

Ordinance Review Team  
Communications and Creative Industries Branch  
Commerce and Economic Development Bureau  
21/F, West Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

4 Mar 2019

**Response to Review of Telecommunications Regulatory Framework Consultation Paper  
November 2018**

Dear Sirs,

I am writing in response to the subject consultation paper.

**Regulation of IoT and Smart Devices**

We support regulating IoT and Smart devices under the TO, but we believe it is important that such regulations shall impose no additional trade barrier.

Basing on the current Class Licensing framework of the CA, we propose that a Class License should be defined for IoT and Smart Devices, such that all devices meeting the specifications should automatically be granted the license and be eligible for import and sale. Import and sale of devices not meeting the specifications of the Class License should be prosecuted and punished after-the-fact.

The technical specifications of such Class License for telecommunications properties should reference all international industry standards, and should be vendor and standards neutral, save that spectrum assignment shall be observed (and regulated separately).

**Protection of Underground Telecommunications Infrastructure**

We fully support the proposal to put in place in the TO new criminal liabilities deterring negligent damage to underground telecommunications facilities.

However, to avoid wrongful punishment to unknowing or unskilled frontline worker, we believe each roadwork application should have an “officer-in-charge” taking responsibilities, and such officer-in-charge shall declare and undertake any legal liability of any undue damages to facilities.

**Trade Facilitation: Simplifying the Issue of Non-Carrier Licenses**

We support simplifying the issue of limited scope “carrier licenses” with less stringent conditions as non-carrier licenses.

However, the consultation document stated that “The CA will consult the industry as necessary on its licensing proposal before non-carrier licences are created to ensure that the proposal meets the needs of the sector.”, which we believe may not be the most efficient way to react to changing market and technologies.

Instead, we propose that an open application channel be established by the CA for the industry to file applications for “non-carrier” or “less-than-carrier” licenses, and the processing of such application by the CA should fall under a performance pledge. The decision should take into consideration the overall competition landscape, including incentives for upfront investments for new technologies, to

achieve ultimate benefit to the general public. The decisions and reasons to grant the license or otherwise should be made fully transparent to the public, and appeals avenue should be made available through the new Independent Appeals Board.

### **Trade Facilitation: Improving the Appeal Mechanism under the Telecommunications Ordinance**

We welcome the proposal to setting up a new Independent Appeals Board to provide an alternative avenue for licensees (and the general public) to challenge CA's decisions.

Paragraph 4.18 of the Consultation Document cited items (a)-(h) falling under the purview of the new Independent Appeals Board. We propose that the purview and functions of the new Independent Appeals Board items should be refined for clarity that,

- CA's decision about exploitation of dominant positions are under the purview of this Independent Appeals Board (as the primary reason for setting up this Independent Appeals Board as set out in 4.15 of the Consultation Document was about exploitation of a dominant position); and that
- The appeal channels are available not only to licensees, but also to the general public.

### **Other Recommendations**

In addition, we would like to take this opportunity to express these additional comments.

- The consultation paper only looks at what new pieces of regulation need to be introduced to take into account developments in the industry but fails to take stock of what existing sections in the Telecommunications Ordinance are now out-of-date and should be removed in order to reduce the cost and regulatory burden imposed on operators in the industry.
- The Government should also make the land and building access rights for fixed and mobile operators under Section 14 much clearer. The current wordings are indeed confusing and a lot of disputes arise between the land/building owner and the FNO/MNO when an operator seeks access in order to install equipment. The ability to gain easy access to land/buildings to install equipment (e.g. small cells) is particularly important in the 5G era and to facilitate HK becoming a Smart City.
- Regarding the management of Underground Telecommunications Infrastructure, The CEDB/CA may also reference the work of EMSD in management of underground electrical facilities, and study the possibility of establishing a system similar to that of "Approval as a Competent Person for Locating Underground Electricity Cables", and maintaining a relevant database of underground telecommunications facilities.

We would like to express our gratitude to the administration in carrying out this review.

Thank you for your kind attention.

Lento Yip  
Chairman  
HKISPA

