

25 February 2019

Mr LEUNG Cheuk Man, Clement, JP  
Permanent Secretary for Commerce & Economic Development  
(Communications & Creative Industries)  
Commerce & Economic Development Bureau  
21/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Clement,

**Consultation Paper issued by Commerce and Economic Development Bureau  
("CEDB") in November 2018 on Review of Telecommunications Regulatory  
Framework (the "CP")**

**Response by Hong Kong General Chamber of Commerce ("HKGCC")**

**Introduction**

1. HKGCC welcomes this opportunity to submit its views on the proposals contained in the CP. In the first section, we set out our general comments on the approach adopted in the CP, and in particular our disappointment at the narrow scope of the review which appears to have been undertaken thus far. In short, this is a golden opportunity to bring our regulatory framework into the digital age, which we must grasp, as such an opportunity may not be available again for a substantial period of time. In subsequent sections, we give our more specific views on the CP.

**General Comments**

2. As HKGCC has consistently pointed out, business regulation needs to be regularly reviewed, and amended or withdrawn in the light of changing market circumstances. Otherwise unnecessary costs and red tape will be imposed on businesses, which may ultimately be passed on to consumers. This is particularly true in a very fast-moving sector such as telecommunications, where regulations that may once have been fit for purpose may quickly become outdated due to changes in technology, or the competitive environment.
3. This is not just a matter of importance to businesses in the telecommunications sector. Advanced telecommunications services, unencumbered by unnecessary regulations, are vital to Hong Kong's continued success as an international

commerce and financial centre, and to realize the Government's objective of making Hong Kong a "Smart City".

4. The CP appears to have acknowledged these facts. However, we are concerned that its proposals do not go far enough.
5. Bearing in mind that the last major review of the Telecommunications Ordinance was 19 years ago, when the Telecommunications (Amendment) Ordinance 2000 was enacted, this latest review is long overdue and was promised when the Government saw fit to set up a Communications Authority to unify telecommunications and broadcasting in 2012. However, it is disappointing to see that the CP proposes only *four*, relatively modest, changes to the existing legislation. And none of the proposed changes involve withdrawing provisions which have become redundant in the light of the hugely different market circumstances which exist now, compared with 19 years ago. The proposals are, in summary, as follows:
  - Given that 5G technology will enable communication between a wide range of devices (not just mobile handsets), to clarify that the Communications Authority will regulate the telecommunications component of such devices;
  - Imposing a new criminal offence for negligently damaging underground telecommunications cables;
  - Simplifying the issue of non-carrier licences: and
  - Specifying the list of Communications Authority ("CA") decisions that can be appealed to a new appeal board.
6. In contrast, HKGCC presented a submission to the Government on 25 November 2014, long before the CP was issued, in which it identified at least eleven legal requirements which could, and should, be withdrawn because any purpose that they had served in the past no longer exists. On the contrary, they impose an unnecessary administrative burden, and therefore cost, on businesses. For example:
  - Telecommunications operators are required to notify all of their prices, and any amendments to those prices, to the Office of the Communications Authority (OFCA), for publication;
  - Telecommunications operators are required to file all of their interconnection agreements, and any amendments to those agreements, to OFCA, for publication.
7. Apart from the unnecessary burden and costs these obligations impose, it is difficult to see how they are (a) compatible with the spirit of the Competition Ordinance, which strictly requires competitors not to disclose their prices or commercial arrangements to each other; and (b) necessary, in a telecommunications market which the CA regularly states is one of the most competitive in the world. And yet there is no proposal to abolish these requirements in the CP, or justification for their retention.
8. This leads to another important point. In a comprehensive review of existing legislation, one would expect *each* legislative requirement to be analysed, and a case made for its retention, amendment, or withdrawal, in the form of a

cost/benefit analysis. The CP does not do so. Instead, it simply makes four proposals for amendment, without any cost/benefit analysis for any of them.

9. HKGCC hosted last November a conference at which senior officials from the UK's Regulatory Policy Committee explained, to an audience comprising many Hong Kong government officials, how such a comprehensive review (a Regulatory Impact Assessment, or RIA) should be undertaken. It involves four key questions:
  - What is the problem which the legislative provision (or proposed legislative provision) is seeking to address?
  - What are the objective(s) it is seeking to achieve?
  - What are the options to achieve the objective(s)? (Apart from legislation or self-regulation, other possible options, including doing nothing, should be analysed).
  - What are the costs and benefits of each option?
10. While not following precisely this methodology, the Office of the Privacy Commissioner for Personal Data has published its own methodology for reviewing privacy legislation:
  - *The purpose of the legislative restriction must be legitimate*
  - *There is a reasonable connection between the legislative restriction and the legitimate purpose*
  - *It is entirely necessary to impose such restriction to achieve the purpose*
  - *A reasonable balance should be struck between legislative protection and the overall benefits of the community*
  - *The interests of all stakeholders should be considered*
  - *The local circumstances should be taken into account alongside the global development*
  - *The legislative restriction should not hinder development of information communications technology and the economy* (emphasis added).
11. Whether the UK approach or the Hong Kong Privacy Commissioner's approach is adopted, either would almost certainly produce a far greater number of necessary changes to the Telecommunications Ordinance than the four changes that the CP proposes.
12. It is hoped that CEDB will consult the public on a more comprehensive review of the Telecommunications Ordinance, on the lines discussed above, before submitting its final list of proposed amendments to LegCo. Amending legislation is a cumbersome process in any jurisdiction, and (as previous experience has shown, as mentioned above) the opportunity to do so does not happen very often. It is vital that we seize this opportunity.

#### **Provisions to facilitate mobile network rollout**

13. In the era of 5G, the number of mobile cell sites will be increased significantly in order to provide the public with a high capacity and low latency 5G network. The Government should review the relevant provisions of the

Telecommunications Ordinance and other related regulations/procedures with a view to facilitating rollout of 5G network in Hong Kong, as follows:

- To facilitate right of access for mobile operators to enter and install cell sites in buildings, shopping malls, government-owned properties, MTR, railways, tunnels and highway facility. Given the demand for a huge number of 5G cell sites, we expect the site placement designs for 5G to be very different from the previous generations of mobile technologies. For the purpose of efficient deployment of 5G services and realization of Government's smart city initiatives, we suggest the Government take a proactive role in coordinating with its various departments to promote access to government premises.
- To streamline the approval process for cell sites, and protect radiocommunications equipment: (a) Installation of cell sites in buildings, shopping malls, government-owned properties, MTR, railways, tunnels, street level government furniture (e.g. bus stops, lamp poles, telephone booth, building outer wall) currently requires approvals from multiple departments. It usually takes long processing time to get all the approvals. A streamlined and consolidated approval process should be put in place. (b) The approval process for installation of small cell should be simplified - a self-registration procedure similar to Wi-Fi could be adopted. (c) The protection of underground telecommunications facilities, as currently proposed in the CP, should also apply to radiocommunications equipment, as mobile communication services are a necessity to most Hong Kong citizens.

**Removal of outdated or duplicated provisions in the Telecommunications Ordinance and telecommunications licences**

14. The Government should take this opportunity to conduct a comprehensive review of the provisions in the Telecommunications Ordinance and licence conditions in the telecommunication licences to remove duplicated or outdated provisions. For example:

- Licence conditions regarding **customer information** (General Condition 7 of the Unified Carrier Licence) should be removed as the disclosure and use of personal data is already subject to the Personal Data (Privacy) Ordinance.
- The requirements of **filing and publication of tariffs** (under section 7F of the Telecommunications Ordinance) should be reconsidered given that unfair trade practices are already addressed by the 2013 implementation of the Trade Description Ordinance, which protects consumer interests in Hong Kong generally.
- The requirements on licensees to adopt **accounting practices** as specified by the CA (section 7H of the Telecommunications Ordinance) should be removed as the commercial and financial matters of companies in Hong Kong are dealt with in the Companies Ordinance. The only situation which may warrant such requirement is confined to specific circumstances where accounting information is required from licensees, such as for the purposes of calculating royalty-based spectrum fees or the cost of the universal service obligation.
- The requirements of **filing and publication of interconnection agreements** under section 36A of the Telecommunications Ordinance should be removed.



15. Removal of the above-mentioned duplicated or outdated requirements from the Telecommunications Ordinance and telecommunications licence not only saves unnecessary compliance costs of the industry but also reduces the administrative works and costs of the CA/OFCA. Ultimately the users of telecommunication services will benefit.

**Conclusion**

16. We hope that the Government agrees that the current consultation presents a rare and vital opportunity to bring Hong Kong's telecommunications legislation into the digital age. We are happy to discuss our submissions with the Government, with a view to taking full advantage of this opportunity, for the benefits of everyone in Hong Kong.

Yours sincerely,



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