

香港地產建設商會的信頭

Letterhead of THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

**Comments of The Real Estate Developers Association of
Hong Kong (“REDA”) on Telecommunication (Amendment) Bill 1999**

I. OVERALL POSITION

REDA generally supports the intention of the Bill to achieve ubiquitous coverage for mobile telecommunication services. To achieve the objective through infringement of private property right is, however, unjustified. Many aspects of the Bill require clarification as discussed below.

II. KEY RECOMMENDATIONS

- a. The Telecommunications Authority (“TA”) should not interfere if, after the Bill is passed, the relevant landowners treat all new negotiations with mobile network operators (“MNOs”) on an equal basis. Any difference in treatment must be fair and reasonable. The free market mechanism should be adequate in ensuring any agreement between MNOs and landowners is fair and reasonable.
- b. An independent panel/body comprising members who have no conflict of the interest with the industries concerned should be formed to formulate guidelines as well as determine whether intervention is justified and the appropriate terms and conditions governing the right of access conferred to MNOs.
- c. Any fee to be charged for telecommunication installations must reflect a true commercial/market value and not just the cost of installation.

III. AREAS OF CLARIFICATIONS REQUIRED UNDER THE BILL

- a. Conferring Statutory Right of Access for MNOs.
 - i. Why is conferment of such a right necessary when MNOs are claiming 90% coverage of the territory? Is it justified to infringe private property rights in order to achieve just 10% extra coverage?
 - ii. What criteria have been adopted to conclude that mobile telecommunication services are considered an important public facility?

- iii. Is there any solid evidence showing that MNOs suffer widespread mistreatment by landowners or tunnel operators?
- iv. How would the existing contracts between MNOs and landowners be affected by the Bill?
- v. Will there be a fair competition between MNOs accessing private developments under the protection of the Bill and those MNOs with existing contracts with landowners?
- vi. Should there be unlimited access for unlimited number of MNOs?
- vii. Is the grant of such right tantamount to partial resumption?
- viii. If the radiation emitted from MNOs' installations is proved harmful to health, will Government accept a liability for granting such right to so many operators?

b. Fee Structure

- i. Will TA be an impartial party if it has a vested interest in encouraging competitively priced mobile services?
- ii. How would the fee reflect the true commercial/market value if the basis of determination is only the cost of installation?
- iii. Why should we deviate from the principles of the free market in determining the fee?
- iv. If a landowner has incurred losses (such as loss of rental space) in addition to the cost of installation, why should the fee not include a provision for reasonable economic loss.
- v. Does TA have the information such as marketing and rollout strategies of individual MNO to determine the appropriate fee?

c. Other Contractual Terms Governing MNOs and Landowners

- i. If the fee is determined by TA, how will other terms and conditions be determined?

- ii. What indemnity will be provided by MNOs against any damage caused to the landowners and any third parties?
- iii. Should MNOs be required to take out appropriate insurance policies?
- iv. What is the eviction procedure when a landowner wishes to redevelop his property?
- d. Problems Arise from the Statutory Right of Access for Fixed Telecommunication Network Operators (“FTNOs”)
 - i. Some FTNOs withdraw their plans after the building owners have incurred cost to accede to their request Who should pay compensation?
 - ii. Disturbance caused to existing occupiers may arise during the installation of necessary equipment Would the disturbance be exacerbated by MNOs?
 - iii. Some FTNOs fail to enter into formal agreement with landowners even after completing their installation. What remedy is offered to the landowners?
- e. Equipment Installation
 - i. Can MNOs choose to serve only that part of a development that is commercially viable?
 - ii. Will MNOs guarantee that all installation and maintenance works will have no adverse effects on all different aspects of the building such as structural safety, fire resistance, fire escape, public safety, space required for circulation and waiting area, appearance, environmental conditions etc.
 - iii. Should MNOs be first required to co-operate and coordinate with each other in sharing the use of equipment before proposing any separate installation?

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