

**For discussion  
on 11 November 2019**

**Legislative Council Panel on  
Information Technology and Broadcasting**

**Review of Telecommunications Regulatory Framework**

**Purpose**

The Commerce and Economic Development Bureau (“CEDB”) has completed a three-month public consultation on the Review of Telecommunications Regulatory Framework. This paper briefs Members on the views collected in the public consultation and progress of the related work.

**Background**

2. Telecommunications technologies have been developing in leaps and bounds. Our regulatory framework needs to be adaptive to changes and be modernised from time to time to keep pace with market development to promote innovation, investment and consumer adoption.

3. The Review of Telecommunications Regulatory Framework aims to review the telecommunications regulatory framework under the Telecommunications Ordinance (Cap. 106) (“TO”) to ensure that it is in line with the advancement of telecommunications technologies. After the review, the measures we propose to implement include:

**Embracing the Arrival of 5G and Internet of Things (“IoT”) Technologies:**

- (a) Regulation of Telecommunications Functions of Devices in the 5G and IoT Era
  - to focus the regulatory powers and duties of the Communications Authority (“CA”) on the telecommunications functions (i.e. integrity of

and compatibility with telecommunications networks and control of the level of non-ionising electromagnetic radiation) of devices in the 5G and IoT era; and

- the non-telecommunications functions of the aforementioned equipment and devices should be regulated by other dedicated legislation as appropriate.

(b) Protection of Underground Telecommunications Infrastructure

To create certain criminal offences under the TO against any person, who without taking reasonable care in carrying out road works, causes damage to underground telecommunications facilities as follows:

- anyone failing to undertake pre-works precautionary measures or measures during the road works to prevent damage to underground telecommunications line should be liable to a fine at level 4 (i.e. \$25,000) and imprisonment for 6 months;
- where the failure results in suspension of telecommunications services, a more severe punishment will apply, viz. a fine of \$200,000 and imprisonment for 12 months;
- in the case of a continuing offence, an additional fine of \$10,000 per day shall also apply; and
- compliance with relevant guidelines promulgated by the CA shall constitute a defence to a charge under the proposed offences.

## **Trade Facilitation:**

### (c) Simplifying the Issue of Non-carrier Licences

To simplify the existing mechanism under the TO of excluding licences having the characteristics of carrier licences from the scope of carrier licence by empowering the Secretary for Commerce and Economic Development to publish such licences in the Gazette instead of by specifying them in Schedule 1 to the TO.

### (d) Improving the Appeal Mechanism under the TO

To improve the appeal functions under the TO by establishing an independent appeal board to deal with certain decisions of the CA. Reference will be made to the existing Telecommunications (Competition Provisions) Appeal Board in mapping out the composition and modus operandi of the proposed appeal board.

Details of the proposed appeal mechanism are set out in the **Annex**.

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The contents and policy background of the other aspects of the review are set out in the public consultation paper “Review of Telecommunications Regulatory Framework” issued by the CEDB on 28 November 2018, and can be downloaded from the following website:

[https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTORReview\\_2\(eng\).pdf](https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTORReview_2(eng).pdf).

## **Public Consultation**

4. We conducted a three-month public consultation on the Review of Telecommunications Regulatory Framework from 28 November 2018 to 27 February 2019. A total of 26 submissions have been received from major telecommunications licensees, industry organisations, public utilities, statutory bodies, political party/Legislative Council Member, etc. Stakeholders were

generally supportive of the direction of the proposed measures to update the legislation timely. Some of them were concerned about details and actual operation of individual measures and some also suggested that the Government should introduce additional measures to further facilitate the industry.

#### *Four Recommendations Put Forward in the Review*

5. Stakeholders' views on the four recommendations put forward in the public consultation are summarised as follows:

- (a) Stakeholders were generally supportive of the recommendation to regulate telecommunications functions of devices in the 5G and IoT era through the TO and the CA.
- (b) The majority of telecommunications licensees were supportive of the recommendation on protection of underground telecommunications infrastructure by introducing criminal liabilities for negligent damage to underground telecommunications facilities. Some stakeholders from the construction sector, however, had reservation about the measure and were concerned about the responsibility that the sector had to bear as well as the operational arrangements of the measure. In this connection, we are drafting relevant guidelines to provide the stakeholders concerned with specifications and guiding principles and to set out, by drawing reference to existing codes of practices related to protection of electricity supply lines and gas pipes, appropriate works procedures and protection measures for the sector to follow. Compliance with the guidelines shall be a defence to a charge arising from breach of the legislation concerned. We will consult the sector on the draft guidelines and brief them on the related details in due course.
- (c) As for the streamlining of the mechanism for issuing non-carrier licences, some carrier licence holders considered that the non-carrier licences proposed to be issued thereunder were of a similar

nature to carrier licences in terms of telecommunications services coverage. That said, the former's proposed licensing approach was relatively simple and the service coverage was unclear and that consumers might not be able to distinguish between the two types of licences. We wish to point out that the new arrangements for issuing non-carrier licences are designed to facilitate the industry to launch innovative telecommunications services (including IoT and 5G services provided in specific areas). Such non-carrier licences are significantly different from carrier licences, in that the service scope and nature of such licences are relatively confined and the scale is relatively small. We understand that some stakeholders (particularly the existing carrier licensees) have doubts about the new arrangements. Before simplifying the mechanism for issuing non-carrier licences, we will thoroughly discuss and communicate with stakeholders on the scope of the licences proposed to be issued.

- (d) As for the appeal mechanism, stakeholders were agreeable to expanding the scope of the CA's decisions made under the TO that could be dealt with by the proposed appeal mechanism.

6. We will continue to engage stakeholders and draft the amendment bill to implement the recommendations with a view to benefiting the telecommunications industry as early as possible.

#### *Other Proposals*

7. Apart from the four recommendations put forward in the public consultation, stakeholders also submitted views in other areas related to telecommunications policy and the telecommunications regulatory framework under the TO. Stakeholders' major recommendations and our preliminary analyses are summarised as follows.

(a) **To facilitate network roll-out by telecommunications operators**

8. The existing section 14 of the TO stipulates a mechanism which allows mobile network operators (“MNOs”) to seek the CA’s authorisation to enter any land to place and maintain radiocommunications installations to provide radio communications services to public places. Some stakeholders considered the mechanism ineffective as it essentially mandated operators and landlords to reach an agreement. Some operators had indicated that conditions imposed by landlords were often unreasonable. They therefore proposed to further amend the TO to facilitate telecommunications operators to enter private/public properties to install telecommunications equipment (e.g. radio base stations (“RBSs”)).

9. We recognise that the roll-out of 5G networks requires the installation of a considerable number of RBSs and that MNOs may face challenges in setting up the 5G infrastructure. To assist MNOs to timely roll-out 5G networks, a pilot scheme was launched in March 2019 to provide more than 1 000 suitable government premises for operators to install RBSs under streamlined procedures. The Office of the Communications Authority is coordinating the relevant departments to proactively handle MNOs’ applications, and the progress is good. With a view to extending 5G network coverage, a “demand-led” model will be adopted to assist operators in applying for the use of other suitable government venues and to identify suitable facilities (such as bus stop shelters and public payphone kiosks, etc.) to facilitate the setting up of RBSs by operators.

10. As for the proposal to amend the TO, the Government, through introducing the Telecommunication (Amendment) Bill 1999 in 1999-2000, introduced the existing mechanism under section 14 of the TO. The mechanism empowers the CA to authorise MNOs to enter private lands to install telecommunications installations. The proposal was one of the most intensely discussed items when the Bill was being scrutinised back then. While MNOs welcomed the proposal, other stakeholders, particularly owners of private premises, expressed reservations over and even strong objections to the proposal. They questioned that

the proposal gave the CA (then Telecommunications Authority) too much power, interfered with free market negotiation mechanism which had been working well, and might damage the rights of private ownership of property enshrined in the Basic Law, etc. Eventually, the Bills Committee, after in-depth discussions, adopted an amendment to include an independent arbitration mechanism in the Bill to provide that telecommunications operators and landlords might seek independent arbitration in case they could not reach an agreement on relevant charges.

11. On the operation of the existing provisions, although there were successful precedent cases where the CA authorised telecommunications operators to enter specified locations in private premises to install telecommunications installations (the fees were eventually determined through negotiations between the operators and the landowners), some stakeholders opined that the mechanism, requiring negotiation with landlords beforehand, was often overly time-consuming. In addition, given that there was often more than one location technically feasible for installation of telecommunications installations, it was difficult to specify a landlord to make room for the installation. Operators expected a more direct mechanism to facilitate rapid installation of a large number of RBSs.

12. The installation of facilities such as telecommunications equipment in private properties involves rights of private property. We have been encouraging operators and landlords to settle through private negotiations. Regarding the proposal to further facilitate the operators, we need to carefully balance various parties' interests, including the need to respect ownership of private property and whether landlords and land users are willing to open up private land to facilitate use of telecommunications services by the general public. As the proposal is controversial, we consider that there is a need to first further forge consensus amongst stakeholders before deciding on the way forward.

**(b) To facilitate telecommunications operators to open up and use customer information**

13. Under the Telecommunications (Carrier Licences) Regulation (Cap. 106V), General Condition (“GC”) 7 for carrier licences allows telecommunications operators to disclose customer

information (including anonymous data of telecommunications service users) to third parties with the consent of the customers, which form of consent shall be approved by the CA, and in compliance with the Personal Data (Privacy) Ordinance (Cap. 486) (GC 7.1). Moreover, telecommunications operators cannot use customer information for purposes other than for and in relation to the provision of the licenced service (GC 7.2). Some stakeholders proposed to repeal the licence condition to allow telecommunications operators to open up, after deletion of the personal data involved, anonymous customer data for browsing and use by the public free-of-charge, to facilitate scientific research, innovation and the use of big data.

14. Given the sensitivity of customer information and data, the very purpose of enacting GC 7 is to restrict the use of such information by telecommunications operators to protect customers' privacy. If telecommunications operators are allowed to disclose such data to third parties or all members of the public without the need of seeking customer consent, even if personal information such as customer names are to be removed in advance, some members of the public may still have concern over the risks of leakage or misuse of personal data and privacy (such as real-time locations, people flow in individual districts, etc.). Moreover, we need to consider the views of relevant entities and the appropriateness of requesting free disclosure of such data as such information is owned by telecommunications operators.

15. To implement the aforementioned proposal involves amending the Telecommunications (Carrier Licences) Regulation, which is an important policy change. Under the current social environment where the public are increasingly concerned about protection of personal data and privacy, we consider that we should refrain from taking any hasty action before a broad consensus in the community is reached.

(c) **Other regulatory measures**

16. Stakeholders also proposed to remove or streamline certain regulatory measures such as the requirement of compliance with the accounting practices by licensees, the requirements for licensees to publish their tariffs and to file copies of interconnection agreements with the CA, etc. We understand that the telecommunications



industry wished the Government to introduce additional business facilitating measures that keep pace with the advancement of telecommunications technologies and enhance operational efficiency. Relevant background and our responses are outlined as follows:

- (i) **To streamline the requirement for licensees to adopt the accounting practices:** Currently, some licensees (including seven fixed network operators and four MNOs) are obliged to report to the CA financial information in relation to their business operation in accordance with the Accounting Manual (“AM”) issued by the CA. There were views that the requirement was too complicated and was different from general accounting requirements and therefore needed to be streamlined.

In fact, the requirement is generally in line with prevailing accounting standards and certain specified itemized requirements are only stipulated to enable the CA to perform its regulatory functions (such as calculation of spectrum utilization fee and universal service contribution, determination of interconnection cost, etc.).

That said, we will review the financial information required for reporting by licensees under the AM and consider whether there is room for streamlining.

- (ii) **To streamline the requirement for licensees to publish their tariffs:** Under section 7F of the TO and relevant licence condition, licensees shall publish and submit to the CA their tariff information. The relevant requirement only requires licensees to publish tariffs and to charge no more than the published tariffs. Under prevailing market practices, operators usually provide customers with promotion packages of more competitive prices or services. Moreover, nowadays consumers could already browse and compare between different services and prices offered by telecommunications operators through numerous channels, and such prices also fluctuate from time to time. Therefore, there were views that keeping such requirement had little reference value.

The original intent of imposing such requirement is to ensure that consumers will have a grasp of the price information of the licensed services in order to protect their interest. Before considering whether to amend the legislation to repeal the above requirement, we will consider exempting licensees from the licence requirement of submitting tariffs to the CA for filing and to streamline the requirement of publishing tariffs for information to their customers, with a view to reducing compliance cost of licensees.

- (iii) **To remove the requirement to file copies of interconnection agreements with the CA:** Under section 36A of the TO, licensees shall ensure that a copy of the interconnection agreement is filed with the CA within 14 days of it being made. Some licensees expressed that with this requirement, they needed to spend administrative resources in removing commercially sensitive information from the interconnection agreements before submitting them to the CA for filing.

As the practice involves fulfilment of international trade requirements, it cannot be removed entirely. That said, to reduce licensees' compliance cost, we will consider allowing licensees to provide interconnection templates with such information as basic interconnection charges and conditions in lieu of their obligation to submit copies of individual interconnection agreements to the CA for filing.

The CA will further consider the proposals along the above direction, and consult the industry on any concrete proposals as appropriate, with a view to updating and formulating relevant guidelines for implementation of the streamlined measures.

## **Way Forward**

17. If a broad consensus is reached amongst Members as well as in the community on the four legislative proposals generally supported in the public consultation, we will continue with the drafting of the amendment bill in accordance with the Panel's

consensus. As for the other proposals, we will continue to study carefully and engage the stakeholders.

18. Members are invited to note and comment on the content of this paper.

**Communications and Creative Industries Branch  
Commerce and Economic Development Bureau  
November 2019**

**Improving the Appeal Mechanism under the TO**

**Details of the Recommendation**

The proposed independent appeal board will be modelled on the existing Telecommunications (Competition Provisions) Appeal Board and will handle the following decisions of the CA under the TO:

- (i) refusal to grant telecommunications licence (section 7 of the TO);
- (ii) refusal to give consent on tariffs (section 7F of the TO);
- (iii) revocation of certificate of competency and authority to operate for operating personnel (section 32K of the TO);
- (iv) cancellation, withdrawal or suspension of licence, permit, permission or consent granted (section 34(4) of the TO);
- (v) determination of terms and conditions of interconnection (section 36A of the TO);
- (vi) direction on sharing of use of facilities (section 36AA of the TO);
- (vii) directions by the CA (on the above provisions subject to appeal) (section 36B of the TO); and
- (viii) imposition of financial penalties (on the above provisions subject to appeal) (section 36C of the TO).