

Letterhead of Hutchison Telecommunications (Hong Kong) Limited
和記電訊有限公司的信頭

August 31 1999

Bills Committee on Telecommunication (Amendment) Bill 1999
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Attention: Miss Polly Yeung
Clerk to Bills Committee

Dear Committee Members,

Telecommunication (Amendment) Bill 1999

On behalf of Hutchison Telephone Company Limited and Hutchison Communications Limited (“Hutchison”), we would like to express our support on the proposed Telecommunication (Amendment) Bill 1999 (“Bill”). In particular, we welcome the following proposals:

- granting access right to mobile telecommunications operators to install radiocommunications equipment in public places;
- clarifying the powers of the Telecommunication Authority (“TA”) on interconnection;
- improving the competitive safeguards.

Issues relating to the mobile telecommunications industry:

Access to Building & Land (Proposed Section 14)

Hutchison supports the proposal to grant a right of access to mobile operators to install radiocommunications equipment in public places. Our reasons are as follows:

1. Mobile operators should enjoy similar access right to public places as the Fixed Telecommunications Network Services (“FTNS”) operators.

According to the latest statistics, the number of mobile phone subscribers in Hong Kong has robustly grown by 44% in the past year to 3.46 million in June 1999. As the number of mobile phone lines is now very close to the number of fixed telephone lines which totalled 3.77 million, it is our firm conviction that mobile telecommunications operators should have a similar status as the FTNS operators. In particular, the existing access right to public places provisioned under Section 14 of the Telecommunication Ordinance should be extended to the mobile operators.

2. Ubiquitous coverage is in the interest of the public.

With over 3.4 million mobile phone users, it is evident that the mobile phone service has evolved to become a utility for the masses. The mobile phone network should therefore be considered as part of Hong Kong's basic infrastructure, hence an indispensable facility which consumers expect to be provided everywhere. To this end, the Government should have the duty to ensure that the public can enjoy excellent mobile telecommunications services that are widely available and readily accessible at reasonable costs.

3. The mobile operators' initiative and ability to continue expanding mobile network coverage while reducing tariffs to even more competitive levels hinge on the right to access public places.

Hong Kong's mobile telecommunications industry is one of the best developed and most efficient in the world. In terms of user penetration, Hong Kong is second only to Finland, outstripping the other countries with a penetration rate of about 50%. In our view, such wide acceptance is driven by two key factors, namely tariffs that are amongst the most competitive in the world, and extensive mobile network coverage of over 99% of the populated areas in Hong Kong. It is imperative that the above success factors can be sustained by encouraging the mobile operators to further expanding their networks in the most cost efficient way.

4. Continuous success of the mobile telecommunications services is hindered by the grave difficulties that mobile operators encounter in gaining access to properties to install radiocommunications facilities.

In some cases, landlords unreasonably deny access without regard to public interest, while there are other cases in which the landlords request payment of exorbitant access fees. To illustrate the extent of the problem, we submit that some landlords are charging excessive access fees of over HK\$500 per square feet of rental area per month, compared to the market rental average of only about HK\$20 per square feet.

5. Worse still many landlords were driving up access fees in a bid to compensate for decreasing income from other revenue streams such as property rental and tunnel operation.

To cite just one example, Hutchison is at present renting a commercial property in the New Territories with a size of about 100 square feet for the installation of radiocommunications facilities. The existing rental has already been agreed at a very high level of HK\$38,000 per month. However, during the recent negotiation with the landlord for contract renewal, the landlord asked for a monthly rental of HK\$60,000, which means an increase of 58% and a rental of HK\$600 per square feet. As the property is the most technically efficient site for providing extensive mobile coverage to the vicinity, Hutchison only has two difficult options: accept the unreasonably high rental, or provide coverage by other less efficient alternatives.

However, either of the above options will fly in the face of the Government's telecommunications policy objectives that telecommunications services should be available to the community at reasonable cost and be provided in the most economically efficient manner possible. The Government therefore has to intervene to prevent the situation worsening.

6. Bound by licence obligations and unavailability of alternatives, mobile operators had no choice but to accept agreements however unfavourable in the past.

Mobile operators often feel helpless against excessive access fees demanded by the landlords. The reason is twofold. Firstly, alternative sites are not always available (such as tunnels and shopping malls) and even if available, they are usually equally expensive. Secondly, mobile operators are required under the PCS licence to provide coverage in certain public areas including nine road tunnels, KCRC Rail Tunnel, Airport Railway and the MTR. Bound by their licence obligations and commitment to the public, the mobile operators are left with little bargaining power.

7. As the landlords could leverage on a monopolistic or cartel-like position, the ground for commercial negotiation could hardly be fair and the free market cannot prevail.

Tunnel companies are examples of landlords who have an upper hand in negotiations. Under the current agreements between Hutchison and the five private tunnel companies, the annual revenue that could be recovered from the radio cell sites within those tunnels is only about 30% of the access fees payable to the tunnel companies. We further note that during Hutchison's commercial negotiation with a tunnel company on access fee, Hutchison offered to pay an access fee that is equal to all of the related mobile service revenue generated in the tunnel. Our offer was, however, rejected by the tunnel company straightaway.

While we appreciate that some tunnel companies and property owners are dependent on other revenue streams to counterbalance operating losses, mobile telecommunications industry should not have to unwillingly cross-subsidise other industries to no end, especially in consideration of the equally difficult operating environment of the mobile industry. Such cross-subsidisation defeats the principle of free market and is by no means fair.

8. The cost-savings achieved by mobile operators over the years have been passed on to consumers in the form of significantly reduced prices.

There is clear indication that any cost-savings derived by mobile operators from reductions in access costs would be translated into such benefits as reduced tariffs, improved services and enhanced network coverage for the public.

In contrast, one profitable tunnel company raised licence fees by 225% in December 1997, but there was no evidence that the extra revenue earned had resulted in any benefits to consumers such as reduction in tunnel tolls.

9. Tunnel operators have adopted a discriminatory approach in charging mobile operators and radio companies for access.

We understand that the provision of radio broadcasting services within tunnels is only subject to a minimal one-off payment at the outset for compensating the tunnel operators' capital expenditure. Thereafter no recurring access fee is required.

Given that both radio company and mobile operator are providing services in tunnels to the benefit of tunnel users, there is not much difference between the two that would justify the tunnel operators' discriminatory pricing policy.

10. The proposal is supported by the Real Estate Developers Association of Hong Kong.

Given the popularity of mobile phones, the quality of mobile coverage in some commercial properties such as shopping malls will very much affect the flow of shoppers in such premises. It will therefore increase the value of the property and is beneficial to the landlords. In this respect, we understand that most members of the Real Estate Developers Association of Hong Kong also support the Government's proposal to grant mobile operators the access right.

As the major revenue source to landlords is rental income from tenants or usage fee from users rather than access fee from mobile operators, Hutchison believes that the landlords should only charge mobile operators a very minimal access fee to facilitate convenience of their patrons.

If the landlords' practice is allowed to be continued, we envisage that mobile phone users will eventually suffer higher tariffs and a less comprehensive network coverage. This will in turn jeopardise the long term development of Hong Kong into the pre-eminent regional telecommunications hub, as well as a centre for high technology industries.

Issues relating to the Fixed Telecommunications Network Services industry

Interconnection (Sections 36A, 36AA)

We welcome the clarification of powers of the TA on interconnection and the addition of a new provision on the sharing of use of facilities on the basis of the following considerations:

1. Interconnection is critical to public interest.

Interconnection allows consumers to choose from the widest range of services possible and is an efficient means of introducing competition into the market. From a public policy point of view, it is therefore justified to provide the TA with the necessary power to ensure efficient and effective interconnection between various telecommunications networks.

We believe that such power is essential for the Government to achieve the telecommunications policy objective that the widest range of quality telecommunications services should be provided to consumers at reasonable costs.

2. The proposed provisions will redress the problems confronting new FTNS operators.

Interconnection arrangements have not always proceeded smoothly. A case in point is the implementation of Type II interconnection which has been complicated by the dominant carrier's efforts to frustrate the ability of the new FTNS operators to access buildings and to build up their networks. The proposed provisions will facilitate commercial arrangements on interconnection, and will enable the new market entrants to develop their networks in a timely and cost efficient manner.

Without the opportunity to access buildings, the new FTNS operators will hardly be able to develop and to sustain their local telephone business. Hong Kong's fixed telecommunication services will only retract into an environment with all the negative effects of a virtual monopoly.

Issues relating to both industries

Competition Safeguards (Sections 7K - 7N, 36C, 36D)

Hutchison supports the following proposed amendments:

- Incorporating provisions on competition safeguards set out in FTNS licences into the principal Telecommunication Ordinance;
- Increasing the penalties for the breaching of licence conditions; and
- Empowering the TA to apply to a magistrate for warrants to seek information about anti-competitive practices from non-licensees (e.g. customers).

The reasons underlying our support are as follows:

1. The TA will be able to perform investigations more swiftly.

We are concerned about the speed with which complaints about anti-competitive activities could be investigated. Bringing the provisions on competition safeguards into the Telecommunication Ordinance will enable the TA to investigate allegations thoroughly and effectively and shorten the time currently taken to determine a remedy. Without sufficient protection of the competitive process, interests of consumers will be compromised.

2. Higher penalties will be a more effective enforcement tool.

The TA's ability to impose fines and pass the case to the Court of First Instance will act as a strong deterrent leading to reduce the likelihood of breaches. It is important

that the Government adopt a more heavy-handed approach towards non-compliance so as to deter conduct that may jeopardise the level playing field.

3. The TA will be more efficient in the exercise of his functions.

The power of the TA to obtain information will be a very valuable tool for speeding up his investigation of industry complaints, as many of them are often based on verbal customer information.

We see the competition safeguards as critical to the progression of both mobile and FTNS industries in Hong Kong, ultimately to protect the interests of consumers and to position Hong Kong as an advanced information society.

Yours faithfully

For and on behalf of

Hutchison Telecommunications (Hong Kong) Limited

Dennis Lui

Managing Director