

**A comparison of the existing licence conditions  
and the improved regulatory regime proposed in the  
Telecommunication (Amendment) Bill 1999**

At the Bills Committee meeting held on 23 February 2000, a Member enquired on the effect of the new section 7O as introduced by the Telecommunication (Amendment) Bill 1999, having regard to the effect of the Bill on existing licensees.

2. As explained by the Administration, the new section 7O seeks to provide for the transitional arrangement for existing licences granted before the commencement of the Bill. The existing licences would continue to be effective throughout their respective validity periods notwithstanding the new licensing regime being introduced by the Bill. In other words, the licence conditions of those existing licences would **not** be changed upon the commencement of the Bill.

3. With the passage of the Bill, existing licensees would operate under an improved regulatory environment. The Bill seeks to, amongst other things, enhance competition safeguards, improve interconnection and access arrangement to telecommunication services, streamline licensing procedures and provide the Telecommunications Authority (TA) with powers over certain technical matters. The pro-competition safeguards under the new sections 7K to 7N, for example, aim to consolidate TA's regulatory powers through incorporating powers now provided in the existing licence conditions of the Fixed Telecommunication Network Service (FTNS) licences and extend them across the whole telecommunications market (please see Legislative Council Brief on "Telecommunication (Amendment) Bill 1999" issued on 30 April 1999"). Recent developments in the telecommunications industry also illustrate the importance of having an up-to-date pro-competition regime to safeguard the level playing field amongst the industry players.

4. The improved regulatory system proposed in the Bill was subject to extensive consultation with the industry and the public. We conducted the first public consultation exercise on the legislative amendments to the Telecommunication Ordinance in 1996, and following revisions, a further consultation paper on the proposed legislative amendments were circulated

in December 1996. In April 1998, we issued the paper “The 1998 Review of Fixed Telecommunications – A Consultation Paper”. The Bill was subsequently introduced to LegCo after the conclusion of “The 1998 Review of Fixed Telecommunications – A Considered View”. Our proposals have general support from the licensees and the users of telecommunications services. Our response to specific comments on different provisions in the Bill raised at the Bills Committee and by the various deputations are set out in our Bills Committee papers. A summary of deputations’ views and relevant comments (including the administration’s and Legal Services Division’s) is set out in Bills Committee paper CB(1) 372/99-00(02) dated 15 November 1999.

5. There are over 30 different types of licences under the Telecommunication Ordinance. General conditions of all licences are prescribed in Telecommunications Regulations and all major licences are published in OFTA's home page at <http://www.ofta.gov.hk>. To facilitate discussion at the Bills Committee, we have made at Annex A a comparison of the improved regulatory regime under our Bill and the key licence conditions (under the new section 7, section 35A, section 36A and section 36AA) of the following from three major licences for public telecommunication services -

- Fixed Telecommunication Network Services (FTNS) Licence
- Public Radiocommunication Service (PRS) Licence (e.g. mobile phone and paging services)
- Public Non-Exclusive Telecommunications Service (PNETS) Licence (e.g Internet access services and external telecommunications services)

Most of the other licences (e.g. mobile radio system licence (MRSL) for private systems) do not involve the provision of public telecommunication services. Hence all competition provisions do not apply. These licences already contain provisions allowing for inspection of facilities.

Information Technology and Broadcasting Bureau  
29 February 2000

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In the Telecommunication (Amendment) Bill 1999**

<b>New Sections in Telecommunication (Amendment) Bill 1999</b>	<b>FTNS Licence</b>	<b>PRS Licence</b>	<b>PNETS Licence</b>
Section 7F - Tariffs	Similar provision to publish tariffs is already in General Condition 20.	Existing licences contain no provision to publish tariffs. A licensee will have to publish its tariffs only if directed by the Telecommunications Authority.	Existing licences contain no provision to publish tariffs. A licensee will have to publish its tariffs only if directed by the Telecommunications Authority.
Section 7G - Tariff controls	The existing dominant operator in the market is already subject to price control under General Condition 20.	Existing licences have no price control over dominant operators.  The new section 7G empowers the Policy Secretary to make regulations to provide for a carrier licensee in a dominant position in a telecommunications market for the purposes of tariff control not to charge more or less than its published tariffs.	The new section 7G applies only to fixed carrier or carrier licensees in a dominant position. It does not apply to PNETS licensees.

<b>New Sections in Telecommunication (Amendment) Bill 1999</b>	<b>FTNS Licence</b>	<b>PRS Licence</b>	<b>PNETS Licence</b>
Section 7I - Information	Similar provision is already in General Condition 18.	Similar provision is already in Special Condition 14 of the licences for personal communications services.	Similar provision is already in special conditions of the licences.
Section 7J - Inspection, etc., of Facilities	Similar provision is already in General Condition 9.	Similar provision is already in Special Condition 9 of the licences for personal communications services.	Similar provision is already in special conditions of the licences.
Section 7K - Anti-competitive Practices	Similar provision is already in General Condition 15.	Similar provision is already in Special Condition 12 of the licences for personal communications services.	Similar provision already exists under General Condition 7. Some PNETS Licences contain provisions under special conditions similar to new section 7K.
Section 7L - Abuse of Position	Similar provision is already in General Condition 16.	Existing licences do not contain similar provision. If an operator becomes dominant in the market, it would be subject to the provision under section 7L.	Existing licences do not contain similar provision. If an operator becomes dominant in the market, it would be subject to the provision under section 7L.
Section 7M - Misleading or Deceptive Conduct	Not a new provision as the licensee should not engage in misleading or deceptive conduct otherwise it would	Not a new provision as the licensee should not engage in misleading or deceptive conduct otherwise it would	Not a new provision as the licensee should not engage in misleading or deceptive conduct otherwise it would be

<b>New Sections in Telecommunication (Amendment) Bill 1999</b>	<b>FTNS Licence</b>	<b>PRS Licence</b>	<b>PNETS Licence</b>
	be in breach of General Condition 10(1) - providing the service in a manner satisfactory to the Telecommunications Authority.	be in breach of General Condition 3 - providing the service in a manner satisfactory to the Telecommunications Authority.	in breach of General Condition 1 - providing the service in a manner satisfactory to the Telecommunications Authority.
Section 7N - Non-Discrimination	Similar provision is already in General Condition 16(3)(b)(ii).	Existing licences do not contain similar provision. If an operator becomes dominant in the market, it would be subject to the provision under section 7N.	Existing licences do not contain similar provision. If an operator becomes dominant in the market, it would be subject to the provision under section 7N.
Section 35A - Inspection of Records	Similar provision is already in General Condition 19.	Similar provision is already in Special Condition 15 of the licences for personal communications services.	Similar provision is already in special conditions of licences.
Section 36A - Interconnection	Similar provision is already in General Condition 13 as well as the existing sections 36A and section 36B of the Telecommunication Ordinance <sup>1</sup>	Similar provision is already in the existing sections 36A and section 36B of the Telecommunication Ordinance.	Similar provision is already in the existing sections 36A and section 36B of the Telecommunication Ordinance.

<sup>1</sup> The new section 36A aims to clarify the powers of the TA on interconnection. In particular, the TA may determine interconnection “at any point that is technically feasible”.

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Section 36AA - Sharing of Facilities	Similar provision is already in General Condition 31	Existing licences do not contain similar provision. Under the new section 36AA, licensees will be directed to share facilities only if commercial negotiations fail and the public interest tests (Section 36AA(3)) are satisfied.	No impact as section 36AA is unlikely to be applied to the PNETS Licensees who are service providers, not facilities providers.

Note : Relevant licences can be downloaded from OFTA's Home Page at <http://www.ofa.gov.hk>.