



To:  
Ordinance Review Team  
Communications and Creative Industries Branch  
Commerce and Economic Development Bureau

## Hon Charles Mok's Submission to the Public Consultation on Phase 2 of Review on Broadcasting Ordinance and Telecommunications Ordinance

### 1 Regulation of Devices in the 5G and IoT Era

- 1.1 The consultation document suggests to focus the CA's regulatory powers and duties on the telecommunications functions<sup>1</sup> (i.e. integrity of and compatibility with telecommunications networks and control of the level of non-ionising electromagnetic radiation) of telecommunications equipment and 5G and IoT devices.
- 1.2 However, in the wake of the powerful distributed denial-of-service (DDoS) botnet attacks executed through the infection and hijacking of hundreds and thousands of vulnerable Internet of Things (IoT) devices, governments around the world are beginning to step up their efforts to address the increased security and safety risks in the rise of IoT adoption, and to better define their roles in fostering and regulating the technology.
- 1.3 In the United States, the European Union, China, Japan and other countries, regulations and certification schemes are being introduced to connected devices from different perspectives, including creating new resources for consumers to better understand the security and reliability of their IoT devices, regulating specific security standards and imposing contractual requirements on companies that provide IoT devices to the government.

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<sup>1</sup> Para. 3.17 and 3.18 of the consultation document



- 1.4 In preparation for the growing number of IoT devices and their security concerns, the government should conduct a cross-departmental study in collaboration with the industry, to promoting security through policies that can foster safer development and deployment of IoT devices in both the public and private sector.

## 2 Protection of Telecommunication Facilities

- 2.1 As current provisions in the TO (such as Section 18 and 27) do not provide a strong deterrent effect to contractors performing works in the vicinity of telecommunications facilities, in the previous years there had been a number of cases of telecommunications service outage due to the negligence of civil work contractors.
- 2.2 Given the importance that telecommunications network in the era of 5G and smart city development, I strongly support the Government's proposed measures to create new criminal offences under the TO against negligent damage to underground telecommunications facilities. The level of the fine and imprisonment should be subject to periodic review after the amended legislation is in effect, in order to evaluate the effectiveness of the increased penalty and compliance to the codes of practice among the contractors.
- 2.3 As the consultation paper stated the CA "will promulgate and approve, in consultation with the industry, relevant codes of practice" that would be a defence to a charge under the proposed offences, it is suggested that the CA to joint force with other relevant government departments, and industry organisations to enhance the construction industry's awareness and knowledge about the new criminal offences, as well as the importance of undertaking pre-work precautionary measures to meet the requirements in the codes of practice.



### 3 Trade Facilitation

- 3.1 The consultation paper sets out a number of measures including improving the appeal mechanisms under the TO, to set up an independent appeal board to handle cases involving certain decisions. I support this proposal as it can enhance the transparency in the dealing of complaints against CA's decisions.
- 3.2 In addition, it is recommended that the Government should review the provisions in the TO and licensing conditions in the telecom licenses to remove duplicated or outdated provisions with a view to reduce unnecessary administrative works/costs to both the industry and the Authority/OFCO.

### 4 Facilitating rollout of 5G network

- 4.1 In the era of high capacity and low latency 5G network, installation of more 5G radio equipment is anticipated to grow significantly in order to provide good network coverage and high data throughput. The Government should review the relevant provisions of the Telecommunications Ordinance (TO) and other related regulations and procedure with a view to facilitating faster deployment and rollout of 5G network in Hong Kong.

#### Making more locations available for 5G site deployment

- 4.2 The telecommunications industry has long expressed the challenges they face in finding suitable location for installing mobile radio base station. To facilitate network operators in 5G network rollout, the Government has taken the initiative to open up 1000 Government properties for 5G base station installations.



- 4.3 While 1000 more locations will likely be still insufficient for deploying a 5G network that provides satisfactory performance, to further support and encourage technology investment in 5G network, it is suggested that the Government should continue to extend the search for suitable location, for instance enlarging the supply of potential locations to include properties under the Housing Authority, properties/areas partially owned or managed by the Government, as well as by the MTRC.
- 4.4 Besides, it came to my attention that the installation of cell sites on street furniture such as bus stops, lamp poles, telephone booth, building outer wall etc. requires approvals from multiple departments with a long processing time to obtain approvals from all departments. To expedite the vetting and approval of the applications of MNOs by different government departments, OFCA should continue to strengthen its facilitating role and as the one-stop-shop for interface between the MNOs and various government departments, and a more streamlined vetting process should be put in place.
- 4.5 To ensure that Hong Kong's telecommunications infrastructure capacity can meet the long-term demand, there should be better overall planning on future supply of and demand for telecommunications infrastructure capacity in Hong Kong, which will give much-needed clarity to the operators and potential investors.

### **Improve the mechanism to resolve the disputes on premises access**

- 4.6 While Section 14 of the TO allows the CA to authorise operators to place and maintain telecommunications facilities (fixed and mobile) on land/ third party premises in order to provide telecommunications services to customers. In reality, such access is often delayed or in some cases stalled by the different understanding of 'public place' between telecommunications service providers and the landlords or building/ premises owners.



- 4.7 Building owners may refuse the installation of base stations at their properties' roof for various reasons, which can turn the network deployment process into a lengthy process. If 5G site installation applications are rejected or stalled for extended period of time, there could be significant impact on the progress of 5G network rollout in the near future. As in cases such as Lam Tsuen area in Tai Po, when property owners refuses to install radio base station, a drop in the service quality often hurts the neighbourhood as a whole.
- 4.8 The right of building access for fixed-line service installation is supported and protected by Government policies while mobile communications currently does not have the same status. Yet the latter has already become indispensable to our economic activities, daily lives of citizens and visitors to Hong Kong. Its importance will only continue to grow to support innovation that the Government has set out in the Smart City Blueprint.
- 4.9 Between the MNOs and the site owners, the level of payment is most often in dispute. While suggestions such as giving MNOs an access right to install, operate and maintain mobile telecommunications facilities needs to weigh against the rights of private property, it is recommended that the CA should take a more proactive role in devising solutions to help MNOs resolving these cases in a timely matter, such as providing mediation support or establishing an independent board to tackle dispute cases.

## 5 Spectrum Utilization Fees (“SUFs”) and its usage

- 5.1 Section 32I(3) of the TO allows the Secretary to set the SUF on a basis that includes an element in excess of the simple recovery of the cost of providing service by the Authority. Meanwhile, high SUFs is charged to MNOs for the use of limited and precious spectrum to provide mobile services, which is in



some way passed onto consumers.

- 5.2 It is recommended that the SUF collected by the Government be channeled into a fund with the aim of supporting innovation, research and development, and catalysing and accelerating the rollout of next-generation telecommunications infrastructures. For example, providing continuous financial support to the project that expands the reach of high speed connectivity to remote areas (such as outlying islands), making it self-sufficient so that in the long run it can enable more people to work remotely without disruption in the age of gig economy.

#### **Spectrum Utilization Fees (“SUFs”) tax treatment**

- 5.3 When 3G spectrum was assigned in the year 2001, SUF level was calculated based on revenue. This treatment makes SUF deductible for tax purpose. Starting from year 2009, the Inland Revenue Department (“IRD”) argues that the upfront SUF payment enables new spectrum holder to develop a new business, substantially increases its capacity and enhances its service level. Therefore upfront SUF is considered capital in nature and non-tax deductible.
- 5.4 The industry has expressed its concern that this arrangement could pose negative impact on promoting investments on 5G. It is recommended that the CEDB should fully consider the evolving trends in 5G investment and study the feasibility of introducing concessionary arrangement that allow SUFs payments for tax deductions.

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