

**For discussion
on 13 June 2022**

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

**Follow-up Measures to Implement
the Telecommunications (Amendment) Ordinance 2021**

Purpose

The Telecommunications (Amendment) Bill 2021 was passed in the Legislative Council (LegCo) on 21 October last year to amend relevant provisions of the Telecommunications Ordinance (Cap. 106) (TO) to implement the proposed measures in the Review of Telecommunications Regulatory Framework. The legislative amendments would ensure that our regulatory framework can keep pace with the latest development so as to facilitate sustainable development of the telecommunications industry. According to our plan and as published in the Gazette, the Telecommunications (Amendment) Ordinance 2021 (the Amendment Ordinance) will come into operation on 24 June 2022. This paper briefs Members on the Government's follow-up measures to implement the Amendment Ordinance and the latest development.

Background

2. In February 2019, the Government completed a three-month public consultation on the Review of Telecommunications Regulatory Framework to review the telecommunications regulatory framework under the TO to ensure that it is in line with the application and advancement of telecommunications technologies (in particular innovative services such as 5G and Internet of Things (IoT)). We subsequently briefed this Panel in November 2019 on the views collected during public consultation and the four major measures which were proposed after the review. These include stipulating the powers of the Communications Authority (CA) on regulating the telecommunications functions of smart devices, strengthening the protection of underground telecommunications infrastructure, simplifying the licensing framework to facilitate the introduction of innovative services by the industry and improving the appeal mechanism under the TO. On 19 April 2021, the Commerce and Economic Development Bureau (CEDB) briefed this Panel on the relevant proposed legislative amendments and obtained Members' support. The CEDB

subsequently introduced the legislative amendments proposals into LegCo to implement the relevant proposed measures.

Latest Progress of the Implementation of the Four Measures under the Amendment Ordinance

3. The proposed legislative amendments to implement the above four measures were passed in LegCo on 21 October 2021. The Government has thereafter been actively taking forward preparatory work for the implementation of the Amendment Ordinance. On 29 April this year, the Secretary for Commerce and Economic Development (SCED) specified by notice as published in the Gazette 24 June 2022 as the commencement date of the Amendment Ordinance. The latest progress of the implementation of the four measures under the Amendment Ordinance is set out in ensuing paragraphs.

Stipulating CA's Powers on Regulating the Telecommunications Functions of Smart Devices

4. In the past, under the regulatory framework for traditional devices, "telecommunications equipment" was generally regulated by the CA. Nevertheless, in the 5G and IoT era, the rapid development of many household and personal electronic devices equipped with internet connection functions has rendered the regulation of these devices more complicated. The Amendment Ordinance clearly stipulates that the powers and duties of the CA would focus on regulating the telecommunications functions of such smart devices and products (i.e. including the integrity of and compatibility with telecommunications networks and control of the level of non-ionising electromagnetic radiation). Non-telecommunications functions of such equipment and devices (e.g. electrical and other safety specifications and standards) are regulated by other dedicated legislation as appropriate. For example, the Electrical and Mechanical Services Department enforces the Electrical Products (Safety) Regulation (Cap. 406G) to regulate the safety of household electrical products sold and leased in Hong Kong while the Customs and Excise Department enforces the Consumer Goods Safety Ordinance (Cap. 456) which imposes a duty on manufacturers, importers and suppliers to ensure that consumer goods supplied in Hong Kong will comply with the general safety requirements. The Amendment Ordinance has clearly delineated the division of responsibilities among various government departments in regulating the smart devices and products to facilitate the overall development of relevant markets.

5. The Office of the Communications Authority (OFCA) has been actively carrying out follow-up work after the passage of the Amendment Ordinance,

including consultation with the telecommunications industry on and securing their support for updating the telecommunications technical specification HKCA 2001 and its scope of safety requirements. OFCA has also notified relevant electrical appliance merchant associations (i.e. the Hong Kong and Kowloon Electrical Appliances Merchants Association and the Radio Association of Hong Kong), various telecommunications equipment certification bodies and testing laboratories, etc. of the regulatory arrangements updated by the legislation. OFCA also uploaded the latest information on electrical safety onto its website for reference by consumers and the industry so as to ensure that they have better understanding of the regulatory requirements after the Amendment Ordinance has come into effect. OFCA will continue to closely monitor market development of relevant products and work jointly with relevant government departments in light of the latest division of responsibilities to handle public enquiries or complaints to ensure that consumers and public safety are safeguarded.

Strengthening the Protection of Underground Telecommunications Infrastructure

6. To enhance the existing protection of underground telecommunications infrastructure, the Amendment Ordinance creates certain criminal offences¹ against any person who does not take reasonable steps and measures to protect or prevent damage to underground telecommunications lines when carrying out works. Offenders shall be liable to fines and imprisonment. The amendments have made reference to other existing statutory protection arrangements for underground infrastructure in Hong Kong² and their levels of sanctions to prevent and punish negligent damages inflicted on underground telecommunications facilities, thereby providing better protection for both telecommunications operators and the public from network outage.

7. To ensure that stakeholders (in particular the construction industry) understand and comply with the latest protection requirements for underground telecommunications lines after the legislative amendments have come into effect,

¹ Including (a) failure to take all reasonable steps before the work begins to ascertain if any underground telecommunications line exists within or near the proposed work site, and (if so) the alignment and depth of the concerned line should be liable to a fine at level 4 (i.e. \$25,000) and imprisonment for 6 months; (b) failure to take all reasonable measures to prevent any damage to an underground telecommunications line or interruption to a telecommunications service arising from the work should be liable to a fine at level 4 (i.e. \$25,000) and imprisonment for 6 months; (c) if the offence of (b) results in an interruption to a telecommunications service should be liable to more severe punishment i.e. a fine of \$200,000 and imprisonment for 12 months; and if the offence of (b) or (c) above continues, an additional fine of \$10,000 per day.

² Including statutory protection arrangements concerning the electricity supply lines under the Electricity Supply Lines (Protection) Regulation (Cap. 406H) and gas pipes under the Gas Safety (Gas Supply) Regulations (Cap. 51B).

OFCA, in consultation with the telecommunications industry, the construction industry and other relevant stakeholders³, formulated the Guidelines on Work near Underground Telecommunications Lines (the Guidelines) in November 2021. Having considered their views, the CA has completed the work on formulating the Guidelines in February this year.

8. Separately, since a contractor shall, in accordance with the Guidelines, appoint a competent person concerned to carry out the detection work for the underground telecommunications line, OFCA has engaged the Hong Kong Institute of Construction and the Hong Kong Institute of Vocational Education to offer training courses since March this year for practitioners to be qualified as relevant competent persons. Individuals who have completed such courses and qualified for relevant requirements may apply to OFCA for approval as a competent person. As of early June this year, more than 300 persons have attended the above training courses and over 70 of them have registered as competent persons. We expect the pool to be sufficient for providing services to the industry. OFCA will continue to update the list of competent persons on its website for public information.

9. According to our plan, the Guidelines and the Amendment Ordinance will come into effect concurrently to provide clear standard and guiding principles, and draw up appropriate working safety guidelines and precautionary measures. The Amendment Ordinance provides that it is a defence if a contractor or anyone who carries out the works can prove that the requirements of the Guidelines have been complied with before or during the works.

Simplifying the Licensing Framework to Facilitate the Introduction of Innovative Services by the Industry

10. The Amendment Ordinance empowers SCED to specify by notice published in the Gazette certain telecommunications licences as “non-carrier licences”⁴ so as to increase the flexibility of the licensing framework, thereby facilitating the implementation and application of innovative telecommunications services under the 5G era and enabling swift response to technological advancement and market conditions.

³ Relevant stakeholders include licensees of unified carrier licences (including operators of submarine cable landing stations) holding block licences for installation of underground telecommunications lines to provide cable-based fixed line telecommunications service, trade associations, relevant professional bodies/institutes/associations and government departments.

⁴ It refers to telecommunications licences with a more restrictive scope in terms of geographical coverage, scope, scale or customer base of the service.

11. Unlike the regulatory approach for carrier licences⁵ under the TO, such innovative telecommunications services are generally smaller in scale and applicable to specific geographical settings, serving a specific group of users (e.g. property management, parking/access control, industrial automation, transportation, academic research and health care services, etc.). Licensing for such telecommunications services should be made flexible through non-carrier licences which are subject to less stringent licence conditions to facilitate the development of relevant innovative telecommunications services in Hong Kong and embrace the arrival of new technologies and new applications.

12. The industry generally welcomes the legislative amendment to introduce a simplified licensing framework for “non-carrier licences”. After the Amendment Ordinance has come into effect, the CA will determine the licence conditions and relevant details, including the form of licence, its validity period and the fees payable for a “non-carrier licence” as defined under the law. SCED will specify by notice published in the Gazette such licences as “non-carrier licence”.

Improving the Appeal Mechanism under the TO

13. The Amendment Ordinance will expand the functions and powers of the existing Telecommunications (Competition Provisions) Appeal Board which will be renamed as the Telecommunications Appeal Board (TAB). In addition to dealing with existing decisions of the CA in relation to exploitative conduct engaged by licensee under section 7Q⁶ of the TO, the TAB will handle certain decisions of the CA⁷ under the TO. If licensees or other affected parties express objection to certain regulatory decisions of the CA, they may lodge appeals with the TAB after the Amendment Ordinance has come into effect.

⁵ Pursuant to section 2 of the TO, a “carrier licence” means a licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between fixed locations, between moving locations or between fixed locations and moving locations, within Hong Kong, or between Hong Kong and places outside Hong Kong, on a point-to-point, point-to-multipoint or broadcasting basis, such locations within Hong Kong being separated by unleased Government land.

⁶ Section 7Q of the TO provides that a licensee in a dominant position in a telecommunications market must not engage in conduct that in the opinion of the CA is exploitative. A licensee aggrieved by the CA’s decision under this section might lodge an appeal to the TCPAB. Other than this, a licensee who wants to challenge a decision of the CA can only seek a judicial review.

⁷ Including (i) refusal to grant telecommunications licence (section 7(5) of the TO); (ii) refusal to give consent on tariffs (section 7F(3) of the TO); (iii) suspension and/or revocation of certificate of competency and authority to operate for operating personnel (sections 32K(2) and 32K(5) 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(1) of the TO); (vi) direction on sharing of use of facilities (section 36AA(1) of the TO); (vii) directions by the CA (section 36B(1) of the TO); (viii) imposition of financial penalties (section 36C(1) of the TO); and (ix) requirements by the CA for disclosing information or publishing corrective advertisements (section 36C(3A) of the TO).

Way Forward

14. We will continue to closely monitor the market situation to ensure that our telecommunications regulatory framework is up-to-date and in tandem with the advancement of telecommunications services and technologies.

15. Members are invited to note the content of this paper.

**Commerce and Economic Development Bureau
Office of the Communications Authority
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