Telecommunication (Amendment) Bill 1999

The Administration's response to the views submitted by the deputations

The Telecommunication (Amendment) Bill 1999 is an important and technical Bill. It aims to amend the Telecommunication Ordinance (Cap 106) (Ordinance) in order, *inter alia*, to enhance competition safeguards, improve interconnection and access arrangement for telecommunications services, streamline licensing procedures and provide the Telecommunications Authority (TA) with the necessary powers in certain technical areas, such as radio spectrum management and setting technical standards. A majority of the provisions proposed are existing licence conditions, which have been included in the Bill to provide an even more certain operating environment for telecommunications operators. The Bill has also reflected views we have collected in several rounds of public consultation.

2. The views of the deputations are mainly concerned with the proposals to strengthen and clarify the TA's powers to regulate the telecommunications industry, as well as to provide for an access right, subject to payment of an access fee, for mobile network operators to gain access to land (under circumstances such as where there are no alternative sites for installation) for radiocommunications installations to extend the coverage of their networks to public places. The following set out the major principles and our thinking behind these proposals.

Powers of the TA

3. It has been a well established practice of the TA to consult the industry or the public, where appropriate, and to give reasonable opportunities for affected parties to make representations before he comes to a conclusion on significant issues, including directions and determinations. It is also the duty of the TA, and his existing practice, to take into account all relevant considerations before taking these decisions and to make known to the public his considerations and reasons for the decisions. The TA, as in the case of all Government agencies, has the duty to observe the rules of natural justice.

4. We have taken the opportunity of the Bill (e.g. *vide* Clauses 2 (new section 2(2)), 3 (new section 6A(3)), 4 (new section 7I(4)), 20 (new section 36AA(2)) to formalise these existing practices by including in the Telecommunication Ordinance provisions which require the TA to set out reasons for his decisions in writing, give the affected parties a reasonable opportunity to make representations before making decisions of significance (e.g. disclosure of information and making directions), and issue guidelines for the exercise of his powers. These proposals would further ensure that the TA exercises his decision-making powers in a transparent and timely manner. The existing system whereby appeals against the TA's decisions are by means of judicial review has worked well and has the general support of the industry. We have therefore reflected the existing arrangements in the Bill.

Competition Safeguards

5. Understandably, as a major player in the telecommunications market, Cable & Wireless HKT Limited (CWHKT) would have substantial concern over the provisions (Clause 4 to insert new sections 7K to 7N) on competition safeguards and the TA's powers to request and disclose information of licensees. It should be noted that these provisions are largely modelled on the existing conditions in the fixed telecommunication network services (FTNS) licence (e.g see General Conditions 15, 16 and 20(4) of CWHKT's licence - extract at Annex A). The
Annex A FTNS operators are already subject to such regulatory measures as an integral part of their licence conditions. We have only taken the opportunity of this Bill to put beyond doubt the TA's powers to enforce these measures.

6. CWHKT also has expressed concern over the increased penalties that the TA may impose for breaches of the Telecommunication Ordinance, licence conditions, and directions relating to interconnection and facilities sharing. However, it should be noted that in many submissions received during our consultation with the public on the legislative proposals, respondents considered that the existing level of penalties was grossly inadequate (e.g. see extracts from the summary of the responses submitted to the LegCo ITB Panel on 9.11.98 at
Annex B Annex B). Given the state of market development, some respondents even felt that the proposed ten-fold increase in penalties which the TA may impose was still too low. We have therefore proposed that the TA should be empowered to apply to the Court of First Instance for a higher level

of penalty if he felt that the proposed maximum penalty ($200,000 for the first occasion of a breach, $500,000 for the second occasion and $ 1 million for the third and subsequent occasions) which he may impose inadequate for a particular breach.

Interconnection

7. We propose in the Bill to clarify the powers of the TA on interconnection. The clarifications we propose are that the TA be given the powers to make a Determination on interconnection at any technically feasible point (including the local loop) and on such terms (including those which are cost-based) as appear to the TA to be fair and reasonable for access to and use of the appropriate part of the network or line. This proposal is supported by other FTNS and the Hong Kong Telecommunications Users' Group.

8. CWHKT, however, has expressed concern over the proposal. It claims that unbundling of the local loop is not "interconnection" but the taking away of property which will raise serious constitutional issues under the Basic Law and the Bill of Rights. We disagree with CWHKT's views on this. The property rights of the facilities, including the local loops, remain to be vested in the licensee as owner of the facilities/loops even with interconnection. The rights of the party obtaining interconnection or sharing of use of facilities under the proposed sections 36A are not assignable. The TA's exercise of his powers under these sections are not in the nature of a "deprivation of property" within the meaning of the Basic Law 105. The right of interconnection to local loops is an internationally recognized practice to ensure effective competition in the telecommunications market. Similar statutory powers are provided for regulators in the US, Germany and Australia.

9. CWHKT's suggestion that interconnection should only be mandated if there is a bottleneck facility is not acceptable. Interconnection is critical in ensuring that consumers of one network can also gain access to another network in case they wish to reach parties not connected to their own network and *vice versa*. This form of interconnection is necessary even if the network to be interconnected with is not a "bottleneck" facility. For example, it is necessary for interconnection to be made to a fixed network so that users connected to that network may gain access to users connected to other networks.

However, the former fixed network is not necessarily a "bottleneck" facility as the users connected to it may be accessed through other networks (e.g. a mobile network). The concept of "bottleneck" facility is not relevant in the consideration of interconnection in general.

Access Right of Mobile Network Operators

10. Regarding the proposal on access right for mobile network operators, we have already set out in our previous response to the Bills Committee [CB(1) 1860/98-99 (01)] the underlying considerations and the procedures that the TA will follow in the exercise of his power to determine access fees. In essence, the high and increasing mobile penetration rate (51 mobile telephones per 100 people) in Hong Kong suggests that mobile telecommunications have now become an essential public service to consumers and the community. We have therefore decided that it will be in the public interest to have a policy that helps to ensure ubiquitous coverage for mobile telecommunications services in Hong Kong. This policy objective can only be met if such services could also gain access to shielded areas, including tunnels. The Bill seeks to empower the TA to authorize mobile network operators to enter land for radiocommunications installation for provision of services to a public place subject to the payment of access fees, **only if the public interest test is met** under new section 14(1B)(a) and the factors under new section 14(1B)(b), such as the availability of alternative sites, have been taken into account. The three key factors which the TA must consider in applying the public interest test are:

(a) the Government policy objectives on telecommunications industry namely:

- that the widest range of quality telecommunications services should be available to the community at reasonable cost

- that telecommunications services should be provided in the most economically efficient manner possible

- that Hong Kong should serve as the pre-eminent communications hub for the region now and into the next century

(b) protection of consumer interests

(c) encouraging the efficient investment in telecommunications infrastructure

The new section 14(5)(a) provides that "the licensee (that is, mobile network operators) and the person having a lawful interest in the land concerned shall endeavor to come to an agreement as to the fee to be paid .....". Only when this failed would the Telecommunications Authority (TA) be empowered to intervene and determine the fee.

11. In line with its established practice, the TA will conduct public consultation on the charging principles for determining the access fees to shielded areas under section 14(5)(b) of the Telecommunication (Amendment) Bill 1999. It will formulate clear guidelines on how he would make such a determination. The TA will carry out research and analyses on the relevant factors and considerations, including the commercial consideration that may be put forward by landlords/tunnel operators, to determine the appropriate charging models under various circumstance. If necessary, the TA may engage outside consultants (e.g. surveyors and valuers) to provide advice. A review stage will follow the public consultation process, involving consideration of responses to the consultation document and further quantitative or qualitative analysis of the issues. The purpose of the consultation is to enhance the transparency and effectiveness of decisions by ensuring that the views of all interested parties, including the landlords and tunnel operators, are factored into the decision-making process.

12. The Administration's detailed response to the views submitted by the deputations are set out in the table at Annex C.

Annex C

Information Technology and Broadcasting Bureau
September 1999

Annex A

Extracted from Cable & Wireless Hong Kong Telecommunications's Licence

Anti-competitive conduct

15. (1) (a) A licensee shall not engage in any conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in the operation of the Service or in any market for the provision or acquisition of a telecommunication installation, service or apparatus.

(b) Conduct which the Authority may consider has the relevant purpose or effect referred to in subparagraph (a) includes, but is not limited to -

(i) collusive agreements to fix the price for any apparatus or service;

(ii) boycotting the supply of goods or services to competitors;

(iii) entering into exclusive arrangements which prevent competitors from having access to supplies or outlets;

(iv) agreements between licensees to share the available market between them along agreed geographic or customer lines.

(2) In particular, but without limiting the generality of the conduct referred to in paragraph (1), a licensee shall not -

(a) enter into any agreement, arrangement or understanding, whether legally enforceable or not, which has or is likely to have the purpose or effect of preventing or substantially restricting competition in any market for the provision or acquisition of any telecommunication installations, services or apparatus;

(b) without the authorization of the Authority, make it a condition of the provision or connection of telecommunication installations, services or apparatus that the person acquiring such telecommunication installations, services or apparatus also acquire or not acquire any other service or apparatus either from itself or of any kind from another person; or

(c) give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a significant competitive disadvantage or competition would be prevented or substantially restricted within the meaning of paragraph (1).

Abuse of position

16. (1) Where the licensee is, in the opinion of the Authority, in a dominant position with respect to a market for the relevant telecommunications services, it shall not abuse its position.

(2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers. In considering whether a licensee is dominant, the Authority will take into account the market share of the licensee, its power to make pricing and other decisions, the height of barriers to entry, the degree of product differentiation and sales promotion and such other relevant matters which are or may be contained in guidelines to be issued by the Authority.

(3) (a) A licensee which is in a dominant position within the meaning in paragraph (1) shall be taken to have abused its position if, in the opinion of the Authority, it has engaged in conduct which has the purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunication installations, services or apparatus.

(b) Conduct which the Authority may consider to fall within the conduct referred to in subparagraph (a) includes, but is not limited to -

(i) predatory pricing;

(ii) price discrimination;

(iii) the imposition of contractual terms which are harsh or unrelated to the subject of the contract;

(iv) tying arrangements;

(v) discrimination in supply of services to competitors.

Tariffs

20. (1) The licensee shall publish and charge no more than the tariffs for the Service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the Service.

(2) Publication shall be effected by -

(a) submission for publication in the Hong Kong Government Gazette and by sending a copy to the Authority on or before the date on which the licensed service is to be introduced;

(b) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and

(c) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.

(3) Where the licensee provides customer equipment integral to the provision of a telecommunication service to its customers, the tariff shall clearly state the price of the customer equipment separately from the charges for the telecommunication service.

(4) The licensee shall not offer any discount to its published tariffs for a particular telecommunication service provided under this licence or customer equipment subject to paragraph (3) (other than a discount calculated in accordance with a formula or methodology approved by the Authority and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that telecommunication service.

(5) The licensee shall not, without the approval of the Authority, bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.

(6) In this General Condition, "a dominant position" has the meaning described by General Condition 16(2).

Annex B

Extracts from the paper "1998 Review of Fixed Telecommunications - A Considered View Summary of Submissions" submitted to the Legislative Council Panel on Information Technology and Broadcasting

Person/Organisation	Comment
British Telecommunications plc	Any legislation introduced to specifically provide competitive safeguards should be firm and yet flexible enough to meet changing market conditions. As a general rule though measures to restrict abuse of dominant market power can be specific rather than couched in general terms, because abuse of dominant market power can lead to damaged competition which in itself is difficult to prove in the absence of certain tests. The penalty for such abuse should be set at an appropriate level such that it becomes economically non-viable to do so. These penalties can be calculated from the loss of economic value from damaged competition in each test.
City Telecom (HK)	Opines that Government's proposal to increase the existing penalties ten times will not be sufficient to curb anti-competitive conduct, when compared with the benefits to those engaged in anti-competitive practices. It will be more effective for the penalties to be based on the revenue derived from anti-competitive behaviour or the losses inflicted on their competitors without any upper limit.
Hong Kong Internet Service Providers Association	Call for stronger enforcement of competitive safeguards to ensure a fair and open competitive environment for all types of telecommunications and Internet services, to maintain a healthy environment for the development of the IT industry which depends on telecoms services with quality and choices. There must be stronger enforcement against violators and the level of penalty should be increased by at least ten-fold. In addition, competing service providers and consumers which suffer as a result of anti-competitive practices should be given a means to seek compensation against damages.

Person/Organisation	Comment
Hutchison Telecommunications (Hong Kong)	Support needed from Government: the proposed strengthening of remedies for breaches of licence conditions does not go far enough. Significant financial penalties are necessary.
JOS Telecom	Supports the proposal to increase the penalty for anti-competitive behaviour. In addition to a set fine, the penalty imposed should be a multiple of the benefits received by the violator as well as the damages done to its competitor.
Lam, Charles (Dr.)	If the current penalties for anti-competitive behaviours are not effective, heavier penalties should be imposed.
New T&T Hong Kong	Supports the proposal to increase the penalties for anti-competitive activities, but submits that the new penalties are still too low to act as an effective deterrent.
New World Telephone	Supports the proposal to increase the existing level of penalty. Proposes that Government should consider increasing the maximum penalty substantially and tying the penalty to the benefit derived. More effective sanctions, e.g. suspension of licence, should be considered.
Telstra Corporation	Agrees that the existing penalties for anti-competitive conduct should be increased. However, not convinced that an increase in penalties by a factor of ten is sufficient. Penalties of the magnitude of AUD 10 million with AUD 1 million a day for continuing offences would generate instant management attention.

The Administration's Response to the Views Submitted by the Deputations

Issues	Major Views by Deputations	The Administration's Response
Powers of Authority (s.6A)	(a) **Cable & Wireless HKT Limited (CWHKT)** considers that the functions of the Telecommunications Authority (TA) should be clearly set out in the new section 6A. The TA's powers should only be used in the exercise of his stated functions. (b) **CWHKT** opines that the law as presently drafted has no statutory requirement on the TA to give written reasons for forming an opinion on whether the licensee has engaged in the anti-competitive conduct in the proposed section 7K, 7L, 7M and 7N. It proposes that a new section be added after the new section 6A to provide that the TA, in forming an opinion or making a direction, determination or other decision must: • have regard only to all relevant considerations;	(a) The services of the Office of the Telecommunications Authority Trading Fund (OFTATF) are set out in Schedule 1 of the Legislative Council Resolution on the establishment of the OFTATF under the Trading Funds Ordinance. The TA's powers are spelt out under the Telecommunication Ordinance. The functions of the TA are restricted by the statutory powers conferred on him. We do not, therefore, consider it necessary to set out explicitly the functions of the TA in the Telecommunication Ordinance. (b) The new section 6A(3)(b) requires the TA to provide reasons in writing for its determination, direction or decision. Omission of the word "opinion" in the section is not a deliberate act of releasing the TA from giving reasons for forming such an "opinion". The administrative framework, as amended by the Bill, is that in case of breach of any provision of the Ordinance or licence condition, the TA may enforce the provision or condition by making a decision as to whether to issue a direction, impose penalties, suspend or revoke the licence. Accordingly, forming an "opinion" will not be a standalone action. When the TA forms an opinion that a licensee is in breach of any of the proposed section 7K, 7L, 7M or 7N, the TA will at the same time decide the kind of disciplinary measure, in which

Issues	Major Views by Deputations	The Administration's Response
	• afford any person who may be affected by the opinion, direction, determination a reasonable opportunity of being heard; and • set out in any reasons given for an opinion, direction, determination or other decision the TA's findings on material questions of fact and a summary of the evidence on which those findings are based.	case the TA will be obliged under section 6A(3)(b) to give written reasons. In fact, it has been the established practice of the TA to consult the relevant parties, take into account all relevant considerations before he makes any decisions of significance or forms an "opinion" whether a licensee is a dominant operator or whether anti-competitive behaviour has been practised. He will also publish, so far as permissible, the information he has considered and the reasons in arriving at the decision or opinion. This existing practice is reflected in the policy statements (i.e. TA Statements), determinations and reports made public by the TA on OFTA's Website. The new section 6A(3) is only a codification of the present practice. For example, detailed reasons and analysis have been given in the report explaining the grounds on which the TA formed his "opinion" in the recent application made by CWHKT for declaration of non-dominance. We therefore do not consider it necessary to amend the proposed section as suggested by CWHKT.
Tariffs and Price Control (s. 7F and 7G)	**CWHKT** claims that the price control regulations reflect an outdated and inappropriate regulatory regime which is inconsistent with the current competitive environment.	We do not agree with CWHKT's views. The proposed section 7F is incorporated into the Bill from an existing licence condition under the Fixed Telecommunication Network Services Licence. It aims to impose the criteria for the telecommunications operators to publish the

Issues	Major Views by Deputations	The Administration's Response
		tariffs to protect the consumers' interests. The proposed section 7G is an enabling provision for the Secretary to issue regulations on price control on dominant operators if justified. In the experience of overseas jurisdictions such as the UK, US and Australia, price regulation, especially in respect of the "dominant" operator, is extremely important because of the fundamental objective of encouraging competition in a market which is in the course of transition from some form of monopoly to full competition. During the initial phase of deregulation, the former monopoly still retains significant market power and this market power is generally constrained by some form of "dominant operator" regulation, as proposed by the Bill. These include the price regulation provisions (i.e. proposed sections 7F and 7G) and the competitive protection provisions (i.e. proposed sections 7K, 7L, 7M and 7N). The telecommunications markets in Hong Kong are not yet fully competitive in a number of sectors. Hence, the price regulation provisions are necessary. However, the inclusion of the price regulation provisions in the Telecommunication Ordinance does not mean that the regulation needs to be perpetually applied. The application must be justified by the market situation at the time.
Request for Information	**CWHKT** claims that there is virtually no limit on the type of information that the TA may	We do not agree with CWHKT's proposal to delete section 7I(3). Section 7I(3) empowers the TA to disclose information only if it is in the

Issues	Major Views by Deputations	The Administration's Response
(s.7I)	disclose under the proposed section 7(I)(3), which could include commercially sensitive information. CWHKT claims that the proposed power to disclose information to third parties is unnecessary and arbitrary within the meaning of the Basic Law and the Bill of Rights Ordinance. It proposes that the proposed section 7(I)(3) should be deleted.	public interest to disclose that information and subject to the requirement in subsection 4 that the TA shall give a person reasonable opportunity to make representations on a proposed disclosure of information obtained under section 7I. The power is a restrictive power necessary for the TA to exercise his functions. For example, if a licensee has engaged in anti-competitive behaviour/deceptive behaviour, the TA may find it in the public interest to disclose certain information provided by the licensee in order to protection consumer interests. Such disclosure does not contravene the Bill of Rights Ordinance or the Basic Law as the exercise of the power is necessary, in the public interest and by no means arbitrary. Our research into the regulatory powers for the telecommunications sector as provided in the overseas jurisdictions indicates that many overseas telecommunications regulators (e.g. in Canada and the UK) are also empowered to require disclosure of information.
Competition Safeguards (s.7K-7N)	(a) **Hutchison, New T&T** and **Hong Kong Telecommunications Users' Group (HKTUG)** support the proposed sections as they will enable the TA to conduct investigations more effectively. HKTUG considers that the proposed sections are very	(a) We welcome the support from Hutchison, New T&T and HKTUG. (b) It is the long established practice within the telecommunications sector for it to be subject to regulatory measures against anti-competitive behaviour. The proposed sections 7K to 7N merely incorporate the relevant anti-competition safeguards from the

Issues	Major Views by Deputations	The Administration's Response
	important to the industry and strike the right balance between the regulation of dominant and non-dominant players in the industry. (b) CWHKT suggests to introduce a general competition law. It claims that a number of anti-competitive market distortions affect telecommunications markets in Hong Kong are perpetuated by non-licensees. In the absence of a general competition law, the proposal in the Bill to single out licensees alone is a violation of the right to "equality before and equal protection of the law" protected by Article 22 of the Bill of Rights. **CWHKT** supports the introduction of a general competition law in Hong Kong and proposes that where applicable the word "licensee" as it appears in the proposed sections 7K to 7N be replaced by the word "person". (c)	existing fixed telecommunication network services (FTNS) licences. Hence, all FTNS licensees are at present already subject to such regulatory measures. For the telecommunications market where there was a monopoly in the past and full competition has yet to be achieved in many sectors of the market, it is in the public interest to have regulatory measures against anti-competitive behaviour of licensees. As regards the differentiation between licensees and non-licensees, there is no question that this falls within the scope of ICCPR Article 26 (i.e. equality before law and equal protection of law) as the differentiation is not due to discrimination based on grounds involving immutable personal characteristics (e.g. race, colour, sex). CWHKT's suggestion for an all-embracing competition law is outside the context of the Telecommunication (Amendment) Bill 1999. The special characteristics of the telecommunication markets justifies the sector-specific approach proposed in the Bill.
New licence requirements (s.8)	**HKTUG** supports the new class licensing regime as it will simplify the administration of licensing in Hong Kong and encourage service	Under the existing Telecommunication Ordinance, the provision of a telecommunication services without establishing or maintaining "a means of telecommunication" is not subject to licensing and therefore

Issues	Major Views by Deputations	The Administration's Response
	providers to enter the market, thereby benefiting users. However, it considers the new requirement for a licence to offer in the course of business any telecommunications service such as phone card service, a bit too broad.	not within regulatory control by the TA. Examples of such activities not brought under regulatory control are telephone card service operators who do not operate telecommunication facilities in Hong Kong, resellers of telecommunications services of other operators, etc. For consumer protection, a system of regulatory control through licensing should be set up. The TA does not envisage that the licensing system would impose unnecessary administrative burden on the industry. Under this class licence system, there would be no need for a person intending to supply the specific services to apply for an individual licence, provided that he complies with the conditions of the class licence. The TA may probably request the person to register his contact details with him.
Right of access (s.14)	(a) **CWHKTCSL, Hutchison, New World, Peoples, SmarTone, Sunday, HKTUG and Telecom Association of Hong Kong** support the proposed sections to provide right of access to mobile network operators subject to payment of access fees. They consider that the continuous development of mobile telecommunications services is hindered by the grave difficulties that mobile operators encounter in gaining access to land	(a) We welcome the support from CWHKTCSL, Hutchison, New World, Peoples, SmarTone, Sunday, HKTUG and Telecom Association of Hong Kong. (b) The existing access fees levied on mobile network operators for radiocommunications installations at government tunnels are tabulated at **Annex C-1**. The government will set new access fees based on cost to lend support to our policy objective and to facilitate access by operators into Government land and buildings. The previous delay in granting approvals for PCS operators to access to

Issues	Major Views by Deputations	The Administration's Response
	for radiocommunications installations. They consider that as the landlords, tunnel companies, MTRC and KCRC can leverage on a monopolistic and cartel-like position, the ground for commercial negotiations can hardly be fair and the free market cannot prevail. They indicate that as they are bound by licence obligations and have no alternative locations for installations, they had not choice but to accept agreements however unfavourabe in the past. They consider that the new section 14 will help address these existing access problems. **New World** states that in other jurisdictions, notably Australia, UK and USA, mobile operators are given statutory access rights to land and buildings similar to their fixed counterparts. **SmarTone** and the **Telecom Association of Hong Kong** also indicate that the majority of overseas tunnel operators and shopping malls only charge the cost or a bare minimum fee for mobile	Government tunnels was primarily due to the limited space in cable trays and ducts of the five Government tunnels. To cope with this constraint, the PCS operators have agreed to maintain integrated radio systems (IRS) for the extension of their network coverage in Government tunnel areas. This allows for more efficient use of the cabling space in Government tunnels. The Government departments concerned have given approvals for the installation of IRS in all six Government tunnels in August and September 1999. Legal documents for the access arrangement are being drawn up. (c) The comments of the railway and tunnel companies suggest that they may have misunderstood somewhat the implications of new section 14(1B) of the Bill. We would like to clarify as follows: (i) There is no question of railway safety being compromised under the proposed arrangement. KCRC and MTRC will still have the right to require that the installations of the mobile network operators should be compatible with the railway systems and meet the safety standards required. Where necessary, the TA would coordinate the installations by mobile network operators to meet the requirements of KCRC and MTRC. Statutory access rights already exist under section 14 of the Telecommunication Ordinance for

Issues	Major Views by Deputations	The Administration's Response
	operators' access arrangement. (b) In response to LegCo's Members' enquiry, some operators mentioned the access fees levied on them by Government tunnels and the related issues at the Bills Committee held on 6 September 1999. The Administration was requested to provide information/response in this respect. (c) **KCRC** and **MTRC** do not support the proposal. They claim that the proposal will give an unfettered right of access for licensees to build their own individual systems and hence affect the safety of the railways. They also consider that the proposal will violate the free market principle and affect the existing commercial agreements. **BOT tunnel companies** object to the proposal on the grounds that -	fixed network operators. Such rights have also been exercised in an orderly and coordinated manner. No safety or security problems have ever been caused to important premises like the Airport Passenger Terminal Building. As stipulated in the new section 14(1B)(b), the TA would take into consideration factors such as the availability of alternative sites, capacity constraints of the space required before granting the authorization under the new section 14(1A). Under the new section 14(6)(c), the TA may issue guidelines to the licensees on how the right of access should be exercised. These guidelines would include requirements for the licensees to cooperate with the persons in control of the land in question to avoid safety, security, disturbance or inconvenience problems. (ii) The TA cannot exercise the power under the new section 14 (1A) arbitrarily. There are clear statutory checks and balances (in particular, the public interest test under section 14(1B)(a), and the requirement to give primacy to commercial agreements under section 14(5) provided under the Bill. In addition, as set out in our previous response to the Bills Committee [CB (1) 1860/98-99 (01)], the TA will conduct public consultation on the charging principles in

Issues	Major Views by Deputations	The Administration's Response
	• the Tunnel Ordinances contain specific provisions that consent from tunnel operators is required to install utility facilities in tunnels; • there is no problem under the existing commercial agreements; • the proposal is contrary to free market economy principles and would discourage private investment in infrastructure in future; • the proposal is unreasonable and unfair as the operation of BOT tunnels is governed by relevant Ordinances; • it is most unlikely that any reduction in fees payable to tunnel operators by mobile phone operators will be passed on to consumers. In contrast, a reduction in the fees paid to tunnel operators could lead to an increase in tunnel tolls and therefore	determining the access fees to shielded areas under section 14(5)(b) of the Bill. It will formulate clear guidelines on how he would make such a determination. The TA will carry out research and analysis on the relevant factors and considerations, including the commercial considerations put forward by landlords/tunnel operators, when determining the appropriate charging models. The purpose of the consultation is to enhance the effectiveness and transparency of decisions by ensuring that the views of all interested parties, including those of the landlords and tunnel operators, are properly taken into account in the decision-making process. (iii) The proposed amendment would not affect existing commercial agreements between mobile network operators and landlords/tunnel operators. It will empower the TA only if the public interest test and any other relevant factors set out in the Bill are met. There is no question of the TA making a determination to override commercial agreements. (iv) As set out in our previous response to the Bills Committee [CB (1) 1860/98-99 (01)], mobile network operators and tunnel operators usually take a long time to reach

Issues	Major Views by Deputations	The Administration's Response
	place an additional burden on tunnel users; • the proposal is not in line with practices outside Hong Kong; and • the TA has a vested interest in acting on behalf of the mobile services market. It is therefore not sufficiently impartial to determine the fees. **The Real Estate Developers Association of Hong Kong** (REDA) respects the need for non-discriminatory treatment for all mobile network operators in the interest of fair competition. But the TA should not interfere with the commercial negotiations between the landlords and mobile network operators. REDA could accept that mobile operators be granted a right of access subject to payment of fees, but requests that an independent panel/body comprising members who have no conflict of the interest with the industries concerned should	agreements. In most cases, negotiations took over a year. Some of the reasons for the lengthy negotiations period are (i) there is no alternative to place the radiocommunications equipment inside the tunnel areas if network coverage is to be extended into the tunnels; and (ii) mobile network operators have licence obligations to extend service coverage to tunnels with performance bonds committed to meeting such obligations. Similar problem exists in the negotiations with MTRC, KCRC and landlords. Although Hong Kong has one of the world's highest mobile penetration rate, coverage of our mobile networks is not yet ubiquitous. There are still many "blind spots" in urban and business areas, given the difficulties mobile network operators face in reaching commercial agreements with landlords of shopping malls and tunnel operators. This is not in the interest of the consumers and businesses. The problem will intensify with the advent of the third generation mobile phones, especially for potential new entrants. (v) Our proposal will facilitate the extension of mobile network coverage. This will undoubtedly benefit consumers and businesses in Hong Kong given the growing importance of

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	be the arbitrator. Any fee to be charged should reflect a true commercial/market value and not just the cost of installation. However, REDA could not suggest that the right be granted only with respect to new buildings as this would not be practicable. **Sun Hung Kai** and **Wharf Estates Management Company Limited** object to the proposal based on similar reasons as the BOT tunnel companies.	mobile telecommunications services. The penetration of mobile telecommunications services in Hong Kong has already passed 51% in June 1999, or 43.6% more than that in June 1998. (vi) Given the extensive and increasing use of mobile phones, it will be in the public interest that the coverage of the mobile communications networks to be provided on as comprehensive a basis as possible. We therefore consider that like their fixed telecommunications counterparts mobile telecommunications operators should be given a statutory right of access to railways and road tunnels as well as to shielded areas in buildings without alternative installation sites. The Bill has provided sufficient checks and balances and the mobile telecommunications operators cannot exercise this statutory right indiscriminately. They must first endeavor to reach commercial agreements with the tunnel operators/property owners. The TA may only intervene if such attempts failed and even so, an authorisation may only be granted if it is in the public interest to do so. Furthermore, the TA is obliged to determine a fee which shall be "fair and reasonable in all the circumstances of case. Finally, the TA's determination is

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		subject to public scrutiny through the publication of the reasons for his determination. (vii) Our research into overseas jurisdictions indicates that a number of them have given powers to the regulatory authorities to intervene and determine the level of access fees for installation of public mobile telecommunications networks. For example, in Japan, the Ministry of Posts and Telecommunications may determine the amount of compensation for the use of land or buildings by telecommunications carriers (including mobile telecommunications carriers) if the parties involved fail to reach commercial agreement. Similar laws exist in France, Switzerland, Portugal and the UK. Details are set out in another paper which we have submitted to the Bills Committee. (viii)The new section 14 (1A) will provide a new framework for tunnel and railway operators, landlords of shield areas and mobile network operators in respect of access arrangement and radiocommunications installations.
Numbering Plan	**HKTUG** supports this proposed section as it will ensure that no carrier will have proprietary	We welcome the support from New World, Peoples and HKTUG. We will take into account the operators' concerns in the implementation of

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(s.32F)	rights to numbers which may prevent fair allocation and use of those numbers. **Peoples** indicates that it has no objection to this proposed section. **New World** in principle has no objection to the allocation of special numbers for charitable or educational purposes, but is concerned about the administrative burden in allocating these special numbers to subscribers. It requests that mobile operators' concerns be taken into account in actual implementation.	the numbering plan if the proposed section 32F is passed. The industry will be consulted prior to the making of the regulation under the proposed section 32F to provide for the details of the implementation of the special numbering arrangements.
Spectrum utilization fee (s.32I)	**HKTUG** supports the proposal to empower STTB to determine the level, or the method for determining the level, of spectrum utilization fees. This will ensure that the Government maintains the ability to charge for spectrum if it becomes efficient to do so. **Peoples** also has no objection to the proposal. **CWHKTCSL** considers that the existing mechanism of spectrum allocation has worked well. It considers that the principle of charging for spectrum usage may result in more	"Spectrum pricing" has been recognised by many overseas administrations (e.g. USA, UK, Australia, New Zealand, etc.) with liberalisation policies in the telecommunications industry similar to Hong Kong as an approach to – (a) allocate radio spectrum (which is a valuable and limited community resource) to the usage that generates the highest economic benefits to the community and (b) provide a fair and transparent procedure of deciding who should be entitled to run their business using the radio spectrum.

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	expensive mobile services, less equitable allocation of spectrum and less efficient on spectrum utilization. **New World and SmarTone** has also expressed concerns on the sale and lease of spectrum.	The proposed section 32I is an enabling provision, providing for the powers to introduce spectrum pricing (spectrum utilisation fee) where justified in the frequency bands designated by the TA and at the level, or based on the method of determination, prescribed by the STTB by regulation. As for other significant issues which may affect the telecommunications industry, the STTB and the TA will conduct consultation with the industry and the public as to whether certain bands should be subject to the payment of spectrum utilization fees, and if so, the level or the method of determination of the level of such fees.
Inspection of records, documents and accounts (s.35A)	**C&WHKT** considers that the proposed section 35A gives the TA unlimited power to compel production of information from a licensee, armed with criminal sanctions for a licensee's failure to comply. It proposes that the proposed section 35A be amended to require the TA to seek a warrant from a magistrate in order to be able to search a licensee's premises and compel the production of information. **C&WHKT** also proposes that sections 7I and 35A be consolidated to avoid any overlap of powers and any potential ambiguity.	Section 35A is modelled on an existing licence condition. This section is intended to grant the power to the TA to inspect records, documents and accounts of the licensee for the purpose of enabling the TA to perform his statutory functions (e.g., whether the licensee is in compliance with its licence obligations, investigation in anti-competitive behaviour by a dominant operator or investigation in complaints on unsatisfactory service). This power has to be exercised from time to time on a routine basis as part of the operational functions of the TA to monitor the status of compliance of the licensees. This power is already available under existing licence conditions. Accordingly, we do not propose that the exercise of the power should be subject to grant of warrants.

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		We should note that the TA is bound by the administrative law duties to act lawfully and not to exercise his power arbitrarily. In addition, the TA is guarded by the administrative rules of natural justice to exercise the power reasonably for the purpose of performing his statutory functions. In fact, there are similar powers granted to overseas regulators (e.g. in Canada and Switzerland).
Interconnection and Sharing of Facilities (s.36A and 36AA)	(a) **Hutchison, New T&T and New World** support the proposals to clarify powers of the TA on interconnection and add a new provision on the sharing of use of facilities. These proposals will remove any ambiguity on the TA's authority and facilitate more reasonable commercial negotiations between operators. Interconnection allows consumers to choose from the widest range of services possible and is an efficient means of introducing competition into the market. From a public policy point of view, it is justified to provide the TA with the necessary power to ensure efficient and effective interconnection between networks. The TA's powers to determine interconnection	(a) We welcome the support from Hutchison, New T&T, New World and HKTUG. (b) We do not agree with CWHKT's views. The property rights over the facilities including the local loops subject to the interconnection (including type II interconnection) and sharing requirements, remain to be vested in the licensee who owns the facilities/loops. The rights of the party obtaining interconnection or sharing of use of facilities under the proposed sections 36A and 36AA are not assignable. The TA's exercise of his powers under these sections are not in the nature of a "deprivation of property" within the meaning of the Basic Law 105. (Also see covering paper.) The right of interconnection is an internationally recognised practice to ensure effective competition in the telecommunications

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	and sharing of faculties are essential for the Government to achieve the telecommunications policy objective that the widest range of quality telecommunications services should be provided to consumers at reasonable costs. **HKTUG** also supports the proposals, and suggests to include cost-based pricing provisions dealing with sharing of bottleneck facilities so that parties can share facilities on an economically efficient basis. (b) **CWHKT** considers that the proposed amendments to section 36A will significantly expand the powers of the TA to mandate the terms and conditions of interconnection, and will extend his powers to include mandatory unbundling of the local loop (which, in CWHKT's view, is not "interconnection" but the taking away of property). This would confer upon the TA an unlimited power to require a	market. In the WTO Reference Paper on Regulatory Principles, it is stated that interconnection with a major supplier will be ensured at any technically feasible point in the network. An extract from the Reference Paper is at **Annex C-2.** The right of interconnection is also found in a majority of advanced jurisdictions in Asia, Europe, North America and Australia. CWHKT argues that "unbundling of local loop" is not "interconnection" but the "taking away of property". We disagree strongly with such a characterisation of Type II interconnection. Under the proposed section 36(3B), the TA would select the costing methods that are fair and reasonable. In fact, the TA has already issued guidelines under the existing section 36A(8) regarding the principles governing the criteria for the determination. As stipulated in the guidelines, the TA would determine terms by using an objective costing method. He would not determine terms which are below the reasonable relevant costs, including the cost of capital. In order to enable fair and effective competition to develop at an early date, interconnection with the local loops of the incumbent operator, which established the customer access network mainly during its monopoly, is critical as it would take a long time to

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	telecommunications licensee to provide its competitors with the core elements of its business and, if the TA so determines, below cost. This raises serious constitutional issues under the Basic Law and the Bill of Rights Ordinance. It proposes that the TA's interconnection power should be extended to interconnection *between networks*, but not between *elements of networks*. **CWHKT** considers that the proposed section 36AA which would not require the payment of compensation of sharing of facilities raises serious constitutional issues under the Basic Law and the Bill of Rights Ordinance. **CWHKT** therefore proposes that the provisions be amended to set out that interconnection or facilities sharing should only be mandated (I) if there is a bottleneck facility; (ii) that there are no viable	provide another set of the local loop facilities of the incumbent. In many cases, it is simply physically impossible to build an alternative local loop. There have been a lot of examples overseas involving Type II interconnection (interconnection to the local loop). In Germany, for example, its Network Access Ordinance 1996 expressly provides that "a carrier shall provide unbundled access to all network elements, including unbundled access to the local loop." The Australian Competition and Consumer Commission has also recently mandated access to Telstra's local network by allowing competitors direct access to its copper lines that connect customers to local telephone exchanges. In the US, the Telecommunications Act 1996 also expressly mandates incumbent local exchange carriers to provide access to network elements on an unbundled basis (section 25I©). CWHKT's suggestion that interconnection should only be mandated if there is a bottleneck facility is not acceptable. Interconnection is essential to ensure that consumers of one network can also gain access to another network. The concept of "bottleneck" facility is not relevant in the consideration of interconnection in general and seriously undermines public interest. For example, it is necessary for interconnection to be made to a fixed network so that users connected to that network

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	alternatives; (iii) that the mandating of interconnection will not stifle investment and innovation; and (iv) that it can be demonstrated that the interconnection will create measurable benefits to consumers and to the industry.	may gain access to users connected to other networks. However, the former fixed network is not necessarily a "bottleneck" facility as the users connected to it may be accessed through other networks (e.g. a mobile network). On the sharing of facilities under section 36AA, the parties are encouraged to reach commercial settlement in the first instance (section 36AA(4)). Only if the parties fail to reach an agreement, would the TA intervene. The TA, under section 36AA(6), will determine the essential terms and conditions (including whether a fair compensation should be paid) for the sharing of the facilities. The proposed new section 36AA(3) already stipulates that the facility should be bottleneck facility and there are no technical alternatives available. Also, the sharing of facilities should be in the public interest (section 36AA(1)). The affected parties must be afforded reasonable opportunity to make representations (section 36AA(2)). There are adequate safeguards to ensure that the exercise of powers by the TA are reasonable and fair. From the experience of making determinations on interconnection, the TA would conduct an industry-wide consultation on the framework for determination on sharing of facilities. Where necessary, consultants may also be engaged to advise. The charging

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		principles will be formulated after taking into account views from the industry and experts with a view to devising a mechanism for determining fair compensation for shared facilities.
Increase in Penalty (s.36C)	(a) **Hutchison, New T&T, New World** support the proposed section. The TA's ability to impose fines and pass the case to the Court of First Instance will help reduce the likelihood of breaches. This would help ensure a more level playing field in the industry. **New World** considers that the fines which can be imposed by the TA under the existing Telecommunication Ordinance are vastly disproportionate to the benefits derived from engaging n the anti-competitive behaviours. (b) **CWHKT** considers that the proposal to impose fines by the TA is, in effect, a "quasi-criminal" process. It requests that the TA's power to impose fines should be subject to review by an independent body. Besides, it raises that the amount of the	(a) We welcome the support from Hutchison, New T&T and New World. (b) The increase in penalty even by ten times, as proposed by the Bill, will mean that the maximum penalty that may be imposed by the TA will be increased to HK$200,000 on the first occasion and HK$500,000 on the second occasion and HK$1,000,000 on any subsequent occasion. This amount is considered to be reasonable, and not excessive, given the fact that telecommunications sector is a significant sector of the economy by virtue of its size of operation and importance to economic development and the revenues derived by the telecommunications licensees in the telecommunications markets. The proposed penalties are not excessive when set in the context of the relevant penalties in overseas jurisdictions. (For example, the European Union at Article 15, Fines 2, provides for a maximum of 10% of turnover in the preceding business year of the entity participating in the infringement of anti-competitive rules.) In our consultation on the proposed legislative amendments, many submissions considered that the existing

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	proposed penalty Is excessive and arbitrary. Penalties of this magnitude could potentially force licensees out of business. It therefore requests that licensees should have the right to ask the court to re-examine the TA's decision before imposing penalties which could put the licensee out of business. (c) **CWHKT** considers that the proposed section 36C(3A) would empower the TA to require a licensee which has breached a provision of the Ordinance or licence to "disclose to the public, to a particular person or to a class persons such information as the TA may specify". Such disclosure of information upon the demand of the TA could deprive a licensee of the protections afforded by the rules of evidence and the rules of civil and criminal procedure. This is unfair to licensees and raises serious constitutional issues. It therefore proposes that section 36C(3A) be deleted.	maximum penalty that the TA could impose was grossly adequate. Some even suggested that a ten-fold increase might still be insufficient as a deterrent under certain circumstances. We have therefore concluded that the TA should be empowered to apply to the Court of First Instance that will be able to impose a higher fine. The proposed penalty is neither arbitrary nor excessive. The business and financial situation of the licensees will be taken into consideration by TA when assessing the amount of the penalty to be imposed. (c) The proposed section 36C(3A) is modelled on section 80A of the Australian Trade Practices Act 1974. The TA does not intend to deprive a licensee of the protections afforded by the rules of evidence and the rules of civil and criminal procedure. By virtue of the proposed section 6(3), The TA would take into account the relevant considerations before making a decision to disclose the information under the proposed section 36C(3A). Also, the penalty will not be imposed before the licensee has been given reasonable opportunity to make representations under section 36C(4). The purpose of section 36C(3A) is to order the delinquent licensee to publish corrective statement usually found in competition protection legislation.

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	(d) **CWHKT** opines that it is not clear whether the TA can impose the increased penalties under amended section 36C(3), and then subsequently apply to the court for higher penalties (a form of "double jeopardy"), or whether the application for higher penalties is the sole penalty the TA can impose. It proposes that the new section 36C(3B) be amended to clarify that penalties imposed by the Courts could only be imposed instead of any fine which the TA is otherwise empowered to impose. (e) The TA can wait for up to 3 years before making an application to court for greater penalties. **CWHKT** considers that this is too long in industry in which technology, and the competitive landscape, change daily. It suggests that delay of this nature violates Article 11 of the Bill of Rights, and the licensee could, in such circumstances, be forced to carry a substantial contingent liability on its books throughout this period.	The TA, in deciding the kind of information that is to be disclosed and to whom the information will be disclosed, has the legal duty to act reasonably, otherwise his action would give rise to grounds for a judicial review. The TA has to balance the public interest against the right of the licensee to privacy. The statutory right of representation and the rules of natural justice will provide safeguards against the TA acting unlawfully or arbitrarily. (d) There will not be any double penalty first by the TA under the proposed section 36C(3), and then by the Court under section 36C(3B)(b) on the same breach. (e) There is always an obligation on the TA to act promptly without undue delay. The TA's exercise of powers are under sufficient public scrutiny. We consider that the three-year period is appropriate bearing in mind that the TA may need time to consider the relevant representations and collect relevant information before making decisions on whether the licensee has committed the breach and whether it is appropriate to apply to the court for a higher penalty. For example, in a previous case, it took about 15 months from the licensee's commission of a breach for the TA to investigate the breach, seek legal advice and finally impose a fine

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	It proposes that the section 36C(3B) be amended to require the TA to institute proceedings for a Court-imposed penalty immediately when a breach of the Ordinance is found, rather than within three years. Besides, it raises that the "turnover" against which the penalty is assessed under the proposed section 36C(3B) needs to be linked to revenue derived from the alleged breach.	on the licensee. Given that consideration and preparation for court applications may require a longer time than administrative regulatory measures imposed by the TA, the three-year period as the limitation period is considered appropriate. The limitation period in our proposal is different from the period of delay in ICCPR Article 14(3)(c). For the purpose of ICCPR Article 14(3)(c), the time limit begins when a suspect is "charged". However, the 3-year period in the proposed section 36C(3B)(a) of the Bill refers to the lapse of time between the date of commission of the breach or the date on which the breach comes to the notice of the TA and the date of application to the Court. If the TA acts expeditiously in making the application to court as soon as the licensee is informed that the TA is taking steps to impose penalty on him, there would be no undue delay under ICCPR Article 14(3)(c).
Request for information from non-licensees (s.36D)	**Hutchison and New World** support the proposed section to empower the TA to apply to a magistrate for warrants to seek information about anti-competitive practices from non-licensees. This would facilitate the TA to conduct investigations on complaints of anti-competitive	We welcome the support from Hutchison and New World.

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	competitive conduct, many of them are often based on verbal customer information.	
Civil remedy (s.39A)	(a) **New World and HKTUG** support the proposed section to avail civil remedy to parties who suffered losses from other parties engaging in anti-competitive practices. The threat of a civil suit will also act as an effective deterrent from anti-competitive practices. (b) **CWHKT** points out that section 39A does not specify what (if any) loss a person must have suffered in order to be "aggrieved", or what criteria must be satisfied before a person can bring an action. It suggests that the provision be amended to follow a similar provision in the 1984 Telecommunication Act (UK) which grants a private right of action to anyone who might "sustain loss or damage" as a result of anti-competitive conduct. Besides, it considers that there is no private right of action against persons	(a) We welcome the support from New World and HKTUG. (b) It is our intention that the aggrieved party should be able to claim remedies for the loss or damage as a result of anti-competitive practices. The court will have due consideration as to whether a person may substantiate his or her claims.

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	other than licensee, and there would be no redress against companies affiliated with its competitors which might routinely prevent, restrict or delay CWHKT from installing or maintaining essential telecommunications facilities in their buildings.	
Appeal body	**CWHKT** considers that the Bill should provide for channel for appeal against decisions of the TA on grounds of merit. It proposes that the new section 6B be amended to provide for any person aggrieved by a decision of the TA to appeal to the Courts [to the Administrative Appeals Board]. **HKCTV** proposes that an appeal procedure should be established. The appeal body should be an independent body set up by LegCo, chaired by a LegCo member and augmented by industry experts, representatives from relevant licensees and consumer interest bodies. The appeal body should be empowered to review and quash the TA's orders, determinations and	Issues of the telecommunications industry that the TA has to deal with are highly technical and require timely action in response to rapid changes brought by technological advancements. The TA carries out the statutory duties imposed by the Telecommunication Ordinance within the government's policy framework on telecommunications. In making decisions, the TA has to take into account the industry's needs and economic considerations, as well as to ensure that the public interest test is met. The exercise of powers of the TA under the Telecommunication Ordinance is subject to checks and balances and important safeguards provided for in the Bill against abuse of powers. Such measures ensure that the TA will operate in accordance with the principles of accountability and transparency. The existing system whereby appeals against the TA's decisions are by means of judicial review has worked well and has the general support of the industry. We do not propose any changes to the present arrangements. The TA's decisions are also subject to the scrutiny of the legislature, the media

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	decisions. **New T&T** suggests that there should be adequate checks and balances on the powers of the TA. It proposes the establishment of an independent appeal board which will be empowered to review and quash the decisions of the TA.	and, on issues of whether there have been administrative malpractices, the Ombudsman. HKCTV's proposal to have an appeal board under the legislature empowered to review and quash the independent regulator's decision is out of step with the structure of government and cannot be accepted as a matter of principle. It is important to ensure that the regulatory framework would enable the regulator to deal with issues effectively and expeditiously, particularly when the telecommunications industry is undergoing rapid developments and regulatory measures, if not undertaken in a timely manner will have significant and long term effect on the telecommunications market. Debates in overseas jurisdictions on whether to establish an appeal channel centered on the availability of a streamlined and straightforward appeals mechanism. There is a danger that a new appeal procedure may be exploited by a delinquent licensee to delay the implementation of a well justified determination of the TA and this will have serious detrimental effect on competition and ultimately the interest of consumers.

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Issues outside the scope of the Bill - submissions from the Hong Kong External Telecommunications Services Association	**The Hong Kong External Telecommunications Services Association (HKETS)** requests that the Local Access Charge and Universal Service Contribution should be reviewed imminently. **HKETS** also requests that CWHKT should not be allowed to increase its rentals on residential telephone lines. Property management should allow the FTNS operators access to the buildings and that the Government should provide guidelines and demand FTNS operators to provide services not only to commercial customers but to residential customers as well. Listed companies and large corporations should not be allowed to sell at out-compete prices to excel other small and medium size ETS operators.	We note the issues raised in the HKETS's submission although they fall outside the scope of the Bill. On access to buildings, we have proposed amendments to the existing section 14 to clarify the rights of FTNS to access land for placing telecommunications lines. In the case of provision of services at prices below-cost, the TA will take into account conditions in the market. If the practice constitutes an anti-competitive behaviour, it will be prohibited under existing licence conditions as well as the proposed fair competition provisions in the Bill, if enacted.

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Issue outside the scope of the Bill - convergence of the telecommunications and broadcasting sectors	**HKTUG** encourages the Government in due course to consider introducing new legislation to combine all broadcasting and telecommunications legislation in Hong Kong.	The views from HKTUG regarding convergence of the telecommunications and broadcasting sectors are noted. Given that we have only recently announced major policy decisions on the operations of the two markets, it would be more appropriate to strengthen the respective regulatory frameworks separately at this point in time, rather than merging them. Nevertheless, as foreshadowed in the consultation paper on the TV market issued last year, it is the intention of the Government to consider in the longer term, the desirability and feasibility of merging the two frameworks, taking into account the progress in convergence in terms of both technology and markets.

Annex C-1

Access fees* paid by mobile telecommunications operators
for access to Government Tunnels for radio communications installation

Tunnel	Access fee per network per annum (HK$)
Lion Rock Tunnel	1,683,200 959,800 948,700 742,200
Aberdeen Tunnel	902,400 888,600 646,600 268,800
Airport Tunnel	1,018,900 661,300 619,100
Shing Mun Tunnel	1,174,700 677,600 602,800 283,100
Tseung Kwan O Tunnel	441,000

Notes:

* Access fees being revised using a cost-based approach.

(1) The access fee for each network at Government tunnels comprises two portions. The cable portion is assessed by having regard to the length and diameter of cables laying within the tunnel area whereas the equipment portion is assessed on the basis of the full market rental approach.

(2) A one-off administrative fee ($16,400-$19,200) is also collected approach for the preparation and issue of the licence for access.

Annex C-2

Extracted from WTO Reference Paper on Regulatory Principles

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.