

September 30, 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 Hand

Attention: The Hon. Sin Chung Kai, Chairman

Dear Sir,

We refer to our letter to your Committee dated September 22, 1999 enclosing a note on our response to the issues raised at the Committee's meeting held on September 6, 1999 together with our observations relating to the Basic Law. We were very disappointed that not only were our points not raised with the Administration present, but there was not even a mention of our submission at the meeting held on September 28, 1999. We trust that you will take into consideration all the submissions made by all parties concerned in relation to this Bill, and we look forward to a thorough discussion of all the points raised by us at one of the coming meetings of the Committee.

With this in mind, we respectfully submit to you our comments on the Administration's presentation and answers to questions from Committee Members at the meeting held on September 28 as follows:

- **Respect for contract and free market economy**
The Administration has failed to explain how it is still upholding this principle, as it claimed, when it is proposing an amendment that will effectively change the terms of the contracts between the Government and the BOT tunnel companies (moving the goalposts in the middle of the game), and interfere with the market forces.
- **Levels of wayleave fees**
The Administration has failed to demonstrate what it would consider as "fair and reasonable" levels of fees. Rather, throughout the meeting, its representatives have implied that the existing fees are too high. This was quite obvious to anyone attending the meeting, although when pressed to make a definite statement, the representative

would not do so. Also, the Administration mentioned frequently terms like “market rent”, “surveyors” and “valuers”. It is quite clear that the Administration has preconceived and misguided ideas about fees.

- Licence obligations of mobile phone operators

In the letter from our legal advisors Lovell White Durrant dated September 24, which was submitted at your request, it has been explained quite clearly that not all the mobile phone operators have in their licence conditions coverage for tunnels, and none of the operators has to provide service in the Tai Lam Tunnel. (Enclosed is the letter for your ease of reference.) In addition, we wish to point out that when mobile phone operators applied for licences, they were asked to put down in their application the areas they propose that their network would cover. We understand that some included tunnels, some did not. For those who volunteered or were prepared to cover tunnels, their licences would include this condition, which does not appear in the licences of those who did not propose or were not prepared to provide coverage in tunnels. So it is not a case of Government in the shape of TA requiring mobile phone operators to provide coverage in tunnels before issuing the licences; but rather, it is a case of mobile phone operators voluntarily offering this service. So these operators were well aware of their commitments and the costs before they submitted their tenders. Even the TA representative said at the Committee meeting that the Government encourages mobile phone operators to cover tunnels in their applications, but they are not required to do so.

- TA to be the mediator

The Administration has failed completely to justify how TA can be an impartial mediator. It claimed very weakly that TA would only come in to mediate when no agreement between mobile phone operators and tunnel companies is reached. In practice, when mobile phone operators have the statutory right of access, the negotiation will not be on even grounds, as the mobile phone operators will have the upper hand, and the tunnel companies’ bargaining power will be greatly reduced. In these circumstances, there will not be any commercially reached agreements, and TA will be asked to step in every time.

- Practice in other countries

The information provided by the Administration for the meeting (Annex of CB(1)1960/98-99) is not complete, but selective and possibly misleading. We will be writing to you again separately on this.

- Guidelines for charging wayleave fees

We are of the view that imposing guidelines is interfering with the free market forces, demonstrating a lack of respect for contract. In any case, we strongly oppose any legislation giving TA the authority to formulate guidelines.

- Benefit to the consumer

Everyone is saying that giving mobile phone operators the right of access to tunnels will be of great benefit to the consumer. Please pause and consider the real situation on the ground. There is no problem of access to any BOT tunnel, and the cost to each mobile phone consumer for coverage in all the 4 BOT tunnels is only \$0.053 per day, or \$1.6 per month. If tunnel companies do not charge any wayleave fee at all, and all mobile phone operators pass all of this onto the consumers, each consumer will save \$1.6 a month. The Administration has failed to answer the question whether this small benefit, if any, to the consumer is worthwhile, bearing in mind the very damaging repercussions of the proposed amendment.

We respectfully draw your attention to the above issues and the issues we have raised in our previous submissions, and rely on you, the members of the Bills Committee, to ensure that they are fully and openly examined, before this Bill is put to the vote.

Yours sincerely,

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

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

Miranda Yip
Deputy 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

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