. electrical and other general safety aspects) should be regulated by their respective dedicated legislation as appropriate;
- (b) Protection of underground telecommunications infrastructure: with the imminent arrival of 5G services and more extensive use of smart city applications, the Administration considers that the integrity of telecommunications infrastructure would become even more crucial. In this connection, the Administration proposes to create new criminal offences under Cap. 106 against negligent damage to underground telecommunications facilities. Compliance with relevant codes of practice or guidelines

promulgated by CA shall constitute a defence to a charge under the proposed offences;

Trade facilitation

- (c) Simplifying the issue of non-carrier licences: to facilitate the timely introduction of innovative services in the 5G era, the Administration proposed to simplify the existing mechanism for issuing non-carrier licences by empowering the Secretary for Commerce and Economic Development to publish a notice in the Gazette to specify non-carrier licences instead of specifying these non-carrier licences under Schedule 1 to Cap. 106, so that subsidiary legislation amendment procedures will not be necessary; and
- (d) Improving the appeal mechanism under Cap. 106: the Administration proposes to improve the appeal functions under Cap. 106 by establishing an independent appeal board to deal with certain decisions by CA. Reference would be made to the existing Telecommunications (Competition Provisions) Appeal Board in mapping out the composition and modus operandi of the proposed appeal board.

Previous discussions

5. The Administration briefed the Panel on 11 November 2019 on the results of the public consultation on the second phase of the Review and the progress of the related work. The Panel noted that the legislative proposals referred to in paragraph 4 above were generally supported by the public during consultation.

Protection of underground telecommunications infrastructure

6. The Panel noted that the Administration would draw reference from existing codes of practice related to the protection of electricity supply lines and gas pipes and prepare guidelines to set out appropriate works procedures and protection measures. Members queried when the draft guidelines would be available and when the Administration would consult the relevant sectors.

7. The Administration responded that relevant stakeholders, including the construction sector and the telecommunications sector, would be consulted on the draft guidelines while the amendment bill was being drafted, such that the industries would have a better grasp of the guidelines when the

amendment bill was introduced. Details on the respective responsibilities of both the construction and the telecommunications sectors would be included in the proposed guidelines as appropriate.

Disclosing anonymous customer data for research purposes

8. Members relayed the concerns of some members of the public about a proposal of removing a restriction on disclosing anonymous customer data by telecommunications operators for research purposes, as their personal data might then become vulnerable. A member commented that, without a consensus in the community, it might not be the opportune time to amend Cap. 106 to allow telecommunications operators to open up or sell anonymous customer data. The Administration confirmed that such a proposal was not included in the current legislative exercise.

Information and Internet freedom in Hong Kong

9. Members noted the public's concerns on whether Hong Kong's information and Internet freedom could be adequately protected under the law, and appealed to the Administration to help safeguard information and Internet freedom as it was important for the social, financial and economic development of Hong Kong. The Administration advised that it would proceed with the drafting of the amendment bill, and would engage stakeholders on other proposals received during the public consultation.

Latest position

10. The Administration will brief the Panel on 19 April 2021 on the proposal to amend relevant provisions in Cap. 106 to implement the measures proposed in the second phase of the Review.

Relevant papers

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

Appendix

List of relevant papers

Committee	Date of meeting	Papers
Panel on Information Technology and Broadcasting	11 November 2019	Administration's paper on review of telecommunications regulatory framework (LC Paper No. CB(1)120/19-20(04)) Updated background brief on review of telecommunications regulatory framework (LC Paper No. CB(1)120/19-20(05)) Minutes of meeting (LC Paper No. CB(1)258/19-20)