

LEGISLATIVE COUNCIL BRIEF

The Secretary for Information Technology and Broadcasting submits the following note for Members' information -

| <u>Title of Note</u> | <u>Date of ExCo</u> |
|---|---------------------|
| Telecommunication Ordinance (Chapter 106) 1998 Review of Fixed Telecommunications Telecommunication (Amendment) Bill 1999 | 27 April 1999 |

30 April 1999

Information Technology and
Broadcasting Bureau

LEGISLATIVE COUNCIL BRIEF

Telecommunication Ordinance (Chapter 106)

**1998 Review of Fixed Telecommunications
Telecommunication (Amendment) Bill 1999**

INTRODUCTION

A
At the meeting of the Executive Council on 27 April 1999, the Council ADVISED and the Chief Executive ORDERED that the Telecommunication (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council, to enhance competition safeguards, improve interconnection and access arrangements for telecommunications services, streamline licensing procedures and provide the Telecommunications Authority (TA) with powers over certain technical areas.

BACKGROUND AND ARGUMENT

2. On 3 September 1998, we published a Consultation Paper entitled "1998 Review of Fixed Telecommunications - A Considered View" (the Review) for public consultation. Chapter 6 of the Review set out proposals to update the Telecommunication Ordinance. On 8 February 1999, in the Legislative Council Panel on Information Technology and Broadcasting, we announced decisions on the principles of legislative amendments to improve the regulatory environment for the telecommunications industry.

Overview of the legislative proposals

3. The **aims** of the proposed amendments to the Telecommunication Ordinance, as set out in the Review, are to -

- (a) consolidate the provisions for the promotion of fair competition in the market for public telecommunications services, particularly to incorporate into the Telecommunication Ordinance such conditions already written in the Fixed Telecommunications Network Service (FTNS) licence;
- (b) update, consolidate and clarify certain provisions concerning access to land and interconnection which are already in existence in the Telecommunication Ordinance. In particular, there is a

proposal to extend to mobile telecommunications operators rights of access to land on a cost-plus basis;

- (c) streamline licensing procedures to cope with the rapid developments in the telecommunications industry; and
- (d) provide the Telecommunications Authority (TA) as the statutory regulator with explicit legal powers in areas like radio spectrum management and technical standards.

B A copy of the relevant sections of the Telecommunication Ordinance which are being
C amended by the Bill is at Annex B. A copy of the Telephone Ordinance which is being
repealed by the Bill is at Annex C.

4. Proposals to adapt the Telecommunication Ordinance to bring it into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China will be the subject of a separate exercise.

Functions and Powers of the Telecommunications Authority

5. The services of the Office of the Telecommunications Authority Trading Fund (OFTATF) are set out in Schedule 1 of the Legislative Council Resolution on the establishment of the OFTATF under the Trading Funds Ordinance. Our proposed amendments to the Telecommunication Ordinance will further spell out the scope of the TA's authority. We do not, therefore, consider it necessary to set out explicitly the functions of the TA in the Telecommunication Ordinance.

6. We have considered carefully the decision-making powers of the TA. These powers should be exercised in a transparent manner, after appropriate consultation and in a timely manner. We **propose** that the TA, in exercising his powers under the Telecommunication Ordinance, should be required to give his reasons in writing when making a determination, direction or decision. We do not propose a general obligation of consultation as there are many decisions which need to be taken by the TA on a routine basis. It is already the practice of the TA to consult relevant parties prior to making significant decisions. We **propose** to formalise this by including in the Telecommunication Ordinance provisions on consultations and the requirement to issue guidelines for the exercise of powers, including those relating to the creation of class licences, determination of dominance, formulation of spectrum plans and designation of frequency bands for spectrum utilisation fees.

7. One point raised by Hong Kong Telecom (HKT) was whether the existing or the proposed powers of the TA amounted to judicial powers. We consider that the TA's powers are those necessary for a licensing authority to carry out its functions effectively. Through the requirements for the TA to consult and issue guidelines on the exercise of his power (see paragraph 6 above) and to give reasons in writing for his decision, the TA's powers are subject to sufficient public scrutiny. The existing system whereby appeals against the TA's decisions are by means of judicial review has worked well and has general support in the industry. We do not propose any changes to the present arrangements.

8. We **propose** to add a provision for the Policy Secretary responsible for telecommunications (i.e. the Secretary for Information Technology and Broadcasting (the Secretary)) to issue directions in writing (which will be published in the Gazette) on how the TA is to exercise his functions and powers under the Telecommunication Ordinance. We expect that this power of policy direction would be exercised only rarely, as it is important for the TA to be, and to be perceived to be, independent. One example of a policy direction which may be issued would be to direct the TA not to issue certain categories of licences which the TA would otherwise be empowered to issue during a period specified in the direction.

Licensing

9. Under the present licensing framework provided under the Telecommunication Ordinance, the Chief Executive in Council has a general licensing power and a power to grant exemption from licensing. The TA may grant licences in the forms specified in the Telecommunication Regulations. This licensing framework has been found to be too inflexible and inefficient to cope with developments in the telecommunications industry, especially in the light of rapid technological advances. At the same time, making exemptions from licensing may reduce too much the control over services or equipment which are the subject of exemption orders.

10. To enable the TA to act quickly and responsively to new technology and service offering, we **propose** the following licensing framework -

- (a) the Chief Executive in Council should continue to prescribe the conditions in, and issue, exclusive licences - this is essentially a reserve power as we anticipate that this power will rarely be used;
- (b) the Secretary should prescribe, after consultation with the industry, the general conditions of carrier licences (for example,

FTNS licences and Public Radiocommunication Services (PRS) licences) which the TA may issue¹;

- (c) the TA should issue the carrier licences prescribed by the Secretary, and should prescribe the conditions in, and issue, all other licences provided under the Telecommunication Ordinance; and
- (d) a new system of class licences to cover the supply of certain telecommunications services and to operate certain networks should be introduced. Taking account of the representations received from the industry, we propose that the scope of the intended class licences and their terms and conditions should be determined by the TA after consultation with the industry. Strict time limits on consultation are proposed to ensure that, where warranted, such class licences can be created expeditiously. Under a class licence, there would be no need for a person intending to supply the specific services or to operate the specific facilities to apply for an individual licence, provided that he complies with the conditions of the class licence. If he does not comply with those conditions, then he will be in breach of the Telecommunication Ordinance and be liable to the penalties for operating without a licence. For certain class licences, the TA may require persons intending to operate such facilities or services to register their contact details with him. The class licence system is intended over time to replace the system of Exemption Orders, thus bringing within the licensing framework the subjects of such Orders (e.g. telephone equipment) rather than leaving them outside.

11. The present licensing system is a facilities-based licensing system. Any persons who wish to establish or maintain any means of telecommunications for the purpose of providing public telecommunications services are required to possess a licence - one of the types of licences set out in paragraph 10 above. We **propose** to extend the requirement for licensing to persons who provide non-facilities-based services, such as international calling cards marketed in Hong Kong, to protect consumers. If enacted, our licensing system will become a facilities-based as well as a service-based one.

¹ To facilitate fixed-mobile convergence, we propose a generic definition of "carrier licence" rather than splitting the definition into 'fixed carrier licences' and 'mobile carrier licences'. The existing FTNS and PRS licences will continue to be in place.

Competition Safeguards

D

12. Our proposals on the principles for competition safeguards were announced through the Legislative Council brief issued on 8 February 1999 (at Annex D). Paragraphs 4 to 21 of that Brief refer to our proposals on competition safeguards. Our principal concerns are to consolidate the powers for the promotion of fair competition and to extend these across the whole telecommunications market through incorporating powers now provided in the General Conditions of the FTNS licences into the Telecommunication Ordinance.

13. We **propose** to raise the financial penalties for anti-competitive conduct as set out in paragraph 7 of the brief at Annex D, provide for remedial publicity action and permit the suspension of licences or parts thereof relating to the services that are the subject of the breach. On the additional civil remedies, we **propose** that the remedy be available to all persons who suffer damage arising from the breaches of the provisions prohibiting anti-competitive practice and misleading or deceptive conduct, or licence conditions or directions relating to matters in these provisions. Action must commence within three years after the commencement of the breach or the imposition of penalty by the TA or the court as the case may be, whichever is the later.

14. We have consulted further on the measures to assist the TA in his investigations of breaches of the Telecommunication Ordinance or licence conditions, particularly related to anti-competitive conduct (paragraph 6 of the brief at Annex D). Operational experience has shown that it is necessary to obtain information from customers to determine whether a breach has or has not occurred. Sometimes, this information is provided voluntarily. But where this is not the case, we **propose** that the TA should be able to apply to a magistrate for an order to require the information relevant to the alleged breach to be provided by the non-licensee concerned. This is to provide a safeguard for the non-licensee to ensure that there is independent assessment of the TA's requirement for the requested information. The information obtained would be treated in confidence and would not be released without the consent of the non-licensees.

Interconnection

15. The principles for our proposals on interconnection are set out in paragraphs 22 and 23 of the brief at Annex D. The clarity provided by the proposals will facilitate interconnection agreements on a commercial basis and thus improve competition, particularly in the local fixed telecommunications market.

Access to Buildings and Land

16. The principles for our proposals on access are set out in paragraphs 24 to 26 of the brief at Annex D. The objectives of our proposals are to clarify the existing access right at no charge for persons authorised by the TA - primarily FTNS licensees and the subscription television broadcasting licensee (Hong Kong Cable Television Limited) - and to extend these rights, on payment of a reasonable fee, to public radiocommunication services licensees. On improving the right of access to telecommunications services, we **propose** making it clear that the proposal to void any term in an agreement, deal or contract that restricts the rights of residents to access telecommunications services of their choice is intended only to be prospective in effect. We also **propose** to reinstate the right previously contained in a repealed section of the Telephone Ordinance for FTNS licensees to lay telecommunications lines on the seabed within the waters of Hong Kong and to manage such lines in a similar manner to the way in which telecommunications lines on land are managed. Similar provisions for telecommunications lines in waters outside Hong Kong are contained in the Submarine Telegraph Ordinance.

17. Our policy intention is that there should be ubiquitous coverage for mobile telecommunication services. With eleven mobile phone networks operated by six operators, competition in our mobile radiocommunications market is intense and air-time charges have dropped substantially in recent years. The number of mobile phone users reached 2.86 million at the end of 1998 and is expected to exceed 3 million by mid-1999. The introduction in the next couple of years of the next generation of mobile phones, with their ability to convey large amounts of data, voice and video signals at high speed, will further spur the demand for mobile telecommunications services, which will become an important part of our information infrastructure. Improved access for the installation of base stations and antennae is therefore important for ensuring the availability of quality mobile telecommunications services in Hong Kong.

18. However, mobile telecommunications operators have encountered problems in gaining access to shielded areas of public places (e.g. shopping malls and tunnels) where equipment has to be placed at specific locations in order to provide network coverage. We **propose** that there should be a right, subject to a public interest test and on payment of a reasonable fee (based on costs and a reasonable profit element), for the mobile network operators to gain access to place their telecommunications facilities in order to provide services to such shielded areas. It remains our intention that the mobile network operators should, in the first instance, seek a commercial agreement with the landlords/tunnel operators on access. Only if this failed and the public interest test was met would the TA be empowered to intervene and determine terms.

We believe this strikes the right balance between the various interests involved.

19. The tunnel operators do not favour this approach and have made representations that the proposal may affect their property rights and for which they may seek compensation. We have since obtained legal advice which confirms that our proposals are reasonable and that the grounds on which they seek compensation are not well-founded. Given the increasing importance of mobile radiocommunications services for businesses and domestic use, we consider that the Government should take this further step to help the mobile network operators to provide ubiquitous coverage for mobile networks throughout Hong Kong.

Technical Regulation

20. Following deregulation of the local fixed network market, the Hong Kong Telephone Company no longer certifies telecommunications equipment against the applicable technical standards and specifications. This work is now overseen by the TA, who needs explicit powers in the Telecommunication Ordinance to set such technical standards for telecommunications equipment and to conduct type approval and certification of telecommunications equipment.

Numbering Plan

21. Since we are bringing all provisions relating to telecommunications in existing legislation into the Telecommunication Ordinance, we will re-enact in the Telecommunication Ordinance section 3 of the Telephone Ordinance, under which the TA manages the telecommunications numbering plan for Hong Kong. One new provision is an enabling one for the Secretary to make regulations to allow the TA to auction off "special numbers" (numbers valued by the consumers for their "lucky" properties) and apply the proceeds (less administrative costs) to charitable institutions or to institutions for education, research or development activities connected with telecommunications.

Radio Frequency Spectrum Management

22. The TA has been managing the radio spectrum, but there is no explicit provision in the Telecommunication Ordinance for the powers to plan and manage the radio frequency spectrum and to allocate and re-allocate radio frequency channels for use. Given the growing importance of radiocommunications, new provisions are required to specify the powers of the TA in the planning and allocation of radio spectrum, including his obligations to consult before exercising such powers. Important provisions regarding the

prevention of interference are to empower the TA to give directions to persons causing direct or harmful interference and to require relevant apparatus to be submitted for testing of compliance within specified limits.

23. As radio frequency spectrum is a limited community resource, we **propose** to include an enabling provision for the Secretary to prescribe a spectrum utilisation fee or a method of calculating such fees in excess of costs to promote a more economically efficient utilisation of spectrum.

THE BILL

General matters

24. Under **clause 1**, the Telecommunication (Amendment) Ordinance should come into effect from a day appointed by the Secretary by notice in the Gazette. The short title of the Telecommunication Ordinance is amended under **section 1** in **clause 2** to "Telecommunications Ordinance" to accord with normal usage.

25. **Section 2** in **clause 2** is an interpretation clause. The definition of "carrier licence" allows flexibility to provide for future convergence of fixed and mobile telecommunications so that these two types of services may in future be regulated under similar licences.

Powers of the Telecommunications Authority

26. **Clause 3, sections 6A and 6B** provide for various powers of the TA. **Section 6A** makes it clear that the TA must exercise his powers reasonably and provide reasons in writing for making a determination, direction or decision. There is a power for the Secretary to direct the TA over matters of policy, such directions to be published. **Section 6B** empowers the TA to give written directions to a licensee in relation to the provision of telecommunications services with places outside Hong Kong requiring the licensee not to engage in conduct, etc. which would have the purpose or effect of distorting competition in a telecommunications market.

Licensing

27. **Clause 4, Sections 7 and 7B** provide for the licensing framework described in paragraph 10 above. There are specific provisions requiring the Secretary to consult before making regulations for carrier licences. **Sections 7B and 7C** provide for the creation and variation of class licences respectively. Under **section 7A**, the TA may stipulate special conditions consistent with the

Ordinance. Under **section 7D**, the TA is required to keep a register of class licences and a register of registered licensees. **Section 7E** provides for the TA to issue short term permits not exceeding 6 months in duration. **Section 7O** provides for transitional matters. **Clause 5** stipulates the additional requirement that providers of telecommunications services for business must have a licence. **Clause 17** is a consequential amendment to align with the new licensing framework.

Competition Safeguards

28. **Clause 4, section 7F** further requires a licensee to publish its tariffs in accordance with licence conditions or directions issued by the TA (some licences do not have such conditions). **Section 7G** is an enabling provision for the Secretary to issue regulations on price control. It also provides that the Secretary may issue regulations on tariff control for carrier licensees in a dominant position in a telecommunications market. **Sections 7K, 7L, 7M and 7N** provide for competition safeguards and prescribe the conduct of the TA in enforcing these safeguards. Similar provisions are currently found in the FTNS licences.

29. In **Clause 4, section 7H** prescribes the accounting standards to be adopted by the licensees. **Section 7I** provides for the TA to obtain information from licensees and provides for safeguards on the use of such information. **Section 7J** provides for the TA to inspect the facilities of licensees. **Clause 18, section 35A** provides for the inspection of records.

30. **Clause 22** provides for the strengthened penalties described in paragraphs 7 to 9 of the brief at Annex D. There is also a minor amendment to provide that the fines are to go to the Government (i.e. the General Revenue Account), rather than the TA (i.e. the OFTATF).

Access

31. **Clauses 7(a), 8, 10(b), 11 and 12** seek to provide rights for FTNS licensees to lay telecommunications lines on the seabed.

32. **Clause 7(b)**, which amends section 14 of the Telecommunication Ordinance, provides for the right of a licensee to place and maintain a radiocommunications installation in, over or upon any land, subject to certain conditions. It sets out the circumstances in which the TA may determine the level of fees to be paid for exercising these rights. Improvements to access rights for radiocommunication installations are also provided for under **clauses 8, 9 and 11**.

33. **Clause 13** gives a right of access to public telecommunications services. The right is prospective in effect.

Technical Regulations

(a) Offences

34. **Clause 15** provides for penalties at level 5 and 2-year imprisonment for new offences of unauthorised use of frequencies, unauthorised dealing in radio transmitters and unauthorised modification of radio transmitters.

(b) Technical standards

35. Under **clause 16, section 32D**, the TA is empowered to prescribe standards and specifications relating to telecommunications. New **section 32E** provides for certification requirements. Under new **section 32K**, the TA is empowered to examine competency in operating telecommunications equipment.

(c) Numbering plan

36. Under **clause 16, section 32F** the former section 3 of the Telephone Ordinance is re-enacted. The new **section 32F(5)** provides for the Secretary to issue regulations on the sale of "lucky" telecommunications numbers.

(d) Spectrum management

37. The powers for the TA to manage the radio spectrum are provided under new **sections 32G, 32H, 32I and 32J**. Under new **section 32I**, there is an enabling power for the TA to charge a spectrum utilisation fee.

Universal Service Obligation

38. **Clause 18, section 35B** provides for the TA to require one or more fixed carrier licensees to have a universal obligation to provide a good, efficient and continuing basic service (as defined in section 2 of the Ordinance), reasonably available to all persons in the geographical area of Hong Kong covered by that Universal Service Obligation. At present, only the Hong Kong Telephone Company has a Universal Service Obligation.

Interconnection

39. **Clause 19** seeks to clarify the powers of the TA on interconnection. In particular, the TA may determine interconnection at any technically feasible point. **Clause 20 provides** the TA has power over the sharing of the use of facilities. Similar provisions are currently set out in the FTNS licences. Both clauses also provide for the TA to issue guidelines.

Other Matters

40. **Clause 23** empowers the TA to apply to a magistrate for an order for a non-licensee to provide information to the TA relevant to his functions and provide for the safeguards. **Clause 25** provides for remedies for a person affected by a breach of the competition safeguards.

Consequential and Miscellaneous Amendments

41. The Telephone Ordinance is repealed under **clause 27, section 1 of Schedule 1**. Copies of the provisions amended by **Schedule 1** and **Schedule 2** which deal with consequential and miscellaneous amendments are available for Members' inspection at the Legislative Council Secretariat.

HUMAN RIGHTS IMPLICATIONS

42. The Department of Justice advises that the proposals on amendments to section 14 of the Telecommunication Ordinance to enable, in certain circumstances after the application of a public interest test, the TA to determine what constitutes fair and reasonable charge is consistent with Articles 6 and 105 of the Basic Law. The Bill makes no changes to the Telecommunication Ordinance in respect of appeals against the TA's decisions which remain subject to judicial review. The Department of Justice advises that, to the extent that the TA's decisions relate to matters of policy, they are consistent with Article 14(1) of the International Covenant on Civil and Political Rights in respect of appeal provisions.

BINDING EFFECT OF THE LEGISLATION

43. The current binding effect of the provisions of section 3 of the Telecommunication Ordinance applies to the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

44. The OFTATF will recover the cost of ensuring compliance with the licence conditions from the licence fees collected and the fees from registering class licences, where applicable. Depending on the competition for spectrum, there may be opportunities for revenue generation from spectrum utilisation fees, as determined by the Secretary, part of which will accrue to the General Revenue Account.

ECONOMIC IMPLICATIONS

45. The legislation will promote competition and economic efficiency in the telecommunications industry, thereby providing benefits to that industry, the industries which it underpins and consumers. The ability of the TA to respond quickly to emerging trends and technologies through a more responsive system of licensing will similarly benefit the industry and consumers. Improvements to access for telecommunications will benefit all telecommunications users, who will then be in a better position to choose from competitive suppliers. In the mobile telecommunications field, better access will mean ubiquitous coverage of telecommunications networks. The proposal for regulatory intervention in determining charges for access to shielded areas only if this is in the public interest will benefit the telecommunications industry and users, while providing a reasonable return for the owners of such shielded areas.

ENVIRONMENTAL IMPLICATIONS

46. There are no environmental implications.

PUBLIC CONSULTATION

47. The proposals have been the subject of three rounds of public consultations. We have reflected the comments received in this memorandum and incorporated them where possible.

LEGISLATIVE TIMETABLE

48. The legislative timetable for the Bill will be as follows -

| | |
|--|---------------|
| Publication in the Gazette | 30 April 1999 |
| First Reading and commencement of Second Reading debate | 12 May 1999 |

Resumption of Second Reading debate,
committee stage and Third Reading

to be notified

PUBLICITY

49. A press release will be issued when the Bill is gazetted on 30 April 1999. A spokesman will be made available to answer media enquiries.

ENQUIRIES

50. For any enquiries relating to this Brief, please contact -

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30 April 1999
Information Technology and Broadcasting Bureau
Government Secretariat

TELECOMMUNICATION (AMENDMENT) BILL 1999

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A BILL

To

Amend the Telecommunication Ordinance following the consultation on proposals set out in the consultation paper entitled "1998 Review of Fixed Telecommunications - A Considered View" issued by the Information Technology and Broadcasting Bureau in 1998 with a view to enhancing competition safeguards, improving interconnection and access arrangements to telecommunications services, streamlining licensing procedures and providing the Telecommunications Authority with powers over certain technical areas.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Telecommunication (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.

2. Sections substituted

Sections 1 and 2 of the Telecommunication Ordinance (Cap. 106) are repealed and the following substituted -

"1. Short title

This Ordinance may be cited as the Telecommunications Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise

requires -

"assign" (指配) includes specify;

"associated corporation" (相聯法團), in relation to a licensee, means -

- (a) a corporation over which the licensee has control;
- (b) if the licensee is a corporation -
 - (i) a corporation which has control over the licensee; or
 - (ii) a corporation which is under the same control as is the licensee;

"associated person" (相聯人士) includes -

- (a) where the licensee is a natural person -
 - (i) a relative of the licensee;
 - (ii) a partner of the licensee and a relative of that partner;
 - (iii) a partnership in which the licensee is a partner;
 - (iv) a corporation controlled by the licensee, by a partner of the licensee or by a partnership in which the licensee is a partner;
 - (v) a director or principal officer of a corporation referred to in subparagraph (iv);
- (b) where the licensee is a corporation -
 - (i) an associated corporation;
 - (ii) a person who controls the corporation and where the person is a natural person, a relative of the person;

- (iii) a partner of a person who controls the corporation and, where the partner is a natural person, a relative of the person;
 - (iv) a director or principal officer of the corporation or an associated corporation and a relative of the director or principal officer;
 - (v) a partner of the corporation and, where the partner is a natural person, a relative of the partner;
- (c) where the licensee is a partnership -
- (i) a partner of the partnership and, where the partner is a natural person, a relative of the partner;
 - (ii) a corporation controlled by the partnership, a partner in the partnership or where a partner is a natural person, a relative of the partner;
 - (iii) a corporation of which a partner is a director or principal officer;
 - (iv) a director or principal officer of a corporation referred to in subparagraph (iii);

"Authority" (局長) means the Telecommunications Authority appointed under section 5;

"basic service" (基本服務) means -

- (a) a public switched telephone service including the service connection, continued provision of

connectivity, provision of a dedicated telephone number, an appropriate directory listing (except where the customer otherwise directs), a standard telephone handset without switching capacity (except where the customer elects to provide the handset), standard billing and collection services and relevant ancillary services and facilities necessarily utilized by the licensee;

- (b) a reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access (including intermittent access);
- (c) a reasonable number of public payphones, designed for ease of effective use by the hearing impaired;
- (d) a reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs;
- (e) operator provided directory enquiries, fault reporting, service difficulty and connection services;
- (f) a tropical cyclone warning service;
- (g) a thunderstorm and heavy rain warning service;
- (h) a flood warning service;
- (i) access to a number or numbers for emergency services; and
- (j) such other service, as the Authority may include, under regulations made under section 37;

"carrier licence" (傳送者牌照) 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, but does not include the licences listed in the Schedule;

"carrier licensee" (傳送者牌照持牌人) means the holder of a carrier licence;

"class licence" (類別牌照) means a licence gazetted by the Authority under section 7B;

"communication" (通訊) includes any communication -

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether in the form of speech, music or other sounds; or text; or visual images whether or not animated; or signals in any other form or combination of forms;

"control" (控制), in relation to an associated corporation, means having -

- (a) a beneficial interest in or control over the exercise of 15% or more of the voting power at a general meeting of the corporation; or
- (b) control over the composition of 15% or more of the directors of the board of the corporation;

"customer equipment" (顧客設備) means equipment acquired by a customer of a carrier licensee intended to be connected to the network of that licensee;

- "dominant position" (優勢) means dominant position construed in accordance with the provisions of section 7L and the words "dominance" and "dominant" shall also be construed accordingly;
- "exclusive licence" (專利牌照) means any licence issued on an exclusive basis for operation or provision of telecommunications networks, systems, installations or services;
- "external services" (對外服務) means telecommunications services between Hong Kong and places outside Hong Kong;
- "fixed carrier licence" (固定傳送者牌照) means a carrier licence issued for communication between fixed locations;
- "fixed carrier licensee" (固定傳送者牌照持牌人) means the holder of a fixed carrier licence;
- "harmful interference" (有害干擾) means interference which endangers the safety of life or property or seriously degrades, obstructs, or repeatedly interrupts a telecommunications service lawfully carried on within or outside Hong Kong;
- "interconnection agreement" (互連協議) means an agreement of a type mentioned in section 36A whether made by mutual agreement or pursuant to a determination under that section;
- "interference" (干擾) means the effect of unwanted energy due to any, or a combination of, emission, radiation or induction upon reception in a telecommunications network, system or installation manifested by any performance degradation, misinterpretation or loss of information which could be extracted from that telecommunications network, system or installation in the absence of such unwanted energy;
- "issue" (發出) includes grant;

"licensee" (持牌人) -

(a) means the holder of a licence under this Ordinance;

(b) includes -

(i) the holder of a licence granted under section 8 of the Television Ordinance (Cap. 52) which, by virtue of subsection (3) of that section, is deemed to be a licence granted under this Ordinance;

(ii) a person given a right referred to in section 7B(1);

"message" (訊息) means any communication sent or received by telecommunications or given to a telecommunications officer to be sent by telecommunications or to be delivered;

"network" (網絡) means a telecommunications network;

"number portability" (號碼可攜性) means the ability for a customer of a telecommunications service to retain the number or code assigned to him when he changes the location of use or the provider of that service;

"numbering plan" (號碼計劃) means the Hong Kong telecommunications numbering plan which sets out the plan of numbers and codes used or designed for use or in connection with the establishment, operation and maintenance of any means of telecommunications under -

(a) a licence; or

(b) an order made by the Chief Executive in Council under section 39;

"payphone" (收費電話機) means a telephone connected to a public telecommunications system which cannot be used to make a call

- (other than specified free calls) unless payment can be collected, or authorized, at the time a call is made;
- "public place" (公眾地方) means a place to which the public or a section of the public may or are permitted have access from time to time, whether by payment or not, but does not include a vessel, aircraft, vehicle or other means of transport;
- "public telecommunications service" (公共電話服務) means a telecommunications service which is offered for use to the general public;
- "radiated interference" (輻射干擾) means any interference transmitted other than through a guided medium;
- "radio spectrum" (無線電頻譜) means the range of frequencies within which radiocommunications are capable of being carried out;
- "radio transmitter" (無線電發射器) means any radiocommunications apparatus designed or intended to transmit or emit radio waves;
- "radio waves" (無線電波) means electromagnetic waves of frequency lower than 3000 GHz propagated in space without an artificial guide;
- "radiocommunications" (無線電通訊) means telecommunications by means of radio waves;
- "radiocommunications installation" (無線電通訊裝置) means a radio transmitter, receiver, aerial, support structure, ancillary equipment or apparatus used or intended for use in connection with radiocommunications;
- "relative" (親屬) means the spouse, parent, child, brother or sister of the relevant person (whether of full blood or half-blood or by affinity);

- "Secretary" (政策局局長) means the Secretary of a policy bureau in the Government Secretariat appointed by the Chief Executive for the purposes of the administration of this Ordinance;
- "sound broadcast receiving apparatus" (聲音廣播接收器具) means an apparatus which is capable of receiving sound only, transmitted by means of radiocommunications or by wire for reception by the general public;
- "space object" (空間物體) has the meaning assigned to it in section 2 of the Outer Space Ordinance (Cap. 523);
- "telecommunications" (電訊) means any transmission, emission or reception of communication by means of guided or unguided electromagnetic energy or both, other than any transmission or emission intended to be received or perceived directly by the human eye;
- "telecommunications industry" (電訊業) means the industry comprising the persons who provide or supply telecommunications networks, systems, installations, customer equipment or services;
- "telecommunications installation" (電訊裝置) means apparatus or equipment maintained for or in connection with a telecommunications network, telecommunications system or telecommunications service;
- "telecommunications line" (電訊線路) means any wire, cable, duct, optical fibre, filament, line, pipe, pole, post, tube, conduit, support structure, ancillary equipment or apparatus or other physical medium used or intended for use as a continuous artificial guide for or in connection with telecommunications;

"telecommunications market" (電訊市場) means any market for the provision or acquisition of telecommunications networks, telecommunications systems, telecommunications installations, or customer equipment or services;

"telecommunications network" (電訊網絡) means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both;

"telecommunications officer" (電訊人員) means any person employed in connection with a telecommunications service;

"telecommunications service" (電訊服務) means a service for the carrying of communication by means of guided or unguided electromagnetic energy or both;

"telecommunications system" (電訊系統) means any telecommunications installation, or series of installations, for the carrying of communication by means of guided or unguided electromagnetic energy or both;

"universal service obligation" (全面服務責任) means the provision of a good, efficient and continuous basic service by a carrier licensee subject to a universal service obligation to all persons within the areas of Hong Kong covered by that obligation;

"vessel" (船隻) has the same meaning as defined in the Shipping and Port Control Ordinance (Cap. 313).

(2) Without prejudice to the operation of any other provision of this Ordinance conferring power on the Authority to issue guidelines, the Authority may, for the purpose of providing practical guidance in respect of any requirements under this Ordinance imposed on a person or class of persons, issue such guidelines as in his opinion are suitable for the purpose."

3. Sections added

The following are added in Part II -

"6A. Powers of Authority

(1) The Authority may do all things necessary to be done to perform his functions under this Ordinance.

(2) The Secretary may issue written policy directions to the Authority pursuant to which the Authority is to carry out his functions and exercise his powers.

(3) In exercising his powers under this Ordinance, the Authority when -

(a) forming an opinion or making a determination, direction or decision shall only do so on reasonable grounds and having regard to relevant considerations;

(b) making a determination, direction or decision shall provide reasons in writing for it.

(4) A policy direction issued under subsection (2) may include a direction not to issue, before a date specified in the direction, any new licence of a type which may be issued under section 7(5).

(5) A policy direction issued under subsection (2) shall be published in the Gazette as soon as practicable after its issue.

6B. Powers of Authority in relation to services with places outside Hong Kong

(1) A licensee shall not enter into any agreement or arrangement with a supplier of international public switched services in a place outside Hong Kong the purpose or the effect of which is to substantially distort competition in the supply

of external services between that place, or another place, and Hong Kong.

(2) Where, following consultation with the licensee, the Authority reasonably concludes that an agreement or arrangement substantially distorts competition in the supply of external services between a place, or another place, and Hong Kong, the Authority may give directions to the licensee and the licensee shall comply with such directions given.

(3) The Authority may issue guidelines as to whether any agreement or arrangement has the purpose or effect prescribed by subsection (1).

(4) For the avoidance of doubt, in this section "agreement or arrangement" (協議或安排) includes an agreement, arrangement, understanding or the like in relation to payments between service suppliers whether by way of the international accounting methods or establishing rates, revenue divisions, termination charges, or any other like charge."

4. Sections substituted

Section 7 is repealed and the following substituted -

"7. Issue of licences

(1) Subject to Part IIIA, the Chief Executive in Council may, for an exclusive licence under this Ordinance -

- (a) determine the conditions of the licence including (but not limited to) -
 - (i) the period of validity;
 - (ii) the payment of fees and royalty;
 - (iii) the frequency of any payments;
- (b) grant the licence; and

- (c) publish notice of the grant of the licence as he sees fit.
- (2) The Secretary may by regulations prescribe -
 - (a) the general conditions, including the period of validity, for a carrier licence other than an exclusive licence; and
 - (b) the fees payable including for the grant and renewal of a carrier licence other than an exclusive licence and by way of annual fees.
- (3) Before making a regulation under subsection (2), the Secretary shall -
 - (a) by notice in the Gazette invite members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice; and
 - (b) consider the representations received by the date.
- (4) The Secretary may by order published in the Gazette amend the Schedule.
- (5) The Authority may issue a licence other than an exclusive licence.
- (6) For licences other than exclusive licences and carrier licences, the Authority may determine -
 - (a) the form of licences;
 - (b) the conditions of licences;
 - (c) the period for which a licence is valid;
 - (d) the types of licences, including class licences, to be issued;
 - (e) the fees payable including for the grant and renewal of licences and by way of annual fees.

(7) without limiting the general nature of the conditions that may be prescribed for or attached to a licence, the conditions may relate to -

- (a) the manner of service provision;
- (b) interconnection;
- (c) interference;
- (d) adherence to technical standards;
- (e) compliance with directions, guidelines, codes of practice, regulations, this Ordinance and international obligations;
- (f) universal service obligations;
- (g) accounting practices;
- (h) the provision of information;
- (i) tariffs;
- (j) network coordination;
- (k) protecting customer information;
- (l) prohibiting unfair market practice;
- (m) the regulation of a dominant licensee;
- (n) the provision of performance bonds.

(8) The Authority shall publish in the Gazette the form of a licence he issues together with the general conditions to be imposed under the licence.

(9) The Authority shall maintain a register of licences and general conditions he publishes in the Gazette.

(10) The Authority may authorize the provision of ancillary and associated services under a licence and, where such services are so authorized, the licence shall be deemed to be granted in respect of those services.

7A. Special licence conditions

The Authority may attach special conditions, consistent with this Ordinance and not inconsistent with the prescribed general conditions, to a licence he is empowered to issue, including special conditions on a carrier licence in addition to the prescribed general conditions and which special conditions are to be interpreted subject to the prescribed general conditions.

7B. Class licences

(1) A class licence gives a person the right to carry on the activities specified in the class licence that are prohibited under section 8(1) except under a licence subject to the conditions of the class licence.

(2) The Authority may create a class licence for telecommunications networks, systems, installations or services.

(3) Before creating a class licence, the Authority shall -

(a) by notice in the Gazette invite members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice; and

(b) consider the representations received by the date.

(4) The Authority shall not create a class licence -

(a) for a telecommunications network, system, installation or service that is subject to an exclusive licence; or

(b) for a telecommunications network, system, installation or service subject to the requirement for a carrier licence.

(5) The Authority shall ensure that a class licence is consistent with any general policy directions issued by the Secretary and any regulations made under this Ordinance.

(6) The Authority shall publish a class licence in the Gazette specifying -

- (a) the telecommunications networks, systems, installations or services that eligible persons may supply or use;
- (b) the conditions of the class licence; and
- (c) the qualification that a person is required to possess before he is eligible to be licensed under the class licence.

(7) Without limiting the general nature of the conditions that may be prescribed for or attached to a licence, the Authority may include in the conditions for a class licence -

- (a) the scope of the telecommunications network, system, installation or service;
- (b) technical and operational standards for the supply of the telecommunications network, system, installation or service;
- (c) the manner in which the person is to supply the telecommunications network, system, installation or service;
- (d) the location in which the person is to supply the telecommunications network, system, installation or service;
- (e) the rights of consumers in the supply of the telecommunications network, system, installation or service;

- (f) interconnection requirements for the telecommunications network, system, installation or service;
- (g) a requirement for the person to supply information including technical, financial and accounting information for the telecommunications network, system, installation or service;
- (h) a requirement for the person to publish tariffs for the service or the different classes of service provided under the class licence;
- (i) requirements to ensure fairness and quality of the services supplied;
- (j) requirements to ensure the person complies with fair market conduct;
- (k) a requirement for the person to register with the Authority before the supply of the telecommunications network, system, installation or service can commence;
- (l) a requirement to adhere to the numbering plan;
- (m) a prohibition on the illegal use of the telecommunications network, system, installation or service;
- (n) any safety requirements; and
- (o) any other provision that the Authority considers necessary for the control of activities under a class licence.

7C. Variation of class licence

(1) The Authority may vary the conditions of a class licence by notice in the Gazette.

- (2) The Authority may in varying a class licence -
 - (a) specify further telecommunications networks, systems, installations or services that a person may supply under the licence;
 - (b) vary or revoke the type of telecommunications network, system, installation or service that a person may supply under the licence;
 - (c) add conditions to the licence; and
 - (d) vary or revoke conditions in the licence.
- (3) The Authority shall not vary a class licence so that it is inconsistent with -
 - (a) a general policy direction of the Secretary;
 - (b) the regulations made under this Ordinance; or
 - (c) the rights of an exclusive licensee or a carrier licensee.
- (4) Before varying a class licence, the Authority shall by notice in the Gazette -
 - (a) state that he proposes to vary the class licence specified in the notice;
 - (b) state the subject matter of the variations to the class licence;
 - (c) set out where a member of the public may purchase a copy of the class licence and the proposed variations;
 - (d) invite members of the public who are interested to make representations by a date set out in the notice; and
 - (e) give an address to which a member of the public may send representations about the proposed variation.

(5) A person may make representations to the Authority on the proposed variation to the class licence not later than the date set out in the notice in the Gazette.

(6) Before varying a class licence, the Authority shall consider all representations made by any person.

(7) The Authority may vary a class licence if the requirements of this section are substantially complied with.

7D. Register of class licences

(1) The Authority shall keep a register of the types of class licences he has created.

(2) For those class licences that specify that the licensee shall be registered with the Authority, the Authority shall keep a register of the registered licensees.

(3) The Authority shall keep the registers available for public inspection during the normal business hours of the Authority.

7E. Permits

(1) The Authority may issue a permit to a person to carry out an activity prohibited under section 8 for a period not exceeding 6 months -

- (a) for the purpose of a field test;
- (b) for the purpose of a demonstration;
- (c) in connection with an event; or
- (d) for a purpose that the Authority determines.

(2) The Authority may issue a permit subject to conditions necessary or desirable for the regulation of telecommunications under this Ordinance.

7F. Tariffs

(1) A licensee shall publish its tariffs in accordance with the requirements of its licence or directions issued in writing by the Authority.

(2) A licensee shall include in the published tariffs the terms on which the telecommunications service is provided including -

- (a) a description of the service;
- (b) discounts, allowances, rebates or credits given or allowed on the supply of the service;
- (c) the supply of goods or other services related to the service;
- (d) the payment for goods or other services related to the service; and
- (e) any other relevant information that the Authority considers necessary as a part of the terms and conditions.

(3) A carrier licensee shall not, without the Authority's prior written consent, combine a number of telecommunications services into a single tariff without offering to its customers the services separately at individual tariffs.

(4) The Authority may require a carrier licensee to provide a telecommunications service, which the licensee includes in a tariff for a combination of a number of telecommunications services, separately at a specified single tariff.

7G. Price control

The Secretary may by regulations provide -

- (a) for a fixed carrier licensee who is in a dominant position in a telecommunications market to be

subject to the price control measures that the Secretary determines on the advice of the Authority; and

- (b) for a carrier licensee who is in a dominant position in a telecommunications market specified by the Authority for the purposes of tariff control not to charge more or less than its published tariffs.

7H. Accounting practices

A licensee shall adopt the accounting practices, consistent with accounting practices generally accepted, that the Authority specifies.

7I. Information

(1) A person who provides or offers a public telecommunications service shall supply the Authority in the manner and at the times the Authority requests the information relating to its business that the Authority may reasonably require to perform his functions.

(2) A person shall not refuse to supply information reasonably requested under subsection (1) on the basis that the information is the subject of a confidentiality agreement that prevents the person from releasing the information.

(3) The Authority may disclose information supplied to him under this section subject to the requirement in subsection (4) and if the Authority considers that it is in the public interest to disclose that information.

(4) The Authority shall give a person a reasonable opportunity to make representations on a proposed disclosure of

information obtained under this section before the Authority makes a final decision to disclose the information if the Authority considers that the disclosure -

- (a) would result in the release of information concerning the business, commercial or financial affairs of the person supplying the information; and
- (b) could reasonably be expected to affect adversely the person's lawful business, commercial or financial affairs.

7J. Inspection, etc., of facilities

(1) The Authority may, on giving reasonable prior written notice to a licensee, enter and inspect the offices, premises and places in Hong Kong where the licensee has installed a facility (including equipment associated with the facility), or used for providing services, to verify that the licensee is complying with the licence conditions.

(2) A licensee shall provide and maintain, up to the reasonable technical standards set by the Authority, facilities to enable the Authority to inspect, test, read or measure, as the case may require, any telecommunications installations, equipment (including but not limited to testing instruments), premises or places used or to be used for the installation of a telecommunications facility or the provision of a telecommunications service.

(3) A licensee may, at its option, and shall, on the prior written request of the Authority, and subject to the Authority giving reasonable prior written notice, provide a representative

to be present at any inspection, testing, reading or measurement by the Authority.

(4) The Authority may, on giving reasonable prior written notice to a licensee, direct the licensee to demonstrate that a telecommunications installation complies with the technical requirements imposed under this Ordinance and regulations made under this Ordinance or any other directions that the Authority issues under this Ordinance or regulations made thereunder.

(5) A licensee shall provide adequate testing instruments and operating staff for the purposes of this section and otherwise comply with the directions of the Authority under this section.

7K. Anti-competitive practices

(1) A licensee shall not engage in conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

(2) The Authority in considering whether conduct has the purpose or effect prescribed under subsection (1) is to have regard to relevant matters including, but not limited to -

- (a) agreements to fix the price in a telecommunications market;
- (b) an action preventing or restricting the supply of goods or services to competitors;
- (c) agreements between licensees to share any telecommunications market between them on agreed geographic or customer lines;
- (d) the conditions of relevant licences.

(3) Without limiting the general nature of subsection (1), a licensee engages in conduct prescribed under that subsection if he -

- (a) enters into an agreement, arrangement or understanding that has the purpose or effect prescribed by that subsection;
- (b) without the prior written authorization of the Authority, makes the provision of or connection to a telecommunications network, system, installation, customer equipment or service conditional upon the person acquiring it also acquiring or not acquiring a specified telecommunications network, system, installation, customer equipment or service, either from itself or from another person;
- (c) gives an undue preference to, or receives an unfair advantage from, an associated person if, in the opinion of the Authority, a competitor could be placed at a significant disadvantage, or competition would be prevented or substantially restricted.

(4) The Authority may issue guidelines as to whether any conduct would in his opinion have the purpose or effect prescribed by subsection (1).

7L. Abuse of position

(1) A licensee in a dominant position in a telecommunications market shall not abuse its position.

(2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers.

(3) In considering whether a licensee is dominant, the Authority shall take into account relevant matters including, but not limited to -

- (a) the market share of the licensee;
- (b) the licensee's power to make pricing and other decisions;
- (c) any barriers to entry to competitors into the relevant telecommunications market;
- (d) the degree of product differentiation and sales promotion;
- (e) such other relevant matters as may be stipulated in guidelines concerning the test of dominance issued by the Authority in consultation with the licensees in the relevant telecommunications market.

(4) A licensee who is in a dominant position is deemed to have abused its position if, in the opinion of the Authority, the licensee has engaged in conduct which has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

(5) The Authority may consider conduct to fall within the conduct referred to in subsection (4) as including, but not limited to -

- (a) predatory pricing;
- (b) price discrimination, except to the extent that the discrimination only makes reasonable allowance for differences in the costs or likely

- costs of supplying telecommunications networks, systems, installations, customer equipment or services;
- (c) making conclusion of contracts subject to acceptance by other parties of terms or conditions which are harsh or unrelated to the subject of the contract;
 - (d) arrangements (other than arrangements the subject of an authorization referred to in section 7K(3) (b)) requiring a person seeking the provision of or connection to a telecommunications network, system, installation, customer equipment or service conditional upon the person acquiring it also acquiring or not acquiring a specified telecommunications network, system, installation, customer equipment or service either from the licensee providing the service or from another person;
 - (e) discrimination in supply of services to competitors.

7M. Misleading or deceptive conduct

(1) A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service.

(2) The Authority may issue guidelines as to whether any conduct has the purpose or effect prescribed by subsection (1).

7N. Non-discrimination

(1) Subject to subsection (4) and without prejudice to the operation of section 7K, a licensee who is in a dominant position in a telecommunications market shall not discriminate between persons who acquire the services in the market on charges or the conditions of supply.

(2) Subject to subsection (4), an exclusive licensee or a carrier licensee shall not discriminate between a person who lawfully acquires and uses telecommunications networks, systems, installations, customer equipment or services to provide services to the public and any other person who is not providing a service to the public.

(3) Discrimination includes discrimination relating to -

- (a) charges, except to the extent that the discrimination only makes reasonable allowance for difference in the cost or likely cost of supplying the service;
- (b) performance characteristics; and
- (c) other terms or conditions of supply.

(4) The prohibitions in subsections (1) and (2) apply only where in the opinion of the Authority such discrimination has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

70. Transitional provisions applicable to the repealed section 7

Where, immediately before the commencement of section 4 of the Telecommunication (Amendment) Ordinance 1999 (of 1999), there was in existence a licence granted or deemed to be granted under section 7, then, on and after that commencement, the licence shall, for the unexpired period of validity it had left to run immediately before that commencement and subject to the same conditions to which it was subject immediately before that commencement, be deemed to be a licence granted under this Ordinance, and the other provisions of this Ordinance (including any power under this Ordinance to cancel, withdraw or suspend a licence granted under this Ordinance) shall apply accordingly."

5. Prohibition of establishment and maintenance of means of telecommunications, etc., except under licence

Section 8 is amended -

(a) in subsection (1) -

(i) by adding "or licensed" after "registered";

(ii) by adding -

"(aa) offer in the course of business a telecommunications service; or";

(b) by adding -

"(1A) For the purpose of subsection (1) (aa), a person is to be regarded as offering a telecommunications service if -

(a) he makes an offer which, if accepted, would give rise to an agreement, arrangement or understanding for the provision

of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service; or

- (b) he invites a person to make an offer of the kind referred to in paragraph (a)."

6. Control of use of radiocommunications apparatus on vessel in Hong Kong waters

Section 10 is amended -

- (a) in subsection (3), by repealing "Radiocommunication" and substituting "Radiocommunications";
- (b) in subsection (6), by repealing "INMARSAT" where it twice appears and substituting "Inmarsat";
- (c) in subsection (9) -
 - (i) in paragraphs (a), (b) and (e), by repealing "INMARSAT" and substituting "Inmarsat";
 - (ii) in paragraph (b), by repealing "Maritime" where it twice appears and substituting "Mobile".

7. Power to place and maintain telecommunications lines, etc., on land, etc.

Section 14 is amended -

- (a) in subsection (1) -
 - (i) by adding "or seabed and may enter upon the land or seabed for the purpose of site inspection, or other activities for or

incidental to placement and maintenance of a telecommunications line" after "any land";

- (ii) in paragraph (a), by adding "or seabed" after "land";
- (b) by adding -

"(1A) Notwithstanding any other law, but subject to subsections (1B) and (2), any licensee authorized by the Authority for any particular occasion may -

- (a) place and maintain a radiocommunications installation in, over or upon any land for the purpose of providing a radiocommunications service to a public place;
- (b) enter any such land for the purpose of -
 - (i) inspecting it; or
 - (ii) other activities which are for the purpose of or incidental to the maintenance and placement of the installation.

(1B) The Authority shall not grant an authorization referred to in subsection (1A) -

- (a) unless he is satisfied that the authorization is in the public interest; and

- (b) except after taking into account -
 - (i) whether an alternative location can be reasonably utilized for placing the radiocommunications installation to which the authorization, if granted, will relate;
 - (ii) whether or not there are technical alternatives to the installation;
 - (iii) whether or not the utilization of the public place to which the authorization, if granted, will relate is critical for the supply of the service by the licensee seeking the authorization;
 - (iv) whether or not that public place has available capacity to be so utilized having regard to the current and reasonable future needs of the occupants

- (v) of that public place; and
the costs, time, penalties and inconvenience to the licensee and the public of the alternatives, if any, referred to in subparagraph (ii).

(1C) Paragraph (a) of subsection (1) shall apply to land referred to in subsection (1A) as it applies to land referred to in subsection (1).";

- (c) by repealing subsection (2) and substituting -

"(2) In exercising the powers conferred by subsection (1) or (1A), as the case may be, the Authority or the licensee, as the case may be, shall -

- (a) give reasonable notice to the owner of any land or seabed or to the person in control of any land or seabed of his or its intention to enter upon that land or seabed;
- (b) do as little damage as possible,

and -

- (i) full compensation shall be paid by the Authority, or the licensee, as the case may be, to any person having a lawful interest in the land or seabed, or being lawfully

thereon, who suffers physical damage as a result of the exercise of those powers;

- (ii) where subsection (1A) is applicable, a fee (which may be a once only fee or a monthly or annual fee) shall be paid -

- (A) which is, in the opinion of the Authority, fair and reasonable in all the circumstances of the case; and

- (B) by the licensee to any person having a lawful interest in the land.";

- (d) in subsection (3) -

- (i) by adding "or (1A), as the case may be" after "subsection (1)";

- (ii) in paragraph (b), by adding "or upon the seabed" after "Government land";

- (e) by adding -

"(4) The Authority, or a licensee authorized by the Authority under subsection (1) or (1A), as the case may be, may apply to a magistrate for an order that a person shall not prevent or obstruct the Authority or the licensee, as the case may be, from exercising the powers conferred by that subsection.

(5) Where subsection (1A) is applicable -

- (a) the licensee and the person having a lawful interest in the land concerned shall endeavour to come to an agreement as to the fee to be paid under that subsection by the licensee to that person;
 - (b) in the absence of any such agreement within a reasonable time -
 - (i) the Authority shall determine the fee; and
 - (ii) the fee so determined shall be -
 - (A) fair and reasonable in all the circumstances of the case; and
 - (B) payable in accordance with the terms and conditions specified by the Authority in the determination.
- (6) (a) The Authority may issue a certificate certifying that a licensee has the right of access under subsection (1) or (1A) to the land or seabed specified in the certificate to place and

maintain telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed.

- (b) Where a person having an interest in the land or seabed specified in a certificate referred to in paragraph (a) does not allow the licensee concerned to gain access to the land or seabed for the purpose of placing and maintaining telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed, the licensee may apply to the court for an injunction.
- (c) The Authority may issue guidelines setting out the manner in which the right of access under subsections (1) and (1A) is to be exercised by the licensee with such right.

(7) In subsections (1) and (1A), "land" (土地) does not include land for the exclusive occupation or use of any person whilst the land is being so occupied or used."

8. Removal, etc., of line, post or installation where necessary by reason of use of land, etc.

Section 16(1) is repealed and the following substituted -

"(1) Where any person desires to use land or seabed in a way that makes it necessary to remove to another part of the land or seabed a telecommunications line, post or radiocommunications installation maintained by the Authority or a licensee in, over or upon the land or seabed under section 14 or to alter such telecommunications line, post or radiocommunications installation in any way, he may by written notice served upon the Authority or licensee, as the case may be, require the removal or alteration of the telecommunications line, post or radiocommunications installation."

9. Trees interrupting telecommunications

Section 17(1) is amended by adding "or radiocommunications installation" after "line" where it twice appears.

10. Work affecting telecommunications lines, etc.

Section 18 is amended -

- (a) by adding "or seabed" after "land" wherever it appears;
- (b) in subsections (1) and (2), by adding "or radiocommunications installation" after "line" wherever it appears.

11. Section substituted

Section 19 is repealed and the following substituted -

"19. Power to enter on land, etc., to inspect, repair, etc., telecommunications lines, etc.

The Authority and a licensee may at such times as may be necessary enter upon any land or seabed in, over or upon which he maintains a telecommunications line, post or radiocommunications installation for the purpose of inspecting, repairing, removing or altering the telecommunications line, post or radiocommunications installation."

12. Interpretation

Section 19A is amended -

- (a) by renumbering it as section 19A(1);
- (b) by adding -

"(2) In this Part "seabed" (海床) includes an estuary or arm of the sea or the shore or bed of any tidal waters within the boundaries of Hong Kong."

13. Section added

The following is added in Part IV -

"19B. Right of access to public telecommunications services

(1) A term in a lease agreement, deed of mutual covenant or commercial contract that restricts the right of a resident or occupier, or deprives a resident or occupier of the right, to have access to the public telecommunications services of his choice is void on and after the day on which this section comes into operation.

(2) Subsection (1) shall apply to any agreement, deed or contract entered into before, on or after the day on which this section comes into operation."

14. Part heading amended

The heading to Part V is amended by adding ", ENFORCEMENT" after "OFFENCES".

15. Sections added

The following are added -

"32A. Use of unauthorized frequencies

A licensee who possesses or uses a radio transmitter operating on a frequency, or installed at a location, not authorized under its licence commits an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

32B. Unauthorized dealing in radio transmitters

A licensee authorized to deal in radio transmitters in the course of trade or business -

- (a) who sells or offers to sell or delivers a radio transmitter to a person who is not licensed, or issued with a permit, or exempt from licensing, to possess or use that transmitter;
- (b) who sells or offers to sell or delivers a radio transmitter the sale or delivery of which is prohibited under a condition of the licence; or
- (c) where the licence conditions provide that the sale or delivery of a particular class of radio transmitters shall be recorded in a transaction

register in accordance with the licence conditions, who fails to make the record upon sale or delivery, commits an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

32C. Unauthorized modification of radio transmitters

A person who knowingly, and without lawful excuse, modifies, or causes to be modified, a radio transmitter that is licensed or authorized under a permit under this Ordinance so that the possession or use of the modified radio transmitter contravenes the licence or permit commits an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years."

16. Parts added

The following are added -

"PART VA
TECHNICAL REGULATION

32D. Standards

- (1) The Authority may prescribe standards and specifications of -
 - (a) telecommunications networks, systems, installations, customer equipment and services;
 - (b) other non-telecommunications equipment generating, deliberately or incidentally, radio frequency energy that may cause interference to telecommunications networks, systems,

- installations, customer equipment and services; and
- (c) other non-telecommunications equipment that may suffer interference from telecommunications networks, systems, installations, customer equipment and services,

in pursuit of the following objectives -

- (i) to prevent or reduce radio interference or the risk of interference to telecommunications networks, systems, installations, customer equipment and services;
- (ii) to facilitate correct, efficient or reliable operation of telecommunications;
- (iii) to ensure safety and health of users and personnel affected by electrical voltages or non-ionising electromagnetic radiation from telecommunications apparatus;
- (iv) to ensure that equipment complies with international or recognized industrial standards;
- (v) to ensure the compatibility of the interfacing equipment between 2 or more interconnecting telecommunications networks, systems, installations, customer equipment or services;
- (vi) to ensure the interoperability of customer equipment with the telecommunications system to which it is connected;
- (vii) to ensure an acceptable quality of reception of telecommunications services;

(viii) as a means to achieve the objectives of this Ordinance.

(2) Before prescribing the standards and specifications under subsection (1), the Authority shall consult with the telecommunications industry.

32E. Certification requirements

The Authority may -

- (a) test or require the testing of equipment or installations against prescribed specifications;
- (b) determine the measuring apparatus to be used, the method by which and the conditions under which tests are to be made;
- (c) issue certificates to certify that the equipment or installation complies with prescribed specifications if the Authority is satisfied that the equipment or installation complies with the specifications;
- (d) prescribe the labels to be affixed to the equipment or installation to show that the equipment or installation complies with the prescribed specifications and to impose requirements for securing information to be marked on, to be given in advertisements or to accompany specified telecommunications equipment or a specified installation;
- (e) by order prescribe that equipment or an installation shall not be offered for sale unless the equipment or installation complies with the

- prescribed specifications or bears the prescribed label;
- (f) recover the actual costs incurred plus overhead from persons submitting equipment or installations for testing against the prescribed specifications;
- (g) accredit other organizations or institutions for the purpose of carrying out the responsibilities set out in paragraphs (a) and (c).

32F. Power of Authority in relation to numbering plan

- (1) All powers and privileges relating to or connected with the numbering plan, including its ownership and control, are vested in the Authority.
- (2) The Authority shall promote the efficient and equitable allocation and use of numbers and codes in the numbering plan.
- (3) The Authority may -
 - (a) prepare, specify, approve, publish, administer (including, in particular, allocate, assign, lease or sell the right to use a number or a code, a block or blocks of numbers or a block or blocks of codes), enforce and amend the numbering plan;
 - (b) issue codes of practice relating to the use of numbers and codes in the numbering plan, and any code so issued may include provisions relating to number portability;
 - (c) designate, or approve on request by any person, a number or a code, a block or blocks of numbers or a block or blocks of codes in the numbering plan

to be the subject of special allocation, assignment, lease or sale as provided for under regulations made by the Secretary under subsection (5);

- (d) recover the cost of administration of the numbering plan from the allocation, assignment, lease or sale of right to use numbers and codes in the numbering plan;
 - (e) delegate the administration of the numbering plan or a part of the numbering plan to any person.
- (4) The Authority may issue directions in writing to require a licensee or a person who is exempted from licensing under section 39 to -
- (a) submit information on the utilization of numbers and codes to which it has been allocated or assigned;
 - (b) adhere to the numbering plan; and
 - (c) observe the codes of practice issued by the Authority under subsection (3) (b).
- (5) The Secretary may by regulation -
- (a) provide for -
 - (i) the allocation, assignment, lease or sale, whether by auction, tender or for consideration, or otherwise of;
 - (ii) the amount of fees to be levied for, the right to use a number, a code, a block or blocks of numbers or a block or blocks of codes designated, or approved on request by any person, by the Authority under subsection (3) (c);

- (b) require any proceeds arising out of any allocation, assignment, lease or sale referred to in paragraph (a), less the administrative costs of carrying out the allocation, assignment, lease or sale, to be -
 - (i) either -
 - (A) paid to a charitable institution or an institution carrying out education, or research and development, activities connected with telecommunications; or
 - (B) applied towards promoting education, or research and development, connected with telecommunications; or
 - (ii) paid into a fund established by the Authority for the purpose of holding such proceeds prior to the payment or application of the funds referred to in subparagraph (i);
 - (c) impose requirements on the Authority in relation to the establishment and management of any such fund.
- (6) The amount of any fees prescribed under subsection (5) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to the allocation, assignment, lease or sale of a number or code.

PART VB

MANAGEMENT OF RADIO SPECTRUM AND
PREVENTION OF INTERFERENCE

32G. Spectrum management

(1) The Authority shall promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong.

(2) Before exercising his powers under sections 32H(2) (a) and (b) and 32I(1), the Authority shall consult with the telecommunications industry.

32H. Power to allocate frequency

(1) The Authority may assign -

- (a) frequencies and bands of frequencies in all parts of the radio spectrum used in Hong Kong or on board a ship, aircraft or space object that is registered or licensed in Hong Kong; and
- (b) satellite orbital positions and parameters for satellites registered or licensed in Hong Kong,

and shall keep a central register of the frequencies, bands of frequencies and satellite orbital positions and parameters assigned.

(2) The Authority may -

- (a) subject to the consultation requirement under section 32G(2), divide any part of the radio spectrum into the number of bands of frequencies he thinks appropriate and specify the general purpose for which each band may be used;
- (b) subject to the consultation requirement under section 32G(2), divide a frequency band into the

channels he considers appropriate and specify the general purpose for which each channel may be used;

- (c) assign the frequencies or bands of frequencies to users of radiocommunications apparatus and specify the purpose for which and the conditions under which the frequencies or bands of frequencies are to be used.

(3) Subject to subsection (4), the Authority may vary or withdraw frequencies, bands of frequencies or satellite orbital positions or parameters assigned, or vary the purposes for which and the conditions under which the frequencies, bands of frequencies or satellite orbital positions or parameters are to be used.

(4) The Authority may only exercise its authority under subsection (3) if the Authority has given reasonable notice of the intended variation or withdrawal to the licensee which has been assigned the relevant frequency, band of frequency or satellite orbital position or parameter.

(5) A person shall not, in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong, use a frequency in any part of the radio spectrum unless the frequency is assigned, or located within a band of frequencies assigned, by the Authority or the use is for the purpose and in compliance with the conditions specified by the Authority.

32I. Spectrum utilization fee

(1) Subject to the consultation requirement under section 32G(2), the Authority may be order designate the frequency bands

in which the use of spectrum is subject to the payment of spectrum utilization fee by the users of the spectrum.

(2) The Secretary may by regulation prescribe the level, or the method for determining the level, of spectrum utilization fees.

(3) A spectrum utilization fee may be calculated on the basis of a royalty or any other basis that includes an element in excess of the simple recovery of the cost of providing a service by the Authority.

32J. Interference

(1) A person shall not knowingly, and without lawful excuse, use an apparatus, whether or not it is an apparatus for telecommunications, in a manner that causes direct or indirect harmful interference with any telecommunications service lawfully carried on, or other apparatus for telecommunications lawfully operated, in or outside Hong Kong.

(2) The Authority may, by notice in writing, direct a person possessing an apparatus, whether or not it is an apparatus for telecommunications, to take such measures as the Authority specifies and within the time directed to prevent the interference specified in the notice.

(3) A person who contravenes subsection (1) or fails to comply with the direction in subsection (2) commits an offence and shall be liable on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(4) The Authority may, by order, specify the limits of conducted or radiated interference from any apparatus which is not subject to the licensing requirement under section 8, to

prevent harmful interference with telecommunications networks, systems, installations or services.

(5) The powers of the Authority under Part VA extend to the apparatus mentioned in subsection (4).

(6) The Authority may require an apparatus mentioned in subsection (4) to be submitted to the Authority for testing to verify whether the apparatus complies with the limits specified by the Authority under that subsection.

(7) A magistrate may, if he is satisfied by information on oath that -

(a) access to premises, vessel, aircraft or vehicle has been requested;
or

(b) permission to examine or test any apparatus has been requested, and in either case has been unreasonably refused, issue a warrant empowering the Authority, or an authorized officer, to enter and search the premises, vehicle, aircraft or vessel specified in the warrant and to examine, test and confiscate any apparatus found on or in the premises, vehicle, aircraft or vessel.

32K. Examination, certification and authorization of operating personnel

(1) The Authority may conduct an examination of the competence of a person in the operation of a particular class of apparatus for radiocommunications.

(2) The Authority may issue a certificate of competency to a person whom he considers suitably qualified to certify that the person is competent in the operation of a particular class of apparatus for radiocommunications and may revoke the certificate

issued if he considers that the person holding the certificate is no longer competent in the operation.

(3) A condition of a licence under this Ordinance may require that a particular radiocommunications station or a class of radiocommunications stations must be operated only by persons with the appropriate authority to operate issued by the Authority.

(4) The Authority may issue an authority to operate to a person whom he considers fit to authorize that person to hold the position in a particular radiocommunications station or a class of radiocommunications stations.

(5) The Authority may suspend or revoke such an authority to operate issued if he considers the person holding the authority to operate is no longer fit to hold the position in the radiocommunications station or class of radiocommunications stations concerned.

(6) The Authority may by order provide for the examination of persons in connection with the operation of apparatus for radiocommunications, the issue and revocation of certificates of competency in the operation of apparatus for radiocommunications and the issue, suspension and revocation of authority to operate to hold positions in radiocommunications stations and the fees payable in respect of such examination, certification and authorization."

17. General provisions as to licences, etc.

Section 34 is amended -

(a) by repealing subsections (1), (2) and (3);

(b) by adding -

"(7) In the exercise of the power under subsection (4) by the relevant authority to

cancel, withdraw or suspend a licence, permit, permission or consent granted under this Ordinance, the authority may cancel, withdraw or suspend (at such times and for such period as the authority determines) any part of the licence, permit, permission or consent without affecting the validity of the remaining part of the licence, permit, permission or consent."

18. Sections added

The following are added -

"35A. Inspection of records, documents and accounts

(1) The Authority or a person whom he authorizes in writing may at all reasonable times enter the premises of a licensee and inspect and make copies of, or make or take an abstract of or extract from, a document or an account relating to a telecommunications network, system, installation or service conducted by the licensee.

(2) The Authority or an authorized person in exercising his powers under this section may require a licensee to produce to him the document or account.

(3) To enable the Authority or an authorized person to exercise his powers under this section, a licensee shall give the Authority or authorized person access to the documents or accounts the Authority or authorized person may reasonably require for inspection, and shall produce to the Authority or authorized person the documents or accounts as he may reasonably require.

(4) A document or account includes information recorded by electronic or other means and the licensee's requirement to

provide access to documents and accounts includes a requirement to provide the appropriate system for reading and reducing the information into a written form on paper.

- (5) Where -
- (a) a copy of a document or an account is supplied by a person under this section; or
 - (b) a copy of a document or an account is made under this section, and a facility of a person other than the Authority is used to make the copy,

the Authority shall reimburse the expenses which, in the opinion of the Authority, have been reasonably incurred by the person in making the copy.

(6) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(7) A person who, without reasonable excuse, in purported compliance with a requirement made under this section, produces a document or an account, or gives information, which he knows to be false or misleading in a material particular commits an offence and shall be liable on summary conviction to a fine at level 6 and to imprisonment for 6 months.

35B. Universal service obligation

(1) The Authority may require that one or more fixed carrier licensees have a universal service obligation.

(2) A universal service obligation requires a licensee to ensure that a good, efficient and continuous basic service is, in the Authority's opinion, reasonably available to all persons within the areas of Hong Kong covered by that obligation.

(3) The Authority may establish a system for licensees prescribed by the Authority to meet a reasonable contribution to the cost of providing the universal service obligation and managing the fund established under subsection (4).

(4) The Authority may establish and manage a fund for the purpose of holding the contributions under subsection (3) prior to payment to the carrier licensee with the obligation.

(5) The Authority may -

(a) recover the cost of the management of the fund established under subsection (4);

(b) delegate the management of the fund to any person and prescribe the requirements for the management of the fund."

19. Authority may determine terms of interconnection

Section 36A is amended -

(a) by repealing subsections (1), (2) and (3) and substituting -

"(1) The Authority may determine the terms and conditions of interconnection of the type mentioned in subsection (3D).

(2) The Authority may make a determination on the request of a party to the interconnection or, in the absence of a request, if he considers it is in the interest of the public to do so.

(3) The terms and conditions in a determination may include any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable.

(3A) Without limiting the general nature of subsection (3), the terms and conditions in a determination may include -

- (a) the level of, and the method of calculating, the charges that any party will pay to another;
- (b) the points at which interconnection is to be made;
- (c) the technical standards for interconnection;
- (d) the supply by any party to another of any element of a telecommunications network, system or installation;
- (e) the supply by any party to another of any telecommunications or ancillary service;
- (f) the supply by any party to another of any information necessary for the efficient planning and handling of services through the interconnection;
- (g) the sharing of facilities referred to in section 36AA.

(3B) The charges in a determination may be based on the relevant reasonable costs attributable to interconnection and, in determining the level, or method of calculation, of the relevant reasonable costs attributable to interconnection, the Authority may select from

among alternative costing methods what he considers to be a fair and reasonable costing method.

(3C) The terms and conditions in a determination -

- (a) are deemed to be of the essence of any agreement for the interconnection to which the determination is made unless the Authority otherwise directs for any particular term or condition; and
- (b) override a different intention arising from the provisions of the agreement.

(3D) The type of interconnection includes an arrangement among 2 or more parties for -

- (a) interconnection to and between telecommunication systems or services including -
 - (i) those licensed under section 7, expressed as being licensed under section 7 or 34 or deemed licensed by the Chief Executive in Council under this Ordinance under section 8(3) of the

Television Ordinance (Cap. 52);

- (ii) those of a description mentioned in section 8 (4) (e) and (f);
 - (iii) telecommunications services that are the subject of an order made under section 39;
- (b) access to, or interconnection with, any element of a telecommunications network, system, installation or service on an unbundled basis at any point that is technically feasible;
 - (c) the supply of a telecommunications service in connection with paragraph (a) or (b).

(3E) In this section -

"element" (元件) means any cable, component, unit, equipment, hardware or software used to provide a telecommunications service and includes the facilities referred to in section 36AA;

"interconnection" (互連) means any connection between systems or services or elements of systems or services for the delivery of any communication, message or signal over the connection and, without limiting the

generality of the foregoing, includes interconnection to a system, to a service, between systems, between services and between a system and a service;

"service" (服務) includes elements of a service;

"system" (系統) includes elements of a system.";

(b) by repealing subsections (5) and (6) and substituting -

"(5) Written notice of a determination, or of the completion or adjournment of a determination process commenced, under subsection (1) shall be served personally or by registered post on the parties to the arrangement for interconnection or, in the absence of a concluded arrangement, the parties who in the Authority's opinion would have been parties to the interconnection arrangement had it been concluded.

(5A) Subject to subsection (5B), parties to an interconnection agreement shall ensure a copy of the agreement is filed with the Authority within 14 days of it being made.

(5B) The obligation to file a copy of an interconnection agreement under subsection (5A) may be waived by the Authority in relation to a particular interconnection agreement or interconnection agreements of a certain kind.

(5C) The Authority may publish all or any part of an interconnection agreement if he -

- (a) considers it is in the interest of the public to do so;
- (b) has first given the parties an opportunity to make representations on which parts of the interconnection agreement should not be published; and
- (c) has considered such representations received within the time specified by him.

(5D) A determination takes effect even though it is under review or appeal unless stayed by a court of competent jurisdiction.

(6) The amount of any costs or expenses incurred, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of a determination or determination process under subsection (1) is a debt due to the Government, and is on service of a notice under subsection (5), recoverable from a person on whom notice has been served.";

(c) by adding -

"(9) The Authority may, after consultation with the parties to an interconnection agreement, issue codes of practice

-

- (a) relating to the efficient and reliable provision of interconnection; and

(b) which shall be observed by the parties.".

20. Section added

The following is added -

"36AA. Sharing of use of facilities

(1) The Authority may direct a licensee or a person to coordinate and cooperate with another licensee or another person specified by the Authority in the public interest to share the use of any facility owned or used by it.

(2) Prior to forming an opinion and issuing a direction, the Authority shall provide a reasonable opportunity for the licensee or person, and any other interested party, to make representations on the matter to the Authority.

(3) In considering a direction in the public interest to share a facility, the Authority shall take into account relevant matters including, but not limited to -

- (a) whether the facility is a bottleneck facility;
- (b) whether the facility can be reasonably duplicated or substituted;
- (c) the existence of technical alternatives;
- (d) whether the facility is critical to the supply of service by the licensees and persons;
- (e) whether the facility has available capacity having regard to the current and reasonable future needs of the licensee or person to whom the facility belongs;
- (f) whether joint use of the facility encourages the effective and efficient use of telecommunications infrastructure;

- (g) the costs, time penalties and inconvenience to the licensees and the public of the alternatives to shared provision and use of the facility.

(4) Where another licensee, or another person authorized by the Authority, reasonably requests to share a facility, the licensee or person shall endeavour to come to an agreement with the requesting party on the conditions, including but not limited to providing for fair compensation to the licensee or person for the provision, use or sharing of the facility.

(5) A shared facility may include a building place or premises that is exclusively occupied and operated by one of the parties to the sharing agreement.

(6) If the parties do not reach an agreement within a reasonable time, and the Authority requires shared use of the facility, the Authority may determine the terms and conditions for the shared use of the facility.

(7) For the purposes of this section "facility" (設施) includes -

- (a) a cable, wire, telecommunications line, duct, pit, tunnel and manhole;
- (b) a tower, mast, pole and antenna;
- (c) land, buildings and ancillary equipment at sites on which radiocommunications facilities have been established;
- (d) reasonable space within a carrier licensee's exchange buildings or other sites to locate equipment of another licensee required to establish interconnection between the licensee's and that other licensee's network at the exchange or sites;

- (e) other installations, including but not limited to in-building risers, cable trays and cable entry points into buildings, reasonably necessary for the efficient provision of a telecommunications network; and
- (f) services incidental to the building, place and premises in which the facility is situated that are reasonably necessary or incidental to the efficient operation by all parties to the sharing of the facility."

21. Directions by Authority

Section 36B(1) (a) (iii) and (b) is amended by repealing "section 36A(3)" and substituting "section 36A(3D)".

22. Authority or court may impose financial penalties

Section 36C is amended -

(a) in subsection (1) -

- (i) by repealing "pay to the Authority" and substituting "pay to the Government";
- (ii) by repealing everything after "to comply with" and substituting -

"-

- (a) any licence condition;
- (b) any provision of this Ordinance or any regulation made thereunder; or

- (c) any direction issued in respect of the licensee by the Authority under section 36AA(1) or 36B(1) (a).";
- (b) in subsection (2) -
 - (i) by adding ", or any person referred to in section 36AA(1)" after "section 36B(1) (b)";
 - (ii) by repealing "pay to the Authority" and substituting "pay to the Government";
 - (iii) by adding "any licence condition or" after "requirement of";
- (c) in subsection (3), by repealing "\$20,000", "\$50,000" and "\$100,000" and substituting "\$200,000", "\$500,000" and "\$1,000,000" respectively;
- (d) by adding -
 - "(3A) Without prejudice to subsections (3) and (3B), the Authority may, by notice to a licensee who has committed a breach of a licence condition or provision in this Ordinance or regulation made thereunder, or a breach of a direction, require the licensee -
 - (a) to disclose to the public, to a particular person or to a class of persons, in such manner as is specified in the notice, such information, or information of such a kind, as is so specified, being information that relates to the breach and is in the

possession of the licensee or to which the licensee has access;

- (b) to publish, at its own expense, in newspapers corrective advertisements in such manner, at such times and on such terms as are specified in the notice and for this purpose, the Authority may specify among other things the newspapers in which the advertisements shall be published, the languages that shall be used, the days on which the advertisements shall be published, the content of the advertisements and the size and prominence of the advertisements in the newspapers.

(3B) Where the Authority considers that a financial penalty under subsection (3) is not adequate for a breach referred to in subsection (1) -

- (a) the Authority may -
 - (i) within 3 years of the commission of the breach;
 - or
 - (ii) if the breach comes to the notice of the Authority within 3 years of its

commission, within 3
years of it so coming to
the notice of the Authority,
whichever is the later,

make an application to the Court of First
Instance; and

- (b) upon such application, the Court of First
Instance may, without prejudice to any
powers conferred on the Authority by any
provision of this Ordinance or any
regulation made thereunder or any licence
condition, impose upon the licensee who
has committed the breach a financial
penalty of a sum not exceeding 10% of
the turnover of the licensee in the
relevant telecommunications market in
the period of the breach, or \$10,000,000,
whichever is the higher.";
- (e) in subsection (4) -
 - (i) by repealing "financial";
 - (ii) by repealing "so imposed" and substituting "imposed
under subsection (3) or (3A)";

- (iii) by adding "any licence condition, provision of this Ordinance or regulation made thereunder or" after "requirement of";
- (f) in subsection (5), by adding "up to \$120,000 and the Court of First Instance for penalty above \$120,000" after "District Court".

23. Section added

The following is added -

"36D. Authority may obtain information

(1) If a magistrate is satisfied by information on oath that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the performance of any of the Authority's functions or the exercise of any of the Authority's powers, he may issue an order that the person shall, within the time specified in the order, give the information or document to the Authority in writing or to produce the document to the Authority, as the case requires.

(2) A person commits an offence if he -

- (a) fails to comply with an order issued under subsection (1); or
- (b) in purported compliance with the order issued under that subsection, knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years."

24. Regulations

Section 37(1) (h) and (i) is repealed.

25. Section added

The following is added -

"39A. Remedies

(1) A person who is aggrieved by a breach of section 7K, 7L, 7M or 7N, or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the person who is in breach.

(2) No action may be brought under subsection (1) more than 3 years after -

(a) the commission of the breach concerned referred to in that subsection; or

(b) the imposition of a penalty in relation to the breach by the Authority under section 36C, or, as the case may be, by the Court of First Instance under section 36C(3B),

whichever is the later."

26. Schedule added

The following is added -

"SCHEDULE

[ss. 2(1) & 7(4)]

LICENCES WHICH ARE NOT CARRIER
LICENCES WITHIN THE MEANING OF SECTION 2

1. Public Radiocommunications Service Licence for radio paging services
2. Public Radiocommunications Service Licence for trunked radio services
3. Public Radiocommunications Service Licence for radiolocation services

4. Broadcast Relay Station Licence
5. Broadcast Radio Relay Station Licence
6. Closed Circuit Television Licence
7. Satellite Master Antenna Television Licence".

27. Consequential and miscellaneous amendments

(1) The enactments specified in Schedule 1 are amended as set out in that Schedule.

(2) The titles to the subsidiary legislation set out in Part 1 of Schedule 2 are amended by repealing "**TELECOMMUNICATION**" wherever it appears and substituting "**TELECOMMUNICATIONS**".

(3) The citations to the subsidiary legislation set out in Part 2 of Schedule 2 are amended by repealing "Telecommunication" and substituting "Telecommunications".

(4) The provisions set out in Part 3 of Schedule 2 are amended by repealing "telecommunication" wherever it appears and substituting "telecommunications".

(5) The provisions set out in Part 4 of Schedule 2 are amended by repealing "Telecommunication" wherever it appears and substituting "Telecommunications" except in any case where "Telecommunication" is immediately followed by "Convention".

(6) The provisions set out in Part 5 of Schedule 2 are amended by repealing "TELECOMMUNICATION" wherever it appears and substituting "TELECOMMUNICATIONS" except in any case where "TELECOMMUNICATION" is immediately followed by "CONVENTION".

(7) The provisions set out in Part 6 of Schedule 2 are amended by repealing "International Telecommunication Convention" and substituting "Constitution and Convention of the International Telecommunication Union".

(8) The provisions set out in Part 7 of Schedule 2 are amended by repealing "radiocommunication" wherever it appears and substituting "radiocommunications".

(9) The provisions set out in Part 8 of Schedule 2 are amended by repealing "Radiocommunication" wherever it appears and substituting "Radiocommunications".

(10) The provisions set out in Part 9 of Schedule 2 are amended by repealing "RADIOCOMMUNICATION" wherever it appears and substituting "RADIOCOMMUNICATIONS".

(11) The Authority within the meaning of the principal Ordinance may by order published in the Gazette amend any reference to "telecommunication" or "radiocommunication" in any Ordinance.

SCHEDULE 1
CONSEQUENTIAL AMENDMENTS

[s. 27(1)]

Television Ordinance

1. Grant of licences

Section 8(3) of the Television Ordinance (Cap. 52) is amended by repealing "by the Governor in Council".

Import and Export (Strategic Commodities) Regulations

2. Strategic Commodities

Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg.) is amended, under the heading "*DEFINITIONS OF TERMS*", in the definition of "ITU", by repealing "Telecommunications" and substituting "Telecommunication".

Telecommunication Regulations

3. Citation amended

Regulation 1 of the Telecommunication Regulations (Cap. 106 sub. leg.) is amended by repealing "Telecommunication" and substituting "Telecommunications".

4. Form of Licences

Schedule 3 is amended -

- (a) in the form of the Public Non-exclusive Telecommunications Service Licence, in general condition 2, by repealing "International Telecommunications Convention" and substituting "Constitution and Convention of the International Telecommunication. Union";
- (b) in the form of the Radiodetermination and Conveyance of Commands, Status and Data Licence, in condition 11, by repealing "International Telecommunication Convention" and substituting "Constitution and Convention of the International Telecommunication Union".

Charges for Radiotelegrams Order

5. Repeal

The Charges for Radiotelegrams Order (Cap. 106 sub. leg.) is repealed.

**Telecommunication (Closed Circuit
Television Systems) Regulations**

6. Repeal

The Telecommunication (Closed Circuit Television Systems) Regulations (Cap. 106 sub. leg.) is repealed.

**Telecommunication (Cable and Wireless
(Hong Kong) Limited) (Exemption
from Licensing) Order**

7. Repeal

The Telecommunication (Cable and Wireless (Hong Kong) Limited) (Exemption from Licensing) Order (Cap. 106 sub. leg.) is repealed.

**Telecommunication (Model Control Equipment)
(Exemption from Licensing) Order**

8. Citation amended

Paragraph 1 of the Telecommunication (Model Control Equipment) (Exemption from Licensing) Order (Cap. 106 sub. leg.) is amended by repealing "Telecommunication" and substituting "Telecommunications".

9. Interpretation

Paragraph 2 is amended, in the definition of "spurious emission", by repealing "Telecommunications" and substituting "Telecommunication".

**Telecommunication (Public Radiocommunication Service
Customers) (Exemption from Licensing) Order**

10. Citation amended

Paragraph 1 of the Telecommunication (Public Radiocommunication Service Customers) (Exemption from Licensing) Order (Cap. 106 sub. leg.) is amended by repealing "Telecommunication" and "Radiocommunication" and substituting "Telecommunications" and "Radiocommunications" respectively.

**Telecommunication (Possession and Export of
Radiocommunication Apparatus by Visitors)
(Exemption) Order**

11. Title amended

The title to the Telecommunication (Possession and Export of Radiocommunication Apparatus by Visitors) (Exemption) Order (Cap. 106 sub. leg.) is amended by repealing "TELECOMMUNICATION" and "RADIOCOMMUNICATION" and substituting "TELECOMMUNICATIONS" and "RADIOCOMMUNICATIONS" respectively.

Miscellaneous Licences Regulations

12. Forms

The Second Schedule to the Miscellaneous Licences Regulations (Cap. 114 sub. leg.) is amended, in Form 13, in condition 3, by repealing "Radio Regulations annexed to the International Telecommunication Convention of Buenos Aires, 1952," and substituting "regulations and recommendations annexed to or made under the Constitution and Convention of the International Telecommunication Union".

Telephone Ordinance

13. Repeal

The Telephone Ordinance (Cap. 269) is repealed.

Shipping and Port Control Regulations

14. Interpretation

Regulation 3 of the Shipping and Port Control Regulations (Cap. 313 sub. leg.) is amended, in the definition of "Radio Regulations", by repealing "International Telecommunications convention" and substituting "Constitution and Convention of the International Telecommunication Union".

SCHEDULE 2 [s. 27(2) to (10)]
MISCELLANEOUS AMENDMENTS
PART 1

**REPEAL "TELECOMMUNICATION" AND SUBSTITUTE
"TELECOMMUNICATIONS"**

Telecommunication (Cordless Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

Telecommunication (Radio Receivers) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

Telecommunication (APSTAR-I) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

Telecommunication (Fixed Telecommunication Network Services) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

Telecommunication (APSTAR-IA) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

Telecommunication (APSTAR-IIR) (Exemption from Licensing) Order (Cap. 106 sub. leg.)
Telecommunication (Mobile Earth Stations) (Exemption) Order (Cap. 106 sub. leg.)

PART 2

REPEAL "Telecommunication" AND SUBSTITUTE
"Telecommunications" IN CITATION

Telecommunication (Control of Interference) Regulations (Cap. 106 sub. leg.)
regulation 1.

Telecommunication (Essential Services Corps Fuel Oil Unit) (Exemption) Order (Cap. 106
sub. leg.)

paragraph 1.

Telecommunication (Public Non-exclusive Telecommunications Service Customers)
(Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 1.

Telecommunication (China Light and Power Company Limited) (Exemption from Licensing)
Order (Cap. 106 sub. leg.)

paragraph 1.

Telecommunication (Low Power Devices) (Exemption from Licensing) Order (Cap. 106 sub.
leg.)

paragraph 1.

PART 3

REPEAL "telecommunication" AND SUBSTITUTE
"telecommunications"

Bankruptcy Ordinance (Cap. 6)
Section 30E.

Defamation Ordinance (Cap. 21)

section 2.

Television Ordinance (Cap. 52)

section 2, 8, 10, 17B and 20A and Schedules 1 and 1A.

Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg.)

Schedule 1.

Telecommunications Ordinance (Cap. 106)

Long title and sections 3, 4, 8(1) and (2), 12, 13(1) and (3), 14(1), 17(1), 18(1) and (2), 23, 24, 25, 26, 27, 27A(1), 28, 29, 35(1)(d), 36B(1), 37(1) and 40(2).

Telecommunications Regulations (Cap. 106 sub. leg.)

regulations 2, 11, 12, 13 and 14 and Schedules 1 and 3.

Telecommunications (Control of Interference) Regulations (Cap. 106 sub. leg.)

regulations 1A, 5 and 9.

Telecommunications (Model Control Equipment) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2 and the Schedule.

Telecommunications (Public Non-exclusive Telecommunications Service Customers) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2.

Telecommunications (China Light and Power Company Limited) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 3.

Telecommunications (Low Power Devices) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2 and the Schedule.

Telecommunications (APSTAR-1) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

- paragraph 2.
- Telecommunications (Fixed Telecommunications Network Services) (Exemption from Licensing) Order (Cap. 106 sub. leg.)
 - paragraph 2.
- Telecommunications (APSTAR-IA) (Exemption from Licensing) Order (Cap. 106 sub. leg.)
 - paragraph 2.
- Telecommunications (APSTAR-IIR) (Exemption from Licensing) Order (Cap. 106 sub. leg.)
 - section 2.
- Eastern Harbour Crossing Road Tunnel Regulations (Cap. 215 sub. leg.)
 - regulation 3.
- Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)
 - section 4 and 13.
- Air Pollution Control (Construction Dust) Regulation (Cap. 311 sub. leg.)
 - section 2.
- Arbitration Ordinance (Cap. 341)
 - the Fifth Schedule.
- Merchant Shipping (Safety) (GMDSS Radio Installations) Regulation (Cap. 369 sub. leg.)
 - section 2.
- Roads (Works, Use and Compensation) Ordinance (Cap. 370)
 - sections 13 and 20.
- Tate's Cairn Tunnel Regulations (Cap. 393 sub. leg.)
 - regulation 3.
- Electricity (Exemption) Regulations (Cap. 406 sub. leg.)
 - regulation 2.
- Electricity (Wiring) Regulations (Cap. 406 sub. leg.)

- regulation 2.
- Western Harbour Crossing Regulation (Cap. 436 sub. leg.)
section 2.
- Bills of Lading and Analogous Shipping Documents Ordinance (Cap. 440)
sections 2 and 7.
- Land Drainage Ordinance (Cap. 446)
section 37.
- Tai Lam Tunnel and Yuen Long Approach Road Regulation (Cap. 474 sub. leg.)
section 2.
- Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493)
section 2.
- Environmental Impact Assessment Ordinance (Cap. 499)
Schedule 2 (Part I).
- Railways Ordinance (Cap. 519)
sections 2, 18 and 25.
- Copyright Ordinance (Cap. 528)
sections 8 and 9.
- Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28).

PART 4

REPEAL "Telecommunication" AND SUBSTITUTE "Telecommunications"

- Bankruptcy Ordinance (Cap. 6)
section 30E.

Defamation Ordinance (Cap. 21)
section 2.

Television Ordinance (Cap. 52)
sections 2, 8, 10 and 17B and Schedules 1, 1A and 2.

Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg.)
Schedule 1 (but excluding the definition of "ITU" under the heading
"DEFINITIONS OF TERMS").

Telecommunications Ordinance (Cap. 106)
section 41 is amended by repealing "Telecommunication" where it secondly
appears and substituting "Telecommunications".

Telecommunications Regulations (Cap. 106 sub. leg.)
Schedule 1 (but excluding the definition of "radio frequency co-ordination" in
the Self-Provided External Telecommunication System Licence in Part
II) and Schedule 3 (but excluding condition 6(b) in the forms of the
Self-provided External Telecommunication System Licence and the
Self-provided External Telecommunication System (Short Term)
Licence and general conditions 4 and 10 in the form of the Public
Radiocommunication Service Licence (For Services other than Land
Mobile Service).

Telecommunications (Essential Services Corps Fuel Oil Unit) (Exemption) Order (Cap. 106
sub. leg.)
paragraph 2.

Telecommunications (Public Non-exclusive Telecommunications Service Customers)
(Exemption from Licensing) Order (Cap. 106 sub. leg.)
paragraph 2.

Telecommunications (Cordless Telecommunications Apparatus) (Exemption from Licensing)
Order (Cap. 106 sub. leg.)
paragraphs 2 and 4.

Telecommunications (Public Radiocommunications Service Customers) (Exemption from Licensing) Order (Cap. 106 sub. leg.)
paragraph 2.

Shipping and Port Control Regulations (Cap. 313 sub. leg.)
regulation 6.

Merchant Shipping (Safety) Ordinance (Cap. 369)
section 82.

Merchant Shipping (Safety) (Navigational Equipment) Regulations (Cap. 369 sub. leg.)
regulation 2.

Merchant Shipping (Safety) (Radio Installations) Regulations (Cap. 369 sub. leg.)
regulations 2.

Merchant Shipping (Safety) (GMDSS Radio Installations) Regulation (Cap. 369 sub. leg.)
section 2.

Smoking (Public Health) Ordinance (Cap. 371)
section 13B.

Broadcasting Authority Ordinance (Cap. 391)
sections 2, 9, 11, 14, 16, 19, 20, 24 and 26.

Office of the Telecommunications Authority Trading Fund (Cap. 430 sub. leg.)
Schedule 1.

Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493)
section 2.

Railways Ordinance (Cap. 519)
section 2.

Official Secrets Ordinance (Cap. 521)
section 17.

Copyright Ordinance (Cap. 528)
sections 82 and 259.
Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28).

PART 5

REPEAL "TELECOMMUNICATION" AND SUBSTITUTE
"TELECOMMUNICATIONS"

Television Ordinance (Cap. 52)
Schedule 3.
Telecommunications Ordinance (Cap. 106)
The heading to Part IV.
Telecommunications Regulations (Cap. 106 sub. leg.)
Schedule 3.

PART 6

REPEAL "International Telecommunication Convention"
AND SUBSTITUTE "Constitution and Convention of
the International Telecommunication Union"

Telecommunications Regulations (Cap. 106 sub. leg.)
Schedule 3.
Merchant Shipping (Safety) (Radio Installations) Regulations (Cap. 369 sub. leg.)
regulation 2.
Merchant Shipping (Safety) (GMDSS Radio Installations) Regulation (Cap. 369 sub. leg.)
section 2.

Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478 sub. leg.)

Schedule 3.

PART 7

REPEAL "radiocommunication" AND SUBSTITUTE
"radiocommunications"

Television Ordinance (Cap. 52)

section 2.

Telecommunications Ordinance (Cap. 106)

sections 8, 10, 11, 12 and 22.

Telecommunications Regulations (Cap. 106 sub. leg.)

regulations 2, 3 and 4 and Schedules 1, 2 and 3.

Telecommunications (Control of Interference) Regulations (Cap. 106 sub. leg.)

regulation 2.

Telecommunications (Model Control Equipment) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2.

Telecommunications (Cordless Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2.

Telecommunications (Public Radiocommunications Service Customers) (Exemption from Licensing) Order (Cap. 106 sub. leg.)

paragraph 2.

Telecommunications (Possession and Export of Radiocommunications Apparatus by Visitors) (Exemption) Order (Cap. 106 sub. leg.)

sections 1 and 2.

- Telecommunications (Fixed Telecommunications Network Services) (Exemption for Licensing) Order (Cap. 106 sub. leg.)
section 2.
- Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369 sub. leg.)
the Schedule (Part E, Annex IV, item 1 (o)).
- Merchant Shipping (Safety) (Navigational Equipment) Regulations (Cap. 369 sub. leg.)
regulation 2.
- Merchant Shipping (Safety) (Radio Installations) Regulations (Cap. 369 sub. leg.)
regulations 2 and 28.
- Merchant Shipping (Safety) (GMDSS Radio Installations) Regulations (Cap. 369 sub. leg.)
sections 2, 5, 6, 10, 16, and 17.
- Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation (Cap. 478 sub. leg.)
Schedule 1.
- Legislative Council Ordinance (Cap. 542)
Schedule 1 (item 28).

PART 8

REPEAL "Radiocommunication" AND SUBSTITUTE "Radiocommunications"

- Telecommunication Regulations (Cap. 106 sub. leg.)
Schedules 1 and 3.
- Merchant Shipping (Safety) (Radio Installations) Regulations (Cap. 369 sub. leg.)
regulation 27.

PART 9

REPEAL "RADIOCOMMUNICATION" AND SUBSTITUTE
"RADIOCOMMUNICATIONS"

Telecommunications Regulations (Cap. 106 sub. leg.)
Schedules 1 and 3.

Explanatory Memorandum

This Bill amends the Telecommunication Ordinance (Cap. 106) with a view to enhancing competition safeguards, to improve interconnection and access arrangements to telecommunications services, to streamline licensing procedures and to provide the Telecommunications Authority ("the Authority") with powers over certain technical areas.

2. Clause 2 repeals and replaces sections 1 and 2. New section 1 provides that the Ordinance may be cited as the "Telecommunications Ordinance" in place of the previous citation "Telecommunication Ordinance". New section 2(1) sets out all the definitions of terms used in the Ordinance as amended by the Bill.

3. Clause 3 adds 2 new sections that set out the powers of the Authority.

4. The licensing arrangements are reorganized in clause 4 (new sections 7 to 70). The Chief Executive in Council is to issue exclusive licences. The Secretary (see the definition of Secretary in new section 2(1)) is to specify by regulation the general conditions applicable to carrier licences other than exclusive licences. The Authority will issue all licences other than exclusive licences. The Authority will also specify class licences to regulate non-essential services which do not require the licensee to take up an actual licence if he meets the licence conditions published in the Gazette.

5. The Authority may also issue a permit under new section 7E that will enable the operating of telecommunications equipment for a limited period not exceeding 6 months without the issue of a formal licence.
6. Public telecommunications services will be monitored and regulated under new sections 7F to 7L in areas including tariffs, accounting practices, information, inspection of facilities and consumer protection aspects. Clause 5 adds the requirement that providers of telecommunications services for business are to have a licence.
7. Clauses 7(a), 8, 10 and 11 clarify the power to lay telecommunications lines on the seabed. New section 14(1A) at clause 7(b) provides for the power of licensees authorized by the Authority to have access to land to place and maintain a radiocommunications installation for the purpose of providing a radiocommunications service to a public place. New section 14(2) at clause 7(c) requires a licensee to pay a fee to any person who has a lawful interest in the land on which the licensee has (pursuant to new section 14(1A)) placed a radiocommunications installation.
8. Clause 13 adds new section 19B that gives a right of access to public telecommunications services.
9. Clause 15 introduces 3 additional offences relating to the contravention of licensing requirements, the use of unauthorized frequencies and the unauthorized dealing in radio transmitters.
10. Clause 16 introduces new Parts to the principal Ordinance dealing with technical regulation, including standards and certification requirements, the management of the radio spectrum and prevention of interference, including the power to allocate frequencies, the payment of a spectrum utilization fee and the examination, certification and authorization of operating personnel.

11. Clause 17 amends section 34 as a consequence of the inclusion of new section 34(7).
12. Clause 18 adds new section 35A dealing with the inspection of records, documents and accounts and new section 35B that deals with the universal service obligation for fixed carrier licensees.
13. Clause 19 amends section 36A to clarify the Authority's power to determine the terms and conditions applicable to an interconnection.
14. Clause 20 adds new section 36AA to empower the Authority to direct a licensee to share a facility in certain circumstances.
15. Clause 23 adds new section 36D that enables the Authority to obtain a magistrate's order to obtain information from non-licensees.
16. Clause 25 adds new section 39A giving the right to civil remedies by way of, inter alia, an action for damages or an injunction against any person who is in breach of the principal Ordinance, licence conditions, determinations or directions of the Authority relating to anti-competitive practices, abuse of position, misleading or disceptitive conduct or discrimination.
17. Clause 27 of and Schedules 1 and 2 to the Bill provide for consequential and minor miscellaneous amendments to a number of enactments. It should be noted that section 14 of Schedule 1 repeals the Telephone Ordinance (Cap. 269).

**Relevant extracts from the Telecommunication Ordinance of the sections
which are amended by the Telecommunication (Amendment) Bill**

1. Short title

This Ordinance may be cited as the Telecommunication Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“Authority” (局長) means the Telecommunications Authority appointed under section 5;

“licensee” (持牌人)—

(a) means the holder of a licence under this Ordinance;

(b) includes the holder of a licence granted under section 8 of the Television Ordinance (Cap. 52) which, by virtue of subsection (3) of that section, is deemed to be a licence granted by the Governor in Council under this Ordinance; (*Replaced 38 of 1993 s. 2*)

“message” (訊息) means any communication sent or received or made by telecommunication or given to a telecommunications officer to be sent by telecommunication or to be delivered;

“radiocommunication” (無線電通訊) means communication by radio waves;

“sound broadcast receiving apparatus” (聲音廣播接收器具) means an apparatus which is capable of receiving sound only, transmitted by means of radiocommunication or by wire for reception by the general public; (*Added 2 of 1968 s. 2*)

“space object” (空間物體) has the meaning assigned to it in the Outer Space Ordinance (Cap. 523); (*Added 39 of 1990 s. 2. Amended 65 of 1997 s. 16*)

“telecommunication” (電訊) means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by visual means or by wire or radio waves or any other electromagnetic system;

“telecommunication installation” (電訊裝置) means any apparatus or equipment maintained for or in connection with a telecommunication service;

“telecommunication line” (電訊線路) includes any apparatus or equipment maintained for or in connection with any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire; (*Added 38 of 1993 s. 2*)

“telecommunication officer” (電訊人員) means any person employed in connection with a telecommunication service;

“telecommunication service” (電訊服務) means the provision of facilities for use by members of the public or by any person for the transmission or reception of messages or the provision on loan, lease or hire to members of the public or to any person of apparatus for telecommunication either within Hong Kong or with any place outside Hong Kong;

“vessel” (船隻) has the same meaning as in the Shipping and Port Control Ordinance (Cap. 313); (*Added 69 of 1983 s. 2*)

“wire” (導線) means, in relation to telecommunication, any cable, conduit, duct, fibre, filament, line, pipe or tube maintained for or in connection with telecommunication. (*Added 38 of 1993 s. 2*)

6. Delegation of powers

The Authority may, in writing, delegate to any public officer, either generally or for any particular occasion and either by name or by reference to a public office, such of his powers and functions under this Ordinance as he considers necessary:

Provided that—

- (a) no delegation made under this section shall preclude the Authority from exercising or performing at any time any of the powers or functions so delegated; and
- (b) nothing in this section shall authorize the Authority to delegate to any public officer any power conferred upon him by regulation under section 37 to fix the limits of any electrical or radiated interference in respect of any class or classes of apparatus. (*Replaced 26 of 1966 s. 2*)

7. Power of Governor in Council to grant licences

(1) Subject to Part IIIA, the Governor in Council and, subject to regulations made under section 37, the Authority may, in accordance with this Ordinance, grant to such persons as they think fit licences to establish and maintain any means of telecommunication and to possess and use apparatus for radiocommunication or any apparatus of any kind that generates and emits radio waves. (*Amended 51 of 1989 s. 2; 38 of 1993 s. 3*)

(2) Where a licence has been granted under this section, whether granted by the Governor in Council or by the Authority and is for the time being in force, to any person to establish and maintain any means of telecommunication the Authority may in addition during the period of validity of the licence authorize that person to establish and maintain such ancillary or associated telecommunication services as the Authority thinks fit and the licence shall thereupon be deemed to have been also granted in respect of those services. (*Added 38 of 1993 s. 3*)

8. Prohibition of establishment and maintenance of means of telecommunication, etc., except under licence

(1) Save under and in accordance with a licence granted by the Governor in Council or with the appropriate licence granted by the Authority, no person shall in Hong Kong or on board any ship, aircraft or space object that is registered in Hong Kong— (*Amended 39 of 1990 s. 3; 74 of 1990 s. 104(3)*)

- (a) establish or maintain any means of telecommunication; or
- (b) possess or use any apparatus for radiocommunication or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunication; or
- (c) deal in the course of trade or business in apparatus or material for radiocommunication or in any component part of any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunication; or
- (d) demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunication.

(2) For the avoidance of doubt, it is hereby declared that the fact that the person from whom any apparatus for telecommunication is loaned, leased or hired, or the person maintaining a means of telecommunication of which other apparatus forms part or with which other apparatus is connected, is the holder of a licence granted under this Ordinance, does not exempt the person to whom the apparatus is loaned, leased or hired, or the person maintaining, possessing or using the apparatus forming part of, or connected with, such means of telecommunication, as the case may be, from the necessity to obtain such licence or licences as may be required under this Ordinance.

(3) (*Repealed 40 of 1995 s. 7*)

(4) Notwithstanding anything contained in subsection (1), no licence shall be required under that subsection in respect of—

- (a) any sound broadcast receiving apparatus;
- (b) any material or component part of such sound broadcast receiving apparatus;
- (c) any television receiver;

- (d) any material or component part of a television receiver; (*Added 2 of 1968 s. 3. Amended 17 of 1972 s. 2*)
- (e) any system which, without a change of frequency, carries from a single aerial, by wire or other material substance which does not cross a public street or unleased Crown land, to outlet points in one building or in more than one building if such buildings are owned by the same person television programmes broadcast by any company licensed under the Television Ordinance (Cap. 52); or (*Added 57 of 1973 s. 2*)
- (f) any closed circuit television system consisting of a television transmitter unit, with or without an associated audio system, connected to reception units by wire or other material substance which does not cross a public street or unleased Crown land, if—
 - (i) the system is operated solely for internal information or security communication purposes solely within premises occupied by the person operating the system or for private entertainment purposes in domestic premises occupied by such person; and
 - (ii) no advertising material is transmitted by means of the system, other than such material advertising only the goods or services sold or provided by the person operating the system or which is transmitted free of charge by such person. (*Added 57 of 1973 s. 2. Amended 62 of 1973 s. 2*)

10. Control of use of radiocommunication apparatus on vessel in Hong Kong waters

(1) Save as otherwise provided in this section, no radiocommunication apparatus on board a vessel (other than a ship of war) shall be used while the vessel is in the waters of Hong Kong notwithstanding that a licence, whether granted under this Ordinance or under the law of any other territory, is in force in respect of such apparatus.

(2) When a vessel is under way in the waters of Hong Kong, radiocommunication apparatus on board the vessel may be used to communicate on minimum power with the nearest coast station, or, if communication with the nearest coast station is impracticable and the safe navigation of the vessel so requires, with a more distant coast station or another vessel. (*Amended 69 of 1983 s. 3*)

(3) Radiocommunication apparatus on board a vessel that is in the waters of Hong Kong may be used, for the purpose of summoning assistance on an occasion of danger to the life of any person or to the vessel, to communicate with the nearest coast station or, if communication with the nearest coast station is impracticable, with a more distant coast station or another vessel.

(4) Where a person has been granted a licence for the purposes of section 8(1) to possess or use any apparatus for radiocommunication upon any vessel he may, subject to the terms of his licence, use such apparatus in the waters of Hong Kong for communication with the base station of the radiocommunication system of which the vessel is a mobile station or with another mobile station of that system.

(5) Apparatus for radiocommunication upon any vessel may be used to communicate with a signal station as defined for the purposes of the Shipping and Port Control Ordinance (Cap. 313), or any other station in connection with—

- (a) the services of a pilot or the piloting of a vessel;
- (b) the berthing and unberthing of a vessel;
- (c) the towing or salvage of a vessel; or
- (d) the supply of water or fuel to a vessel:

Provided that nothing in this subsection shall authorize any such apparatus to be used contrary to the provisions of the Shipping and Port Control Ordinance (Cap. 313) or other provision of law regulating the use of such apparatus.

(6) Subject to the terms of any licence relating thereto granted in or outside Hong Kong, a ship earth station may be used to communicate with any coast earth station by means of the maritime mobile satellite service provided by INMARSAT subject to the following conditions—

- (a) the ship earth station shall operate in the maritime mobile satellite frequency band authorized by INMARSAT;
- (b) transmissions shall cease if so required by the Authority by written notice to the master or agent of the vessel;
- (c) the ship earth station shall not be used—
 - (i) in a dangerous goods anchorage as defined for the purposes of the Shipping and Port Control Regulations (Cap. 313 sub. leg.);
 - (ii) when any person is within a 4 metre radius of its antenna.

(7) With the permission in writing of the Authority, radiocommunication apparatus on board a vessel in the waters of Hong Kong may be used for such period and for such purposes as the Authority may permit and, without derogation from the generality of the foregoing, such purposes may include the demonstration of any apparatus, tests in connection with the commissioning of any vessel and use in connection with any event.

(8) Nothing in this section shall apply to the proper operation of—

- (a) any sound broadcast receiving apparatus; or
- (b) any television receiver.

(9) For the purposes of this section—

- (a) “earth station” (地球站) means an earth station approved by INMARSAT;
- (b) “INMARSAT” (國際海事衛星組織) means the International Maritime Satellite Organization established under the Convention on the International Maritime Satellite Organization (Inmarsat) (London 3 September 1976);
- (c) “master” (船長) and “agent” (代理人) shall have the same meaning as in the Shipping and Port Control Ordinance (Cap. 313);
- (d) a vessel is under way when it is not at anchor, or made fast to the shore, or aground;
- (e) a certificate purporting to be signed by the Authority shall be evidence of the relevant maritime mobile frequency band authorized by INMARSAT on the day specified in the certificate.

(Amended 69 of 1983 s. 3)

14. Power to place and maintain telecommunication lines, etc., on land

(1) The Authority, and any licensee authorized by the Authority either generally or for any particular occasion, may place and maintain a telecommunication line, and such posts as may be necessary, in, over or upon any land, subject—

- (a) in the case of unleased Crown land, to the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section; and (*Amended L.N. 291 of 1993*)
- (b) in the case of land vested in or occupied by Her Majesty's naval, military or airforce services, to the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section.

(2) In exercising the powers conferred by subsection (1), the Authority or the licensee, as the case may be, shall—

- (a) give reasonable notice to the owner of any land or to the person in control of any land of his or its intention to enter upon that land; and
- (b) do as little damage as possible,

and full compensation shall be paid by the Authority, or the licensee, as the case may be, to any person having a lawful interest in the land, or being lawfully thereon, who suffers damage as a result of the exercise of those powers. (*Amended 38 of 1993 s. 4*)

(3) So far as may be necessary for the due exercise of the powers conferred by subsection (1), the Authority or the licensee, as the case may be, may alter the position of any pipe or wire, other than a water, gas or electric main, if—

- (a) reasonable notice has been given to the owner of the pipe or wire or the person in control thereof; and
- (b) in the case of a pipe or wire in over or upon unleased Crown land, the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section has been obtained; and (*Amended L.N. 291 of 1993*)
- (c) in the case of a pipe or wire in, over or upon land vested in or occupied by Her Majesty's naval, military or airforce services, the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section has been obtained.

(Amended L.N. 76 of 1982; L.N. 94 of 1986)

16. Removal, etc., of line or post where necessary by reason of use of land

(1) Where any person desires to use land in a way that makes it necessary to remove to another part of the land a telecommunication line or a post maintained by the Authority or a licensee in, over or upon the land under section 14 or to alter such telecommunication line or post in any way, he may by notice in writing served upon the Authority or the licensee, as the case may be, require the removal or alteration of the line or post.

(2) Any expenses incurred by the Authority or the licensee in complying with a requirement under subsection (1) may be recovered from the person who made the requirement.

17. Trees interrupting telecommunication

(1) If a tree standing or lying near a telecommunication line interrupts, or is likely to interrupt telecommunication, a magistrate may, upon application by the Authority or the licensee concerned, as the case may be, order the tree to be removed or otherwise dealt with in such a way as to prevent the interruption, or the likelihood of the interruption, of telecommunication and, if the tree was in existence at the time the telecommunication line was placed in, over or upon the land, may order the Authority or the licensee, as the case may be, to pay to the owner of the tree such sum by way of compensation as he thinks reasonable.

(2) Any order of a magistrate in proceedings under subsection (1) shall be final.

18. Work affecting telecommunication line

(1) Any person who proposes to carry out on any land work that may affect a telecommunication line maintained by the Authority or a licensee in, over, upon or near the land shall give to the Authority or the licensee, as the case may be, notice in writing of his intention to carry out the work.

(2) All reasonable precautions shall be taken in the carrying out of such work to prevent damage to any telecommunication line in, over, upon or near the land, and the Authority or the licensee, as the case may be, may recover from the person on whose behalf the work is carried out any expenses incurred in making good any damage to a telecommunication line caused by a failure to take such precautions.

(3) In any proceedings under subsection (2) for the recovery of the expenses incurred by the Authority or the licensee, it shall be presumed, until the contrary is proved, that the work was carried out on behalf of the owner of the land.

19. Power to enter on land to inspect, repair, etc., telecommunication lines

The Authority and a licensee may at such times as may be necessary enter upon any land, in, over or upon which he maintains a telecommunication line or a post for the purpose of inspecting, repairing, removing or altering such line or post.

19A. Interpretation of “land” in this Part and in section 29

In this Part and in section 29, “land” (土地) includes “common parts” as defined in section 2 of the Building Management Ordinance (Cap. 344).

(Added 38 of 1993 s. 5)

PART V

OFFENCES AND PENALTIES

34. General provisions as to licences, etc.

(1) A licence granted under this Ordinance by the Governor in Council shall be valid for such period, and shall be subject to the payment of such fee, royalty or other charge whatsoever, annually or otherwise, as is specified therein, and shall be subject to such conditions as the Governor in Council may specify and, where the Governor in Council considers it desirable in the public interest, may confer on the person to whom it is granted an exclusive right to maintain any service to the public in connection with which the licence is granted.

(1A) A licence granted under this Ordinance by the Governor in Council may, with the consent in writing of the person to whom it was granted, be amended by order of the Governor in Council. (*Added 92 of 1970 s. 2*)

(1B) Without affecting the generality of subsection (1) or (3), a licence granted under this Ordinance may include a condition that the licensee shall procure, in favour of the Government, a first demand performance bond or bank guarantee, in such sum and in such form as the authority by whom the licence is granted may require, to secure the compliance by the licensee with any condition imposed under subsection (1) or (3). (*Added 38 of 1993 s. 6*)

(2) Every licence granted under this Ordinance by the Authority shall be valid for the period or until the day prescribed by the regulations, but, save as otherwise provided by the regulations, may be renewed for a period of one year at a time.

(3) Any licence, permit, permission or consent granted under this Ordinance by the Authority shall be subject to the conditions (if any) prescribed by or under the regulations and to such other conditions as the Authority specifies on the grant or renewal thereof, being conditions that the Authority considers necessary for the purpose of carrying out the objects of this Ordinance.

(4) Any licence, permit, permission or consent granted under this Ordinance may at any time be cancelled or withdrawn by the authority by whom it was granted, or suspended by such authority for such period, not exceeding 12 months, as the authority specifies, in the event of any contravention by the licensee or the person to whom the permit, permission or consent was granted, as the case may be, of this Ordinance or of any condition to which the licence, permit, permission or consent is subject, and any such licence may be cancelled or suspended at any time by the Governor in Council if he considers that the public interest so requires.

(5) Where any licence, permit, permission or consent granted under this Ordinance is cancelled, withdrawn or suspended, no part of any fee or other sum paid in respect thereof or thereunder shall be refunded.

(6) Nothing in this section applies in respect of a licence granted under—

(a) Part IIIA; or

(b) section 8 of the Television Ordinance (Cap. 52) which, by virtue of subsection (3) of that section, is deemed to be a licence granted by the Governor in Council under this Ordinance. (*Replaced 38 of 1993 s. 6*)

36A. Authority may determine terms of interconnection

(1) The Authority may, in relation to any interconnection of the type mentioned in subsection (3), determine what the terms and conditions of any agreement for that interconnection shall be.

(2) The terms and conditions as manifested in a determination made under subsection (1) shall, unless the Authority in relation to any particular term or condition otherwise directs, be deemed to be of the essence of any agreement for the interconnection in relation to which the determination is made whether or not a different intention appears from the provisions of the agreement.

(3) The type of interconnection referred to in subsection (1) is an arrangement among 2 or more than 2 parties for interconnection to—

- (a) and between telecommunication systems or services licensed under section 7 or, expressed as being licensed in exercise of the powers conferred by sections 7 and 34 or, deemed to be licensed by the Governor in Council under this Ordinance by virtue of section 8(3) of the Television Ordinance (Cap. 52); and
- (aa) and between programme services licensed by the Governor in Council under section 8 of the Television Ordinance (Cap. 52); and (*Added 21 of 1997 s. 18*)
- (b) and between systems of the description mentioned in section 8(4)(e); and
- (c) and between closed circuit television systems of the description mentioned in section 8(4)(f); and
- (d) and between telecommunication services being the subject of an order made under section 39. (*Amended 40 of 1995 s. 8*)
- (e) (*Repealed 40 of 1995 s. 8*)

(4) No determination shall be made under subsection (1) unless the Authority is satisfied that the parties to any arrangement for interconnection of the type mentioned in subsection (3) have been afforded reasonable opportunity to make representations to him as to why a determination should not be made.

(5) Notice in writing of a determination made under subsection (1) shall be served personally or by registered post on the parties to the arrangement for interconnection.

(6) The expenses incurred by the Authority in, or in relation to, a determination made under subsection (1) shall be a debt due to the Crown and, subject to subsection (7), shall, on the service of a notice under subsection (5), be recoverable in the District Court from all or any of the persons on whom notice has been served under that subsection.

(7) It shall be a defence for any person against whom an action is brought under subsection (6) to satisfy the District Court that he or it concurred with the substance of the terms and conditions as manifested in the determination and had given notice in writing of that fact to the Authority not less than 30 days before the service on him or it of a notice under subsection (5).

(8) The Authority may issue guidelines setting out principles governing the criteria for any determination under subsection (1).

(*Added 38 of 1993 s. 7*)

36B. Directions by Authority

- (1) Subject to subsection (2), the Authority may issue directions in writing—
- (a) to a licensee requiring it to take such action as the Authority considers necessary in order for the licensee to—
 - (i) comply with any of the terms or conditions of its licence; or
 - (ii) comply with any provision of this Ordinance or any regulation made thereunder; or
 - (iii) in relation to any interconnection of the type mentioned in section 36A(3), secure the connection of any telecommunication service being the subject of its licence to—
 - (A) any other telecommunication service being the subject of a licence granted under this Ordinance or of an order made under section 39; or
 - (B) a system of the description mentioned in section 8(4)(e); or
 - (C) a closed circuit television system of the description mentioned in section 8(4)(f); and (*Amended 40 of 1995 s. 9*)
 - (D) (*Repealed 40 of 1995 s. 9*)
 - (b) to any person being the operator of—
 - (i) a system of the description mentioned in section 8(4)(e); or
 - (ii) a closed circuit television system of the description mentioned in section 8(4)(f); or
 - (iii) a telecommunication service being the subject of an order under section 39,
requiring that person to take such action as the Authority considers necessary in order to secure, in relation to any interconnection of the type mentioned in section 36A(3), the connection of any such system, closed circuit television system or telecommunication service to—
 - (A) any telecommunication service provided by a licensee under this Ordinance; or
 - (B) any other system of the description mentioned in section 8(4)(e); or
 - (C) any other closed circuit television system of the description mentioned in section 8(4)(f); or
 - (D) any other telecommunication service being the subject of an order made under section 39, (*Amended 40 of 1995 s. 9*)
 - (E) (*Repealed 40 of 1995 s. 9*)

and the licensee or such person shall give effect to such direction.

(2) No direction shall be so issued under subsection (1)(a)(iii) or (b), unless the Authority is satisfied that the licensee or such person has been afforded reasonable opportunity to make representations to the Authority.

(*Added 38 of 1993 s. 7*)

36C. Authority may impose financial penalties

(1) The Authority may, by notice in writing addressed to a licensee, require the licensee to pay to the Authority the financial penalty specified in such notice in any case where the licensee fails to comply with any direction issued in respect of the licensee by the Authority under section 36B(1)(a).

(2) The Authority may, by notice in writing to any person of the description mentioned in section 36B(1)(b), require that person to pay to the Authority the financial penalty specified in such notice in any case where that person fails to comply with the requirement of any direction issued in respect of that person by the Authority under that section.

(3) A financial penalty imposed under subsection (1) or (2) shall not exceed—

- (a) \$20,000 for the first occasion on which a penalty is so imposed;
- (b) \$50,000 for the second occasion on which a penalty is so imposed; and
- (c) \$100,000 for any subsequent occasion on which a penalty is so imposed.

(4) No financial penalty shall be so imposed unless the Authority is satisfied that the licensee or the person, as the case may be, has been afforded reasonable opportunity of complying with the requirement of any direction in respect of which the penalty is sought to be imposed.

(5) A financial penalty imposed under this section shall be a debt due to the Crown and shall be recoverable in the District Court.

(6) The imposition of a financial penalty under this section, in relation to a licence, shall not be construed as affecting the application of section 34(4).

(Added 38 of 1993 s. 7)

37. Regulations

- (1) The Governor in Council may by regulation provide for—
 - (a) the control and conduct of means of telecommunication;
 - (b) the operation and use of apparatus for telecommunication or apparatus that generates and emits radio waves;
 - (c) the prohibition and control of electrical or radiated interference with the working of apparatus for telecommunication;
 - (d) the conditions and restrictions subject to which messages may be transmitted or received;
 - (e) the period for which, and the conditions subject to which, messages and other documents connected with a telecommunication service shall be preserved;
 - (f) fees for searching for messages or other documents connected with a telecommunication service;
 - (g) the licences and permits that may be granted by the Authority and the fees payable on the grant or renewal of any such licences or permits;
 - (ga) in relation to a licence granted under this Ordinance by the Governor in Council—
 - (i) the control to be exercised over; or
 - (ii) the beneficial ownership or control of any of the voting shares in,
the licensee by any other person; (*Added 38 of 1993 s. 8*)
 - (gb) in relation to a licence, permit, permission or consent granted under this Ordinance by the Authority—
 - (i) the control to be exercised over; or
 - (ii) the beneficial ownership or control of any of the voting shares in,
the licensee by any other person; (*Added 38 of 1993 s. 8*)
 - (h) the examination of persons in connection with the operation of apparatus for radiocommunication and the grant and endorsement of certificates of competency in the operation of such apparatus and the fees payable in respect of any such examination;
 - (i) the issue of certificates of competency in radiocommunication and authorities to operate authorizing persons to hold positions in radiocommunication stations and the cancellation or suspension of any such authority.

(2) Regulations made under this section may provide that contravention of specified provisions of such regulations shall be an offence and may provide penalties therefor:

Provided that no penalty so provided shall exceed a fine of \$20,000 and imprisonment for 12 months. (*Amended 18 of 1994 s. 15*)

- (3) Regulations made under paragraph (c) of subsection (1) may—
- (a) constitute the Authority as the sole authority for the making of tests and measurements in respect of electrical or radiated interference;
 - (b) confer upon the Authority the power to determine the measuring apparatus to be used, the method by which and the conditions under which tests are to be made and the manner to be used in computing the amount of any such interference from readings afforded by the measuring apparatus;
 - (c) in respect of any specified class or classes of apparatus confer upon the Authority, with or without restriction, the power to fix, in such manner as may be specified in the regulations, the limits of any such interference at any frequency or within any frequency range, whether in substitution for or by way of amendment of limits, frequencies or frequency ranges specified in any regulations made under that paragraph, or otherwise; and
 - (d) provide for the issue by magistrates of warrants empowering the Authority, or any public officer authorized in writing in that behalf by the Authority, to enter and search any premises, vessel, aircraft or vehicle and to examine and test any apparatus found thereon or therein in cases where access to such premises, vessel, aircraft or vehicle has been demanded, or permission to examine or test any such apparatus has been requested, but in either case has been unreasonably refused.
(Added 26 of 1966 s. 3)

(4) For the purposes of regulations made under subsection (1)(ga) or (gb), “voting shares” (有表決權股份) means shares in the licensee which entitle the registered owner of such shares to vote at meetings of shareholders of the licensee. *(Added 38 of 1993 s. 8)*

CHAPTER 269

TELEPHONE

To consolidate and amend the law relating to the telephone service in Hong Kong.

(Amended 37 of 1993 s. 15)

[1 June 1951]

1. Short title

This Ordinance may be cited as the Telephone Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires-
"Authority" (局長) means the Telecommunications Authority appointed under section 5 of the Telecommunication Ordinance (Cap 106); (Added 37 of 1993 s.2)
"telecommunication service" (電訊服務) has the meaning assigned to it by section 2 of the Telecommunication Ordinance (Cap 106). (Added 37 of 1993 s.2)

3. Power of Authority in relation to numbering plan

(1) All powers and privileges relating to or connected with the numbering plan including the ownership and control thereof shall be vested in the Authority.

(2) The Authority shall promote the efficient and equitable allocation and use of numbers and codes in the numbering plan.

(3) The Authority may-

- (a) prepare, specify, approve, publish, administer (including, in particular, allocate, assign, lease or sell the right to use a number or a code, a block or blocks of numbers or a block or blocks of codes), enforce and amend the numbering plan;

- (b) issue Codes of Practice relating to the use of numbers and codes in the numbering plan, and any Code so issued may include provisions relating to number portability;
- (c) designate, or approve on request by any person, a number or a code, a block or blocks of numbers or a block or blocks of codes in the numbering plan to be the subject of special allocation, assignment, lease or sale as provided for under regulations made by the Secretary for Information Technology and Broadcasting under subsection (5); (Amended L.N. 206 of 1998)
- (d) recover the cost of administration of the numbering plan from the allocation, assignment, lease or sale of right to use numbers and codes in the numbering plan;
- (e) delegate the administration of the numbering plan or a part of the numbering plan to any person.

(4) The Authority may issue directions in writing to require a licensee under the Telecommunication Ordinance (Cap 106) or a person who is exempted from licensing under section 39 of that Ordinance to-

- (a) submit information on the utilization of numbers and codes to which it has been allocated or assigned;
- (b) adhere to the numbering plan; and
- (c) observe the Codes of Practice issued by the Authority under subsection (3)(b).

(5) The Secretary for Information Technology and Broadcasting may by regulation provide for the allocation, assignment, lease or sale, whether by auction, tender or for consideration, or otherwise of, including the amount of fees to be levied for, the right to use a number, a code, a block or blocks of numbers or a block or blocks of codes designated, or approved on request by any person, by the Authority under subsection (3)(c). (Amended L.N. 206 of 1998)

(6) The amount of any fees prescribed under subsection (5) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to the allocation, assignment, lease or sale of a number or code.

(7) In this section-

"number portability" (號碼可攜性) means the ability for a customer of a telecommunication service to retain the number or code assigned to him when he changes the location of use or the provider of that service.

"numbering plan" (電話號碼計劃) means the Hong Kong telecommunications numbering plan which sets out the plan of numbers and codes used or designed for use or in connection with

the establishment, operation and maintenance of any means of telecommunication under-

- (a) a licence, whether granted to the licensee by the Governor in Council or by the Authority under section 7 of the Telecommunication Ordinance (Cap 106); or
- (b) an order made by the Governor in Council under section 39 of that Ordinance;

(Replaced 40 of 1995 ss. 3 & 6)

4. Power of the Secretary for Information Technology and Broadcasting to provide for price control

The Secretary for Information Technology and Broadcasting may by regulation provide for price control arrangements to apply to the Hong Kong Telephone Company Limited for the revision of any charge which the Company may make and collect for the provision of any service in respect of which, immediately before the repeal of section 24 by the Telephone (Amendment) Ordinance 1995 (40 of 1995), a charge was specified by the Authority under subsection (1) of that section, other than the services in respect of which, immediately before the repeal of the Schedule by the Telephone (Amendment) Ordinance 1993 (37 of 1993), a charge was specified in Part II of that Schedule.

(Replaced 40 of 1995 ss. 4 & 6. Amended L.N. 206 of 1998)

4A. (Repealed 40 of 1995 s.5)

5. (Repealed 40 of 1976 s.5)

6-22. (Repealed 40 of 1995 s.5)

22A. (Renumbered 40 of 1995 s.6)

23. (Repealed 40 of 1995 s.5)

24. (Renumbered 40 of 1995 s.6)

25-25A. (Repealed 40 of 1995 s.5)

26-27 (Repealed 40 of 1995 s.5)

- 28.** (Repealed 37 of 1993 s.9)
- 29-36.** (Repealed 40 of 1995 s.5)
- 37.** (Repealed 40 of 1976 s.6)
- 38-44** (Repealed 40 of 1995 s.5)

File ref. : ITBB CR 7/4/6 (99) XIII

LEGISLATIVE COUNCIL BRIEF

1998 Review of Fixed Telecommunications

Principles of Legislative Amendments relating to Competition Safeguards and Improvements to Interconnection and Access Arrangements

INTRODUCTION

The Executive Council has ADVISED and the Chief Executive ORDERED that the Administration should prepare legislation to amend the Telecommunication Ordinance (Cap. 106) to enhance competition_safeguards and improve interconnection and access arrangements for consideration by the Executive Council before we introduce the amendment bill into the Legislative Council.

BACKGROUND

2. On 3 September 1998, we issued "The 1998 Review of Fixed Telecommunications : A Considered View" (the Review) for public consultation. Chapter VI of the Review contained our proposals on regulatory issues requiring amendments to the Telecommunication Ordinance. The public comments received relate primarily to enhanced competition safeguards and improvements to interconnection and access arrangements. We have considered these public comments carefully and arrived at our conclusions as set out below.

Regulatory Issues Requiring Amendment to the Telecommunication Ordinance

3. A summary of the principles for the legislative amendments which we now propose and which have been endorsed by the Executive Council, compared with the original proposals in the Review, is at Annex A. A more detailed analysis is given in the following paragraphs.

Competition Safeguards

(a) General

4. Our proposals in the Review on competition safeguards attracted many comments. Improvements to the competition safeguards were a major concern of the three existing new Fixed Telecommunications Network Service (FTNS) licensees¹. There had been concern that significant powers of the TA over licensees derived from provisions in the licences rather than through the primary legislation. To redress this and to apply competition safeguards to the whole telecommunications industry, we proposed that the provisions in the licences relating to competition safeguards should, with suitable amendments, be placed in the principal Ordinance. The industry generally welcomed this incremental approach based on familiar powers but with uncertainties removed. We have adopted a broadly similar approach in the concurrent Review on Television Policy. We therefore consider that the TA and the Broadcasting Authority (BA), which are familiar with regulating their respective industries, should continue to do so. We do not consider it advisable to set up an authority, encompassing both broadcasting and telecommunications, at the present time.

5. A major concern of the three existing new FTNS licensees related to the speed with which complaints about the dominant operators' activities could be investigated and remedies (and penalties) determined. Bringing the provisions relating to competition safeguards into the principal Ordinance and clarifying the powers of the TA in this respect will reduce the time taken by the TA in investigating and considering alleged breaches and reaching a decision. Fairness in decision-making is equally important and we will ensure that this is not compromised. The major concern of Hong Kong Telecom (HKT) over this proposal was that the competition safeguards, which are derived primarily from the FTNS licence conditions, are outdated and penalise too heavily the dominant operator (i.e. HKT itself) at the expense of consumer benefit.

6. Taking into account these comments, we are now working on a number of measures which are intended to assist the TA in his investigations. For example, we are considering with the Department of Justice whether it would be appropriate for the TA to have the power to apply to a magistrate for a warrant to seek information about such anti-competitive practices from non-licensees

¹ These are Hutchison Communications (Hong Kong) Limited (Hutchison), New T & T Hong Kong Limited (New T&T) and New World Telephone Limited.

(e.g. customers). The TA will also educate the industry and consumers on the competition safeguards.

(b) Penalties

7. A major concern of respondents was that the penalties for the breaching of licence conditions were too low, even with the proposed ten-fold increase in penalties (from \$20,000 to \$200,000 for the first occasion of a failure to comply; \$50,000 to \$500,000 for a second; and \$100,000 to \$1,000,000 for a third and subsequent occasions.). We have examined the penalties available in other jurisdictions where the penalties for breaching competition safeguards relate to the economic benefits derived by the transgressor company or the harm caused to the competitors and consumers. We have concluded that the maximum penalty which the TA should be empowered to make should be increased to \$1 million per breach. But for cases where the TA considers the maximum penalty which he can impose insufficient, he should be able to pass the case to the Court of First Instance which would be empowered to -

- (i) determine, if appropriate, the case; and
- (ii) impose fines of up to 10% of the turnover of the company in the concerned market segment in the relevant period or \$10 million per breach, whichever is the higher.

We also consider that the TA should have powers to compel the licensees to take remedial publicity action and that he should be able to suspend that part of a licence to which the breach relates. Consequently the licensee may find that for the period of suspension, some of the hitherto licensed services or means of telecommunication are prohibited.

8. The three existing new FTNS licensees commented that under our original proposal on civil remedies, there would be a two-step process for bringing a civil action. A person would only be able to bring such an action after a failure to comply with the TA's Determination. We put forward this two-step process-Determination and the contravention-after consultation, and in order to reduce excessive litigation. But to take account of the further views expressed, we now consider that the civil remedy should be available concurrently with the TA's Determination, in particular, where the Determination relates to breaches of competition safeguards or to deceptive practices. The intention is that a plaintiff

would be able to recover his actual financial loss arising directly from the civil wrong. The details are being worked out in consultation with the Department of Justice.

9. There were some concern on whether the power of the TA to levy penalties and to investigate cases was appropriate. We consider that this is a proper function given by statute for a regulatory authority to maintain order in its field. For instance, in Hong Kong the BA has the power to investigate complaints as well as to impose a financial penalty. In the UK, the telecommunications industry regulator, OFTEL, will also be given the power to impose a financial penalty under the Competition Act approved by the UK Parliament. The European Commission also has powers to impose a financial penalty.

(c) Anti-competitive Practices

10. On our proposal to introduce a new provision, based on General Condition 15 of the FTNS licence (see Annex B), only HKT has commented. HKT opined that given the subjectivity inherent in the provision "in the opinion of the Authority" and the lack of appeal on merits, the powers of direction of the TA and the third party right of action (see paragraph 21 below) would create an unjust regulatory environment. However, our proposal was that the TA might issue guidelines as to whether any conduct would in his opinion have the purpose or effect of anti-competitive conduct. Indeed, the TA has already issued similar guidelines under current legislation which bind his action and if the TA should deviate from these guidelines, it would run the risk of judicial review. In this respect, the TA acts as objectively as possible, but total objectivity is not possible to set out in statute in advance to cope with the varied conditions of the market. HKT's other point seemed to be related to the lack of general competition law in Hong Kong and that the telecommunications sector had been unfairly singled out for the sectoral application of competition law. However, it has long been a policy that this sector should be subject to such regulatory control because of the characteristics of this market and one of the purposes of the proposed legislation is to bring the competitive safeguards provisions currently set out in the FTNS licence into the principal Ordinance.

(d) Abuse of Position

11. We proposed a provision based on General Condition 16 (see Annex B) of the FTNS licence to apply only to a dominant operator in a telecommunications market. At present only HKT is dominant in the fixed telecommunications market. There is no dominant operator in the mobile telecommunications market. It is possible in the future that an operator will gain dominant operator status in the other telecommunications market segments.

12. HKT was the only respondent to comment directly on this proposal. While it appeared from HKT's general comments that the other FTNS licensees were satisfied with the provision in the FTNS licence on which this proposal was based, these other FTNS licences wanted investigations of abuse of position completed more quickly and offences penalised more heavily. Another concern was to ensure that affiliates of a dominant operator were not used to circumscribe dominant operator control, e.g. to provide a free fixed line with the purchase of mobile telecommunications services or Internet services.

13. In its submission, HKT was keen to restrict the application of dominance to the particular market segment in which it was dominant. This generally accords with our intention - we do not intend to place dominant operator control over Hong Kong Telecom CSL (HKTCSL) on the grounds that the Hong Kong Telephone Company (HKTC) is dominant in the fixed market. But HKT's proposals went too far and could allow, for instance, HKTCSL to promote services in a market in which its affiliate, HKTC, is dominant-one of the concerns of the new FTNS operators. HKT suggested that the TA should be empowered to issue guidelines as to the conduct which would amount to an abuse of position. We have no objection to this. HKT further suggested that the TA should have regard to relevant economic principles in coming to a decision. This would not be acceptable if it were to refer to only one set of economic principles, but we can countenance a reference to the TA selecting from alternative economic methods an appropriate method that is reasonable and fair.

(e) Misleading or Deceptive Conduct

14. We proposed a provision that licensees should not engage in misleading or deceptive conduct. HKT suggested that the TA might issue guidelines on what would constitute misleading or deceptive conduct. This is acceptable to us. HKT suggested to restrict deceptive conduct to deceiving end-users. This is

unacceptable. Although our main focus is on protecting end-users, we cannot agree to standing by while other users are subject to misleading or deceptive conduct (ultimately it may be customers of those users who suffer).

(f) Non-discrimination

15. We proposed a new provision based on General Condition 20(4) (see Annex B) of the FTNS licence which would only apply to exclusive licensees or carrier licensees which were in a dominant position. HKT did not consider this necessary as, in its view, it was duplicative of the provision in paragraphs 10 and 14 above, and the Australian law on which our provision was based had been repealed. However, HKT also recognised that the provision was to address a feature of Hong Kong's telecommunications market and had suggested various changes. One of HKT's suggestions was to allow it to promote service to disadvantaged persons on more favourable terms. There are some attractions to this - for example, in providing cheaper full services for the elderly living alone or cheaper Internet services to schools. But we have to recognise that competitive advantages may be obtained from offering such services, and costs would have to be at least at Long Run Average Incremental Costs (LRAIC) level.

(g) Powers of the TA in relation to services with places outside Hong Kong

16. We propose a new provision based on Special Condition 3 (see Annex B) of the FTNS licence of HKT and Special Condition 18 (see Annex B) of the Public Non-exclusive Telecommunications Services licence for external telecommunications services to provide for the TA to give directions to a licensee in relation to places outside Hong Kong such that any arrangement the licensee may make, for instance with an affiliate, does not have the purpose or effect of distorting competition.

(h) Tariffs

17. We proposed a provision based on General Condition 20 (see Annex B) of the FTNS licence to require licensees to publish tariffs and not to charge more than those tariffs. A dominant operator would also not be able to price below these tariffs or the set discounts. Although the proposal was based on an existing provision, it had attracted highly divergent views, with New T & T suggesting that the tariffing process for dominant operator should be strengthened and HKT suggesting that the regulation should be relaxed. In addition, in the past both

Hutchison and New T & T had suggested that licensees should not have an obligation to publish tariffs. On the latter, we disagree as such publication provides basic consumer protection by establishing a maximum price for the service.

18. In theory as competition develops, tariffing rules should get more relaxed and, as in Australia, wither away. However, HKT has in the past year offered services for which it had not yet received approval, to the detriment of its competitors. New T & T proposed that a dominant operator should not offer a tariff for a service unless that tariff had been approved by the TA. This we are considering. New T & T further suggested that the TA should have the power to review a tariff at any time. We consider that under our provisions, the TA will have such a power, if the tariffs are at that stage distorting competition or constitute an abuse of position (whether too low or too high a tariff in the changed circumstances since the last approval). There is no need for a separate power.

19. Regarding the speed with which tariffs are approved, the TA is consulting the industry on proposals to streamline the tariffing procedures. It will issue a Statement on this after the consultation exercise.

(i) Price Control

20. We proposed to re-enact section 3 of the Telephone Ordinance to permit the Secretary for Information Technology and Broadcasting to provide for price control. HKT argued that the price-capping regime envisaged by this provision was out of step with developments in the telecommunications market. It also argued that the proposal was inconsistent with clause 2.1(b) of the Framework Agreement by which the Government agrees not to exercise this form of price control on exchange line rental, and to repeal the Telephone Regulation. We do not accept that argument, but agree that it would be unlikely for us to use this power for as long as the Framework Agreement is in operation (i.e. until September 2006).

(j) Remedies

21. We proposed a new provision to allow persons affected by a breach of the Ordinance to bring an action for damages. This provision would permit an action to be taken after a TA Determination, particularly Determinations which

related to breaches of competition safeguards or deceptive practices. HKT wanted this remedy available only for breaches occurring not more than 12 months after the TA's direction. There may be some merit in a provision for the discharge of a direction following a breach; for instance, if the company concerned becomes no longer dominant. But there seems no need to place a statutory limit on this.

Interconnection and access to telecommunications services

(a) Interconnection

22. The three new FTNS licensees generally welcomed the proposals for amendments to the Telecommunication Ordinance in order to clarify the powers of the TA on interconnection. The clarifications we propose are that the TA be given unequivocally the powers to make a Determination on interconnection at any technically feasible point, (i.e. including the local loop,) and on such terms (including those which are cost-based) as appear to the TA to be fair compensation for access to and use of the appropriate part of the network or line. The new FTNS licensees continued to express concern about the way in which Type II interconnection had been frustrated by the excessively slow manner in which Hong Kong Telecom (HKT) has implemented the existing interconnection agreements. HKT for its part had found it difficult to accept that Type II interconnection as practised in Hong Kong was a legitimate solution to a policy concern to speed up network roll-out. There is now a new spirit of co-operation in the industry. HKT and the existing three new FTNS licensees are, in a process mediated by the TA, drawing up a code of practice for the implementation of Type II interconnection agreements to speed up the process. We expect this new code to be completed very soon.

23. In March 1998, HKT put forward proposals under the Framework Agreement between HKT and the Government on the surrender of Hong Kong Telecom International's licence, which would have allowed 54% of residential customers and 50% of business customers to be accessed by the existing new FTNS licensees using Type II interconnection. Only Hutchison took up this offer and it was able to access 24% of lines by 31 December 1998. The new spirit of co-operation referred to in paragraph 22 above will pave the way for the three new FTNS licensees to make better use of Type II interconnection and thus increase effective competition.

(b) Access to buildings and land

24. Under section 14 of the Telecommunication Ordinance, the TA may authorise a licensee to place and maintain telecommunication lines upon land which, by virtue of section 19A, includes the “common parts” of buildings. When a licensee is so authorised by the TA, the licensee has a right under section 14 to enter the land to place and maintain telecommunication lines. However, there is no specific provision in section 14, or elsewhere in the Ordinance, for the enforcement of such a right. If the developer, landlord or other person with the appropriate interest in the land does not allow the licensee to exercise its right, the licensee has to apply for a court order to enforce the right. The TA has no jurisdiction over the developer, landlord or other person with the appropriate interest in the land as they are not licensees.

25. Many submissions to the Review referred to difficulties in gaining access into buildings to extend the coverage of the fixed networks because of failure to obtain the necessary cooperation from the developers and landlords. They complained about discriminatory treatment of fixed network operators in some cases and the lack of expeditious and certain channels to enforce the right under section 14. Difficulties in building access had been cited as one of the major factors contributing to the slow development of competition in the supply of local fixed lines. We propose to amend section 14 to empower the TA to intervene if the licensees encounter difficulties in enforcing the right of access. Specifically, we propose that the TA should be empowered to issue a certificate certifying that a licensee has the right of access under section 14 to land specified in the certificate in order to place and maintain telecommunication lines in, over or upon the land. The certificate would be sufficient evidence of the rights of the licensee and if the person with the appropriate interest in the land does not allow the licensee access it would be open for the licensee to apply to the court for an injunction. The usual penalties will apply if the injunction is not heeded.

26. We propose to create a right, on payment, for mobile communication service provider to enter land to place their telecommunications facilities. The same procedure for gaining quicker access if the person with the interest in the land creates difficulties is proposed. We are also in discussion with Planning Department on measures to speed up planning approval for placing mobile communications equipment.

27. The existing section 14 requires licensees entering land to do as

little damage as possible and to pay full compensation for any such damage. The intention behind the latter requirement is for the licensee to make good the physical damage promptly. We intend to clarify that damage in this instance refers to physical damage only. As mentioned above, under the Telecommunication Ordinance land is broadly defined - there is no limitation to the common parts of buildings. It certainly is not, though, the intention of the TA or any licensee to possess authority to enter residential accommodation or general business premises. The intention is to allow telecommunications companies to lay lines and to place equipment in the common parts of buildings or land, particularly in shielded places like shopping malls and tunnels, and this will be made clear in amendments to the Telecommunication Ordinance.

HUMAN RIGHTS IMPLICATIONS

28. The Department of Justice will consider and advise on the legislative proposals to amend the Telecommunication Ordinance and any other related Ordinances to ensure that the proposals are implemented in a way which is consistent with the human rights provisions in the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

29. The cost of monitoring the competition safeguards will be recovered from the licence fees.

ECONOMIC IMPLICATIONS

30. The proposals to enhance competition safeguards and improve interconnection and access arrangements will ensure a level playing field for all operators and provide benefits to consumers, including businesses.

ENVIRONMENTAL IMPLICATIONS

31. The proposal has few environmental implications. The clarification of powers relating to interconnection may result in fewer road openings as more efficient use is made of the existing networks.

PUBLIC CONSULTATION

32. The proposals have been the subject of two rounds of industry

consultations and one round of public consultation. We have incorporated the comments received where appropriate and are prepared to consider further comments in the course of preparing the draft amendment legislation.

PUBLICITY

33. We will issue a paper on 8 February 1999 on the proposed amendments to the Telecommunication Ordinance for discussion at the Legislative Council Panel on Information Technology and Broadcasting that day, to be followed by a stand-up press briefing. We will at the same time issue a detailed press release on our regulatory proposals. The Director-General of Telecommunications will be available as a spokesman on the matter.

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8 February 1999
Information Technology and Broadcasting Bureau
Government Secretariat

**Policy decisions on regulatory issues raised in the
1998 Review of Fixed Telecommunications**

| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
|----------------|--|---|
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I. Policy Matters

| | | |
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| Licensing of external services operators | 1. External telecommunications services licences should be issued on demand, effective from 1 January 1999. | Proposal endorsed. This decision was announced on 22 October 1998. As of 4 February 1999, OFTA had issued 47 such licences and another 47 applications were being processed. |
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II. Regulatory Matters

a) Competition

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| Competition safeguards | 2. To bring the provisions relating to competition safeguards currently set out in the licences into the principal Ordinance. | Proposal endorsed. |
| | 3. To empower the Telecommunications Authority (TA) to apply to a magistrate for a warrant to seek information from non-licensees in discharging his regulatory functions. | Proposal endorsed. Details being worked out. |

| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
|---|---|---|
| Abuse of dominant position | 4. To include a provision based on General Condition 16 of the FTNS licence on the abuse of market position to apply only to a dominant operator in a telecommunications market. | Proposal endorsed. TA should be empowered to issue guidelines on the kind of conduct which would amount to an abuse of market position. |
| | 5. To include a provision based on General Condition 20(4) of the FTNS licence on non-discrimination which would only apply to exclusive licensees or carrier licensees which are in a dominant position. | Proposal endorsed. |
| Misleading or deceptive conduct | 6. To include a provision that licensees should not engage in misleading or deceptive conduct. | Proposal endorsed. TA should be empowered to issue guidelines on what constitutes misleading or deceptive conduct. |
| Powers of the TA in relation to services with places outside Hong Kong | 7. To include a provision based on Special Condition 3 of the FTNS licence of Hong Kong Telecom (HKT) and Special Condition 18 of the Public Non-exclusive Telecommunications Services licence for external telecommunications services to empower the TA to give directions to a licensee in relation to communications with places outside Hong Kong such that any arrangement the licensee may make does not have the purpose or effect of distorting competition. | Proposal endorsed. |

| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
|----------------------|--|--|
| Tariffs | 8. To include a provision based on General Condition 20 of the FTNS licence to require licensees to publish tariffs and not to charge more than those tariffs. | Proposal endorsed. |
| Price control | 9. To re-enact from section 3 of the Telephone Ordinance to permit the Secretary for Information Technology and Broadcasting to provide for price control. | Proposal endorsed. |
| Penalties | 10. To increase ten-fold the penalties for failure to comply with directions issued by the TA to remedy a breach of a licence condition or a provision of the Ordinance or Regulation; or to secure the connection of a telecommunications service to another. | The TA should be empowered to impose a penalty of up to \$1 million per breach. The TA may impose a penalty upon establishment of a breach of licence condition, not only after the breach of a direction. For cases where the TA considers the maximum penalty which he can impose insufficient, he should be able to pass the case to the Court of First Instance which would be empowered to (i) determine, if appropriate, the case; and (ii) impose fines of up to 10% of the turnover of the company in the concerned market segment in the relevant period or \$10 million per breach, whichever is higher. |
| | 11. No proposal. | The TA should be empowered to compel the licensees to take remedial publicity action. |

| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
|-----------------|--|--|
| Remedies | <p>12. No proposal.</p> <p>13. To allow a third party affected by cases where the TA has issued a direction to require a person to stop a breach and yet that person has failed to comply with the TA's direction and the third party suffers damages as a result, to seek civil remedies for damages.</p> | <p>The TA should be empowered to suspend that part of a licence to which the breach relates.</p> <p>Proposal to give a third party the right to seek civil remedy was endorsed. Government should consider making the civil remedy immediately available upon establishment of a breach of the Ordinance, licence conditions or determination. The cause of civil remedy should be narrowed down to breaches of competition safeguards and to deceptive practices.</p> |

b) Interconnection and access

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|------------------------|---|---------------------------|
| Interconnection | <p>14. To empower the TA unequivocally to make a Determination on interconnection at any technically feasible point and on such terms as appear to the TA to be fair compensation for access to, and use of, the appropriate part of the network or line.</p> | <p>Proposal endorsed.</p> |
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| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
|---|--|---|
| Review of Delivery Fees | 15. To draw up the interconnection arrangements for external telecommunications services so as to provide the FTNS operators with sufficient revenue to cover all relevant costs of carriage of external telecommunications services on the local networks, including the appropriate cost of capital reflecting the risk involved in investing in the local infrastructure, such costs to be assessed on a forward-looking basis. | Proposal endorsed. The TA issued a Statement on the Delivery Fees Review on 25 November 1998. |
| Access to buildings and land | 16. To create a right under section 14 of the Telecommunication Ordinance, subject to public interest test and on payment of a reasonable fee, for mobile telecommunications service providers to enter land to place their telecommunications facilities. | Proposal endorsed. Government would also clarify that - a) the intention of section 14 of the Telecommunication Ordinance is to allow telecommunications companies to lay lines and to place equipment in the common parts of buildings or land; and b) "damage" in section 14 of the Telecommunication Ordinance refers to physical damage only. |

| Subject | Proposals raised in the 1998 Review of Fixed Telecommunications | Policy decisions endorsed by the Executive Council |
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| Right of access to Telecommuni- cation Services | 17. To provide that any term in an agreement, deed or contract that restricts the right of the residents to access telecommunications services of their choice is void. | c) the TA is to be empowered to intervene if the licensees encounter difficulties in enforcing their right of access, by issuing a certificate which should form the basis of a court order to enforce the right. Proposal endorsed. |

**Extracts from the FTNS licence and the
Public Non-exclusive Telecommunications Service (PNETS) licence
for external telecommunications services**

General Condition 15 of the FTNS licence

15. (1) (a) A licensee shall not engage in any conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in the operation of the Service or in any market for the provision or acquisition of a telecommunication installation, service or apparatus.
- (b) Conduct which the Authority may consider has the relevant purpose or effect referred to in subparagraph (a) includes, but is not limited to -
- (i) collusive agreements to fix the price for any apparatus or service;
 - (ii) boycotting the supply of goods or services to competitors;
 - (iii) entering into exclusive arrangements which prevent competitors from having access to supplies or outlets;
 - (iv) agreements between licensees to share the available market between them along agreed geographic or customer lines.
- (2) In particular, but without limiting the generality of the conduct referred to in paragraph (1), a licensee shall not -
- (a) enter into any agreement, arrangement or understanding, whether legally enforceable or not, which has or is likely to have the purpose or effect of preventing or substantially restricting competition in any market for the provision or acquisition of any telecommunication installations, services or apparatus;
 - (b) without the authorization of the Authority, make it a condition of the provision or connection of telecommunication installations, services or apparatus that the person acquiring such telecommunication installations, services or apparatus also acquire or not acquire any other service or apparatus either from itself or of any kind from another person; or
 - (c) give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a significant competitive disadvantage or competition would be prevented or substantially restricted within the meaning of paragraph (1).

General Condition 16 of the FTNS licence

16. (1) Where the licensee is, in the opinion of the Authority, in a dominant position with respect to a market for the relevant telecommunications services, it shall not abuse its position.
- (2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers. In considering whether a licensee is dominant, the Authority will take into account the market share of the licensee, its power to make pricing and other decisions, the height of barriers to entry, the degree of product differentiation and sales promotion and such other relevant matters which are or may be contained in guidelines to be issued by the Authority.
- (3) (a) A licensee which is in a dominant position within the meaning in paragraph (1) shall be taken to have abused its position if, in the opinion of the Authority, it has engaged in conduct which has the - purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunication installations, services or apparatus.
- (b) Conduct which the Authority may consider to fall within the conduct referred to in subparagraph (a) includes, but is not limited to -
- (i) predatory pricing;
 - (ii) price discrimination;
 - (iii) the imposition of contractual terms which are harsh or unrelated to the subject of the contract;
 - (iv) tying arrangements;
 - (v) discrimination in supply of services to competitors.

General Condition 20 of the FTNS licence

20. (1) The licensee shall publish and charge no more than the tariffs for the Service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the Service.
- (2) Publication shall be effected by -
- (a) submission for publication in the Hong Kong Government Gazette and by sending a copy to the Authority on or before the date on which the licensed service is to be introduced;
 - (b) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and
 - (c) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.
- (3) Where the licensee provides customer equipment integral to the provision of a telecommunication service to its customers, the tariff shall clearly state the price of the customer equipment separately from the charges for the telecommunication service.
- (4) The licensee shall not offer any discount to its published tariffs for a particular telecommunication service provided under this licence or customer equipment subject to paragraph (3) (other than a discount calculated in accordance with a formula or methodology approved by the Authority and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that telecommunication service.
- (5) The licensee shall not, without the approval of the Authority, bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.
- (6) In this General Condition, "a dominant position" has the meaning described by General Condition 16(2).

Special Condition 3 of the FTNS licence of HKT

- 3.1 The Licensee shall not enter into any agreement or arrangement with a supplier of international public switched services in a place outside the Hong Kong Special Administrative Region the purpose or the effect of which is to substantially distort competition in the supply of external services between that place, or another place, and the Hong Kong Special Administrative Region.
- 3.2 For the avoidance of doubt, "agreement or arrangement" in sub-clause 3.1 above includes an agreement, arrangement, understanding or the like in relation to payments between service suppliers whether by way of the international accounting methods or establishing rates, revenue divisions, termination charges, or any other like charge.
- 3.3 Where, following consultation with the licensee, the Authority reasonably concludes that an agreement or arrangement substantially distorts competition in the supply of external services between a place, or another place, and the Hong Kong Special Administrative Region, the Authority may give reasonable directions to the licensee and the licensee shall comply with such directions given.

Special Condition 18 of the PNETS licence for external telecommunications services

18. (1) The licensee shall not enter into any agreement or arrangement with a supplier of international public switched services in a place outside Hong Kong the effect of which is to effectively and substantially distort competition in the supply of external services between that place, or another place, and Hong Kong.
- (2) For the avoidance of doubt, "agreement or arrangement" in paragraph (1) above includes an agreement, arrangement, understanding or the like in relation to payments between service suppliers whether by way of the international accounting methods or establishing rates, revenue divisions or terminating charges, or any other like charges.
- (3) Where, following consultation with the licensee, the Telecommunications Authority reasonably concludes that an agreement or arrangement substantially distorts competition in contravention of paragraph (1), the Telecommunications Authority may give directions to the licensee for the purpose of ensuring compliance with paragraph (1) and the licensee shall comply with such directions given.