

OUTLINE OF PRESENTATION BY TUNNEL OPERATORS TO BILLS
COMMITTEE OF LEGCO ON 6 SEPTEMBER 1999

WHY THE PROPOSED RIGHT OF ACCESS TO TUNNELS FOR MOBILE
OPERATORS AND FEE DETERMINATION UNDER THE
TELECOMMUNICATION (AMENDMENT) BILL 1999 IS WRONG

Introduction

- We note the Government's objective to maintain fair competition among suppliers of telecommunications services and we support the opening up of the telecommunications market in Hong Kong.
- The proposed amendment to give mobile phone operators a statutory right of access to BOT (Build, Operate and Transfer) tunnels is not necessary or does not add to achieving this objective. Moreover, the proposal is unreasonable and unfair, both to the tunnel operators and users.

BOT tunnel companies governed by relevant Ordinances and project agreements

- Each BOT tunnel company is governed by its own Ordinance and project agreement.
- Every BOT tunnel Ordinance contains specific provisions that consent from tunnel operators is required to install utility facilities in tunnels.

Under existing commercial agreements there is no problem gaining access

- BOT tunnel operators have always been committed to allowing access by mobile operators which helps to maintain a competitive edge.
- Accordingly, access to all BOT tunnels has been given and related commercial agreements between all BOT tunnel and mobile phone operators already exist.
- These agreements were reached following arm's length negotiation between individual companies.
- The existing arrangement works very well and should be retained.

Proposal contrary to free market economy

- The proposed amendment is contrary to the principle of free market economy to which Hong Kong is committed.
- It is dangerous for the Government to interfere with this principle.
- The proposal encourages Government intervention which threatens to upset competitive market forces in a free economy.

Proposal detrimental to investment in infrastructure

- After BOT tunnel operators' substantial capital investment, it is unfair (and possibly unlawful) for the Government to change unilaterally the criteria agreed in existing franchise contracts with the operators.
- The proposal will send a very bad message to prospective investors in Hong Kong's infrastructure with respect to the sanctity of agreed franchises and Ordinances.
- The consequences arising from the proposed amendment far outweigh the efforts put forward by the Government in support of the amendment.

Proposal unreasonable and unfair

- The operation of BOT tunnels are governed by relevant Ordinances and are subject to toll control by the Government. The profits of mobile phone operators are not so regulated.
- Most BOT tunnel companies are losing money whereas many mobile phone companies are achieving (in some cases large) profits.

Consumers will not benefit

- It is most unlikely that any reduction in fees payable to tunnel operators by mobile phone operators will be passed on to consumers. In any event, the fees are less than HK\$ 2 a month per mobile subscriber for the provision of mobile services in all BOT tunnels.
- In contrast, a reduction in the fees paid to tunnel operators could lead to an increase in tunnel tolls and therefore place an additional burden on tunnel users.
- There is no justification for tunnel users to subsidise mobile phone consumers. Any such subsidy would set a precedent for similar subsidies in the future.

Amendment not in line with practices outside Hong Kong

- In liberalised countries in telecommunications, such as the United Kingdom and Australia, agreements on access to tunnels by mobile operators are negotiated commercially between the mobile phone and tunnel operators rather than determined by the government or the regulator.
- The proposed amendment is in effect a retrograde step that will tarnish Hong Kong's reputation.

Telecommunications Authority should not determine fees

- The Telecommunications Authority has a vested interest in acting on behalf of the mobile communications market. It is therefore not sufficiently impartial to determine the fees.
- The Government should not interfere with commercial negotiations between the relevant parties but should allow market force to operate in a free and competitive economy.

Conclusion

In summary, the statutory right of access to land by mobile telecommunications operators and fee determination by the Telecommunications Authority under the proposed amendment should not apply to BOT tunnels for the following reasons:-

- The proposed amendment is contrary to the principle of free market economy and will be detrimental to the confidence of those investing in infrastructure in Hong Kong.
- Mobile operators have no difficulty gaining access to tunnels. Commercial agreements between mobile and tunnel operators already exist for all BOT tunnels.
- BOT tunnel companies are currently entitled under their respective tunnel Ordinances and project agreements to determine commercial fees for the installation of radiocommunications equipment in tunnels.
- The proposed amendment is out of step with countries having liberalised telecommunications regimes.

Yours faithfully,

For and on behalf of

NEW HONG KONG TUNNEL CO. LTD.

(Operator of Eastern Harbour Tunnel)

For and on behalf of

ROUTE 3 (CPS) CO. LTD.

For and on behalf of

WESTERN HARBOUR TUNNEL CO. LTD.

For and on behalf of

TATE'S CAIRN TUNNEL CO. LTD.

For and on behalf of

THE CROSS-HARBOUR TUNNEL CO. LTD.

6 September 1999