

Hon. SIN Chung-kai
Chairman
Bills Committee on Telecommunications (Amendment) Bill 1999
Legislative Council Building
8 Jackson Road, Central, HK

23 August, 1999

Dear Sirs:

**Re: Hong Kong Telecommunications User Group (“HKTUG”)
-Telecommunication (Amendment) Bill 1999**

HKTUG welcomes this opportunity to comment on the Telecommunication (Amendment) Bill 1999 (the “Bill”).

1. Introduction

In general terms, HKTUG supports the passage of the Bill as an important step in creating a regulatory framework designed to promote competition in Hong Kong. The inclusion of Sections dealing with anti-competitive conduct and the new remedies conferred by the Bill are particularly welcomed by HKTUG.

HKTUG wishes to express particular support for certain provisions of the Bill (see Section 2. below) and also to comment on several issues of concern (see Section 3. below).

2. HKTUG Support

There are several areas of the Bill which will regard as extremely significant and would not like to see diluted anyway:-

- (A). *The New Class Licensing Regime* - we support this regime as it will simplify the administration of licensing in Hong Kong, encouraging service providers to enter the market and thereby benefiting users.
- (B). *Price Control* - Section 7G is important in relation to ensure that the Secretary has the power to adequately control pricing in Hong Kong, in particular, pricing by carriers or licensees in dominant position in a market.
- (C). *Anti-competitive Conduct* - the provisions of the Bill dealing which anti-competitive conduct (in particular, Sections 6B, 7F, 7K, 7L, 7M and 7N) are very important provisions which appear to strike the right balance between the regulation of dominant and non dominant entities respectively.

- (D). *Right of Access* - Section 19B is a very important step towards ensuring that users have access to telecommunications services of their choice. We note however that Section 19B as presently drafted is fairly limited in scope, to the extent that it only applies to terms in lease agreements, deeds or commercial contracts. We would have preferred to have seen a *right* of consumers to have access to telecommunications services of their choice.
- (E). *Numbering Plan* - Proposed new Section 32F is very important to the extent that it ensures that no carrier will have proprietary rights to numbers which may prevent fair allocation and use of those numbers.
- (F). *Spectrum Provisions* - We generally support the provisions of proposed new Part VB dealing with management of radio spectrum and prevention of interference. In particular, we support the powers to be given to the Secretary to determine the level, or the method for determining the level, of spectrum utilization fees. This will ensure that the Government maintains the ability to charge for spectrum if it becomes efficient to do so.
- (G). *Universal Service Obligation* - We support proposed new Section 35B. In terms of the definition of *basic service*, however, the Government will need to be mindful of the possible need to re-visit this definition from time to time as technology changes. Accordingly, we support the ability of the Telecommunications Authority to include additional services by regulation as currently contained in the definition of *basic service*.
- (H). *Section 36A and 36AA* - The provisions of the Bill dealing with interconnection and facilities sharing will be critical to the creation of a competitive environment in Hong Kong. One issue we note is that proposed new Section 36AA dealing with facilities sharing, unlike the interconnection provisions of Section 36A, does not contain a formula for determination of charges. To date, the authority has determined charges on a commercial basis. We would like the Government to consider including cost based pricing provisions dealing with facilities sharing for bottleneck facilities so that parties can share facilities on an economically efficient basis.
- (I). *Remedies* - We welcome the inclusion of rights of private parties to bring actions under the proposed new Section 39.

Please note that the above only highlights those areas which are particularly welcomed by HKTUG. This is not to suggest that HKTUG does not support the other provisions of the Bill.

3. Concerns

We have certain concerns in relation to the Bill, in particular:

- (A). *Opinions*: The provisions of the Bill dealing with anti-competitive conduct are based upon the “opinion” of the Telecommunications Authority. In HKTUG’s view this will lead to uncertainty as to whether or not the relevant provisions have been infringed. It would be preferable for these provisions to be drafted on an objective basis.

- (B). *New Licence Requirement*: The new requirement proposed to be incorporated in Section 8 of the Ordinance that a licence be required to *offer in the course of business a telecommunications service*, seems to HKTUG to be unnecessary. We do not support this as we believe it is likely imposes an additional administrative burden on those wishing to provide telecommunications services in Hong Kong. We do not see that the provision of telecommunications services requires licensing any more than the provision of any other service in Hong Kong.

- (C). *Legislation Generally* - HKTUG encourages the Government, in due course, to consider creating new legislation to combine all broadcasting and telecommunications legislation in Hong Kong. In order to enable to Hong Kong to adapt quickly to the technological and market changes facing these industries, a simple, technology neutral approach to licensing across the telecommunications and broadcasting sectors should be adopted.

Please do not hesitate to contact us if you have any questions. [While we do not at this stage intend to be represented at the meeting of the Bills Committee, we would be happy to do so if Legco members would like us to do so.]

Yours faithfully,

Simon Chan

Chairman

Hong Kong Telecommunications Users Group (HKTUG)