

**Outstanding issues from the Administration's response
of 4 September 1999 to the Bills Committee
relating to access of mobile network operators**

Formula in determining the access fees to tunnels

In the Administration's response of 4 September 1999 to the Bills Committee [CB(1)1860/98-99(01)], we indicated that we had not been able to generalise some formulae in determining the access fees to tunnels from the information obtained from mobile telecommunications operators. We have sought information from the BOT tunnel companies in this regard.

2. According to the information provided by the BOT tunnel companies, the access fees were determined through commercial negotiations. Again, we have been unable to generalise some formulae for the determination of access fees. However, the tunnel operators have provided information on the factors that they have taken into consideration in the negotiation. Details are as follows -

<u>Tunnel</u>	<u>Factors taken into consideration in the negotiation of the access fees</u>
Tate's Cairn Tunnel	Duration of contract, inflation rate, the Tunnel's traffic volume, the relevant market/economic consideration
Eastern Harbour Tunnel	A number of factors including the number of subscribers of respective mobile phone operators, the throughput of the Tunnel and inflation rate
Western Harbour Tunnel	Number of vehicles passing through the Tunnel and toll road and the future traffic growth, number of subscribers of respective mobile phone operators, number of mobile phone networks installed in the toll area, size of the toll area, current market situation including business requirements and status of mobile operators, and other requirements of the mobile operators such as duration of contract and timing of contract

Tai Lam Tunnel

Number of vehicles passing through the Tunnel and toll road, number of subscribers of respective mobile phone operators, number of mobile phone networks installed in the toll area, size of the toll area, current market situation including business requirements and status of mobile operators

Overseas regulation of mobile telecommunications operators' access

3. At the Bills Committee held on 21 July 1999, the Administration was requested to provide information on whether there was similar problem faced by the mobile telecommunications operators when gaining access to tunnels in overseas countries and how access by mobile telecommunications operators to tunnels was regulated in overseas jurisdictions. The Administration had subsequently consulted the overseas administrations. As expected, the problems faced by mobile network operators and the powers of the regulatory authorities vary. Nonetheless, the responses indicate that in some countries including Japan, France, Portugal, Switzerland and the UK, the regulators have powers in one form or another to step in or have involvement in the negotiations between the landowners and mobile telecommunications operators and determine the level of access charges for telecommunications installations. Details of the regulatory measures in these overseas jurisdictions are at Annex.

Information Technology and Broadcasting Bureau
September 1999

**Regulatory Measures For Access To Land By Telecommunications Network Operators And
Determination Of Access Fees**

Country	Enabling Legislation and Powers	Procedure	Compensation
Japan	Under sections 73-77 of the Telecommunications Business Law 1984 (amended in 1998), a Type 1 telecommunications carrier (including mobile operator) may, when it is necessary and reasonable to use other persons' land or buildings or other structures fixed thereto (collectively, referred to as "land") for the establishment of wires and cables, antennas or other facilities accessory thereto (collectively, referred to as "facilities") for the use of its Type 1 business, request the owner of the land to negotiate the creation of a right to use the land subject to the authorization of the Ministry of Posts and Telecommunications (MPT).	MPT may authorize the use of land if such use will not interfere with the utilization of the land. If the parties fail to reach an agreement, MPT may arbitrate. If MPT accepts an application for arbitration, the affected parties will be invited to submit representation.	Subject to parties' negotiation and if negotiation fails, MPT may arbitrate to determine the amount of compensation and the time and method of payment.

Country	Enabling Legislation and Powers	Procedure	Compensation
France	Under the Telecommunication Act 1996 (art 11), public network operators shall enjoy right of way in the public domain and easements on private properties (in the communal parts) for the installation and operation of network infrastructure.	The installation of infrastructure and equipment must be carried out with regard to the environment and the aesthetic quality of the site and with the least damage to private property and public domain.	In return for occupation of the public domain, fees shall be payable to the local authorities in conformity with the principle of equality between operators. A State Council decree shall determine the terms and shall specify the ceiling of the fee payable. The beneficiary of the easement over the private property shall be responsible for all damages resulting from the network installation. It shall be required to pay for all direct, unquestionable material damages caused by the installation and maintenance and by operation of the network. Failing an amicable agreement, compensation shall be determined by the court with jurisdiction in matters of expropriation on the application of the contending party.

Country	Enabling Legislation and Powers	Procedure	Compensation
Portugal	Under Article 4 of Law no. 91/97 of 1 August 1997, entities licensed for the establishment and provision of public telecom networks are granted: (a) the right to request the expropriation and administrative right of way, if such establishment and provision are indispensable to the construction of the infrastructure of the public telecommunications networks; and (b) the right of access to the public domain under equity conditions, for the installation and maintenance of the respective infrastructure.	Except for reasons for environmental protection, access to the conduits, poles and other facilities for the installation of new infrastructure shall be granted under the terms and payment conditions to be agreed between the parties.	In the event that the entities involved do not reach an agreement, they can forward the matter to ICP (Institute of Communications of Portugal), which shall decide, namely whenever payment conditions are at issue, based on cost-oriented criteria.
Switzerland	Under article 36 of the Telecommunication Law 1997, if the establishment of a telecommunications installation is in the public interest, the Federal Department of Transport, Communications and Energy may grant the right to expropriate.	The procedure shall be conducted in accordance with the Federal Law on expropriation.	Not specified in the Telecommunication Law 1997

Country	Enabling Legislation and Powers	Procedure	Compensation
United Kingdom	<p>There is no particular legislation in place to assist operators in getting access to indoor venues to install coverage systems.</p> <p>Under the Telecommunications Act 1984, operators of telecommunications systems may be granted the so-called "Code Powers" for access to land and the court may determine the level of the access fee if the landowner and the telecommunications operator fail to reach commercial agreement.</p> <p>Under section 34 of the Telecommunications Act 1984., the Secretary of State may authorize a public telecommunications operator to purchase compulsorily any land in England and Wales which is required by the operator for, or in connection with, the establishment or running of the operator's system. The Acquisition of Land Act 1981 shall apply to any compulsory purchase as if the operator were a local authority within the meaning of that Act.</p>	<p>On the enforcement of the right of access, a public telecommunications operator may apply to the court under the Telecommunication Code for an order dispensing with the need for the agreement of the landowner in question. The court may also fix the financial terms in such circumstances.</p> <p>For compulsory purchase, no order shall be made authorizing a compulsory purchase except with the consent of the Director General of Telecommunications.</p>	<p>Not specified in the Telecommunications Act 1984</p>