

**Note on the obligations of public mobile radiocommunication licensees to provide coverage in New Hong Kong Tunnel, Tai Lam Tunnel and Tate's Cairn Tunnel and Western Harbour Tunnel ("BOT tunnels")**

## **1 Background**

The Bills Committee of the Legislative Council set up to consider the Telecommunication (Amendment) Bill 1999 held a meeting on 6 September 1999. At the meeting, Lovell White Durrant, acting on behalf of New Hong Kong Tunnel Co. Ltd., Route 3 (CPS) Co. Ltd., Tate's Cairn Tunnel Co. Ltd. and Western Harbour Tunnel Co. Ltd. ("BOT Tunnel Operators"), referred to the licence obligations of the public mobile communication licensees to provide mobile communication services in BOT tunnels. This note sets out our views on the extent of these obligations.

## **2 PCS Licences**

### **2.1 Licence provision - milestones**

Six PRS licences for personal communications services ("PCS Licences") were issued on 30 September 1996. Under Special Condition 3, each PCS licensee must submit to the Telecommunications Authority a performance bond for compliance with certain "milestones" attached to the licence. These milestones include some commitments on coverage of road tunnels.

### **2.2 Tai Lam Tunnel**

Coverage of Tai Lam Tunnel is not one of the milestones listed. PCS licensees are not therefore legally obliged to cover Tai Lam Tunnel.

### **2.3 Other BOT tunnels**

In relation to the other BOT tunnels, (New Hong Kong Tunnel, Tate's Cairn Tunnel and Western Harbour Tunnel), apart from Mandarin Communications Ltd., the time for complying with the milestone to provide coverage is "within [a specified period] from the date when the necessary site and ancillary facilities are made available by the relevant authorities or entities". The specified period ranges from 2 months to 9 months.

2.4 The "necessary site and ancillary facilities" relate to the tunnel site and ancillary facilities, such as radiocommunication equipment necessary for the provision of a mobile communication service under the licence. The "relevant authorities or entities" would include the Commissioner for Transport, the Telecommunications Authority and other entities, such as the tunnel companies and mobile phone operators, who make the necessary site and ancillary facilities available.

2.5 Under the various tunnel Ordinances, consent from the Commissioner for Transport is required for the installation of a mobile communication facility. However, the site and necessary facilities are made available by the tunnel companies and mobile phone operators themselves. Accordingly, there is no effective time limit for complying with the coverage milestone while no agreement has been reached for the installation and operation of radiocommunication equipment in a BOT tunnel.

## **2.6 Mandarin Communications Ltd.'s PCS licence**

Apart from Tai Lam Tunnel (where, as we have indicated, there is no time limit), the deadline for milestone compliance by Mandarin Communications Ltd. is similar to that of other PCS licensees, but is subject to an overall time limit of 36 months from the launch of the service. In fact, Mandarin Communications already reached agreements with the tunnels companies well before the expiry of the 36 month period.

## **3 Non-PCS licences**

### **3.1 Public mobile communication licences**

We understand that the public mobile communication do not contain any condition requiring licenses to provide coverage in BOT tunnels. However, since licenses issued in the 1980s are not public documents, further clarification may be required.

### **3.2 Other Non-PCS licences**

Five non-PCS licences were issued in the 1990s. Again these licences are not public documents, but we likewise understand that these five non-PCS licensees are either not required or have no effective time limit within which to provide coverage in BOT tunnels.

**Lovell White Durrant**

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