

October 27, 1999

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

By Fax: 2121 0420 & By Post

Attention: The Hon Sin Chung Kai, Chairman

Dear Sir,

Telecommunication (Amendment) Bill 1999

We, the four BOT Tunnel Companies, put forward our concerns about this amendment Bill to your Committee in a series of written representations. We attended the Bills Committee meeting on October 21, 1999 in the expectation that all these concerns would be addressed by the Administration in its response as requested by the Bills Committee. We were disappointed that the response from the Administration was very selective, and that there was no point by point discussion of our concerns. This is quite unfair to us and we are obliged to point out those core areas of concern, which the Administration has not fully dealt with. These are:-

- Respect for existing contracts and project agreements
By this we mean the contracts and agreements commercially negotiated between the Tunnel Companies and the Government, which form the basis for the very substantial investment in these infrastructure projects. To change the rules in this way is unfair to us Tunnel Companies, and breaches the principles of free market economy on which Hong Kong has thrived, and which have been repeatedly stressed by the Chief Executive in his recent Policy Address, and his follow-up meetings with the business sector. The proposed change will certainly act as a deterrent to future investment in Hong Kong as it sends a very negative message that the Government will not honour contracts.
- The Arbitrator
The Telecommunications Authority should not be the arbitrator in disputes between the Tunnel Companies and the Mobile Telephone Operators over wayleave fees. To say he already has such powers, and that his counterparts in other jurisdictions have such powers is wrong. He only has powers to intervene in disputes between rival mobile operators. He does not know enough about tunnel operations, and he cannot be expected to be impartial. If there is to be an arbitrator, we suggest an independent body such as a Judicial Tribunal, or a Competition Commission, and that there should be an appeal procedure.

- Guidelines

If the principles of the free market economy prevail clause 7 of this Bill will be voted down, but in case it is not, guidelines for the determination of the wayleave fees to be paid by mobile operators must be drawn up after consultation with the mobile phone operators and tunnel companies, and included in the draft legislation before any vote is taken on the Bill.

Clause 7 of this Bill is an unnecessary and inappropriate interference in the free market, and will have unfair adverse effects upon our operations. To suggest that interference by the Authority will only come as a last resort is unrealistic; once a statutory right of access is granted it will be very difficult to achieve mutually agreed commercial contracts and the Authority will find himself willy-nilly obliged to intervene.

We earnestly request the Bills Committee to give our case further and careful examination.

Yours sincerely,

For and on behalf of
NEW HONG KONG TUNNEL CO. LTD.

For and on behalf of
TATE'S CAIRN TUNNEL CO. LTD.

Alexander Chan
General Manager

George Lee
General Manager

For and on behalf of
WESTERN HARBOUR TUNNEL CO. LTD.

For and on behalf of
ROUTE 3 (CPS) CO. LTD.

Kenneth Pang
General Manager

Gary Luk
General Manager