

**Review of Licence Conditions in Carrier Licences Issued under the
Telecommunications Ordinance (Cap. 106)**

**Joint Statement of
the Secretary for Commerce and Economic Development and
the Communications Authority**

10 March 2015

INTRODUCTION

Carrier Licences¹ are issued under the Telecommunications Ordinance (Cap. 106) (“TO”) for operators to provide public facilities-based telecommunications services including mobile, local fixed, external fixed, and space station related services in Hong Kong. The general conditions (“GCs”) in the Carrier Licences are prescribed by the Secretary for Commerce and Economic Development (“SCED”) in Schedule 1 of the Telecommunications (Carrier Licences) Regulation (Cap. 106V) (“Regulation”) under the TO; whereas the special conditions (“SCs”), consistent with the TO and not inconsistent with the prescribed GCs, are attached by the Communications Authority (“CA”) to the Carrier Licences in accordance with section 7A of the TO.

2. While the GCs and SCs in the Carrier Licences are sector-specific provisions for the regulation of the telecommunications licensees, there is also cross-sectoral legislation or regulation on specific matters which applies across the board to all sectors including the telecommunications sector. The introduction of and further enhancements to these cross-sectoral regulatory regimes over time have served to supersede the sector-specific controls imposed under the telecommunications licensing regime and rendered them inappropriate and unnecessary. Against this background, the SCED and the CA have conducted a review of the relevant licence conditions in the Carrier Licences, with a view to removing the anomaly of subjecting telecommunications licensees to both the sectoral and cross-sectoral regulatory controls on specific matters. On 5 September

¹ Following the expiry of the last Fixed Telecommunications Network Services Licence and Fixed Carrier (Restricted) Licence on 2 February 2015 and 19 January 2015 respectively, “Carrier Licences” in this joint statement covers Unified Carrier Licence (“UCL”), Fixed Carrier Licence (“FCL”), Mobile Carrier Licence (“MCL”), Mobile Carrier (Restricted) Licence (“MCRL”), and Space Station Carrier Licence (“SSCL”). Nevertheless, FCL, MCL and MCRL were no longer issued upon implementation of the UCL in 2008.

2014, they jointly issued a consultation paper² (“Consultation Paper”) to set out the findings of the review, and solicit the views and comments of the industry and interested parties on the proposed way forward with certain licence conditions governing road opening works and concerning restrictions on attachment to public buildings and trees.

3. By the close of the consultation on 20 October 2014, submissions had been received from the following 11 respondents³ on the issues under consultation:⁴

Network Operators

- China Mobile Hong Kong Company Limited (“CMHK”)
- Hong Kong Broadband Network Limited (“HKBN”)
- Hong Kong Telecommunications (HKT) Limited (“HKT”)
- Hutchison Global Communications Limited & Hutchison Telephone Company Limited (“Hutchison”)
- New World Telecommunications Limited (“NWT”)
- SmarTone Mobile Communications Limited & SmarTone Communications Limited (“SmarTone”)
- Wharf T&T Limited (“WTT”)

Government Departments

- Agriculture, Fisheries and Conservation Department (“AFCD”)
- Highways Department (“HyD”)
- Lands Department (“LandsD”)
- Leisure and Cultural Services Department (“LCSD”)

4. Having carefully considered the views and comments received on the issues under consultation, the SCED and the CA set out in this joint statement their respective responses to the submissions and their respective decisions on the matter. To facilitate discussion, the sections below begin with a recapitulation of the scope of the review. The feedback and responses of the SCED and the CA to the submissions received are grouped under two broad categories, namely SCs on road opening works and GC on restrictions on attachment to public buildings and trees.

² The consultation paper is available at:
http://www.coms-auth.hk/filemanager/en/content_711/cp20140904_e.pdf.

³ The submissions are available at:
http://www.coms-auth.hk/en/policies_regulations/consultations/completed/index_id_288.html.

⁴ Some respondents also provided in their submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present consultation exercise.

For the avoidance of doubt, the SCED and the CA have taken into account and given all of the submissions careful consideration even if they are not specifically addressed herein.

SCOPE OF THE REVIEW

5. As stated in the Consultation Paper, the present review focuses on addressing those licence conditions imposing requirements which duplicate with or have been superseded by the cross-sectoral legislation or regulation. The following four criteria have been adopted for identifying the relevant SCs and GCs:

- (a) the policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the SCED and the CA;
- (b) cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other than the CA;
- (c) there is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; and
- (d) the CA and the Office of the Communications Authority (“OFCA”) do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

6. On this basis, five SCs and one GC (“the Identified Licence Conditions”) have been identified as meeting all the four criteria above and are listed out in Table 1 below.

Table 1: The Identified Licence Conditions

Item	Subject Matter	UCL	FCL	MCL	MCRL	SSCL
(a)	Network Location	SC 14.1 SC 14.3 SC 14.4	SC 15.1 SC 15.3 SC 15.4	--	--	--
(b)	Requirements of Installation of Lines or Cables	SC 17	SC 18	--	--	--
(c)	Works in Public Streets	SC 18	SC 19	--	--	--
(d)	Interference with Works of Others	SC 19	SC 20	--	--	--
(e)	Licensee to Alter Network on Notice	SC 20	SC 21	--	--	--
(f)	Restrictions on Attachment to Public Buildings and Trees	GC 10	GC 10	GC 10	GC 10	GC 10

Items (a) to (e) in Table 1 above concern road opening works in public streets and unleased Government land for network rollout. The full text of the relevant SCs of the UCL is given at **Annex A**. Item (f) in Table 1 above concerns the restrictions on attachment to public buildings and trees. The full text of GC 10 of the UCL is given at **Annex B**.

SPECIAL CONDITIONS ON ROAD OPENING WORKS

7. In the Consultation Paper, the CA proposed to remove the Identified Licence Conditions on road opening works from the Carrier Licences, i.e. items (a) to (e) in Table 1 above. Both the general comments as well as comments specific to individual SCs as raised by the respondents are discussed in the following paragraphs.

General

Views and Comments Received

8. All the responding operators supported the proposed removal of all the Identified Licence Conditions on road opening works, save for HKT which suggested retaining SC 17.2 of the UCL as detailed in paragraph 21 below. In

commenting on SC 16⁵, which was not one of the Identified Licence Conditions proposed to be removed from the Carrier Licences, WTT supported its retention so that the CA may continue its coordinating role in road opening works in the light of the existing road opening guidelines as set out in that SC.

9. As for the Government departments, HyD expressed strong reservation about removing the Identified Licence Conditions on road opening works. It considered those conditions much more powerful than the Lands (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”)⁶ in ensuring compliance with the requirements for telecommunications installations, on the ground that the Carrier Licences can be cancelled or suspended in the event of any contravention of the licence conditions and the maximum financial penalty that the CA can impose is much higher than that under the LMPO. LandsD was concerned that the cross-sectoral controls provided by the LMPO might not fully achieve the purpose as originally intended under the Identified Licence Conditions in regulating the telecommunications licensees.

Responses of the CA

10. The CA notes the support of the responding operators for the removal of the Identified Licence Conditions on road opening works. It also affirms the continued operation of SC 16 of the UCL (and its equivalence in other Carrier Licences) regarding coordination and cooperation among carrier licensees in respect of road opening works according to the relevant guidelines.

11. On the effectiveness of the Identified Licence Conditions relative to the LMPO in ensuring compliance with the requirements for telecommunications installations, the CA wishes to point out that the most severe sanction under the TO, such as cancellation or suspension of a carrier licensee, is very rarely imposed by the CA, and it should only be considered in the event of very serious breaches by the telecommunications licensees, having the effect of adversely affecting the provision of the licensed services. Besides, that the CA is empowered under section 36C(3) of the TO to impose a higher maximum level of financial penalty than that prescribed under the LMPO must be seen against the proper context that under

⁵ SC 16 REQUIREMENTS FOR ROAD OPENING

16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

⁶ The Lands (Miscellaneous Provisions) Ordinance (Cap. 28) is available at:
http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&vwpg=CurAllEngDoc*7*100*28#28.

section 36C(4) of the TO, the CA is duty bound to, when the circumstances so demand the imposition of a financial penalty on a licensee as sanction, impose a penalty that is proportionate and reasonable in relation to the breach concerned. In fact, of all the cases over the past few years relating to breaches of the Identified Licence Conditions governing road opening works, the CA had decided that as sanction, even in the most serious case, the issue of a warning to the concerned licensee was proportionate and reasonable in relation to the breach concerned. For the rest of the contraventions, the CA considered the issue of an advice to the carrier licensees in breach of SC 17.1 was sufficient.⁷ No financial penalty was ever imposed on the carrier licensees in these cases. Comparatively speaking, the penalty under the LMPO is not insignificant. Under the LMPO, a breach of the relevant provisions on road opening works may constitute a criminal offence liable to imprisonment.

12. On LandsD's concern that the cross-sectoral controls may not achieve the same purpose originally intended under the Identified Licence Conditions on road opening works, the CA has already carefully considered those licence conditions along with the cross-sectoral legislation and regulation,⁸ and has come to the conclusion that the removal of the Identified Licence Conditions from the Carrier Licences is unlikely to adversely impact on the effectiveness of the cross-sectoral controls. More importantly, from the perspective of the CA, as the sectoral regulator of the telecommunications sector, there is really no justification on telecommunications policy or regulatory grounds to subject carrier licensees to sector-specific controls on top of the cross-sectoral legislation or regulation on road opening works.

SC on Network Location

(SC 14.1, 14.3 and 14.4 of UCL as extracted below, and their equivalence in other Carrier Licences)

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map

⁷ In these cases, the carrier licensees violated the minimum depth requirement as stipulated in the excavation permit issued under the LMPO. The decision of the CA is available at:

http://www.coms-auth.hk/en/policies_regulations/ca_decisions/index_yr_all-ca_58-sb_65-p_1.html.

⁸ Please see paragraphs 16 – 21 of the Consultation Paper.

background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.

- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

13. In gist, the concerned SC requires the licensee to obtain consent of the Director of Lands (“DL”) before commencing any installation works, record network information on route plans of a scale in consultation with Director of Highways (“DH”) and DL, and provide such network location information free of charge to relevant parties. The licensee is also required to make trained staff available on site to indicate the location and nature of the network to relevant parties.

Views and Comments Received

14. All the responding operators agreed to the proposed removal of SCs 14.1, 14.3 and 14.4 from the UCL. HKT, Hutchison and WTT suggested removing also SC 14.2,⁹ which requires the licensee to keep accurate records of the network location installed under, in, over or upon any land, either because it duplicated with the requirements of the excavation permit (“XP”) issued under the LMPO or GC 8 of the UCL on records and plans of network.

15. LandsD opined that SC 14.1 should be retained to ensure that the Government’s overall enforcement power in relation to road opening works would not be jeopardised. It also advised that section 6(1) of the LMPO that set out the regulation on occupation of unleased land was more relevant to SC 14.1. LandsD further considered that SC 14.3 should be retained, because it referred to records of the location of the network that had been installed (i.e. as-built plan), which was not

⁹ Extract of SC 14 on Network Location:

14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.

covered by the information provided in an XP application. LandsD also indicated that without SC 14.4, the CA could still rely on other conditions to request information about network location, but it doubted whether the CA could ensure the licensee would provide trained staff on site to indicate the location and nature of the network.

Responses of the CA

16. On the suggestion by the responding operators to remove also SC 14.2 from the UCL, it should be pointed out that SC 14.2 assists the implementation of SCs 14.5 and 14.6¹⁰ which are necessary for the smooth operation of the telecommunications networks, and they do not fall within the scope of the present review with the criteria as set out in paragraph 5 above.

17. The CA is of the view that the LMPO (or more particularly section 6 thereof as suggested by LandsD) and the XP issued under it together with the block licence already provide a comprehensive regulatory framework for dealing with land and road opening matters. As such, it does not see how the removal of SC 14.1 in the UCL, which does not affect the LMPO regime, will jeopardise the Government's overall enforcement power in this respect. In any case, telecommunications licensees are required to comply with all the relevant cross-sectoral legislation and regulation.

18. On the need to retain SC 14.3 about recording route plans of suitable scale or as-built plans as referred to by LandsD, the CA notes that in the block licences issued by LandsD for regulating the installation of telecommunications systems and associated facilities on unleased Government land, block licensees are required to maintain and update the master plans to show all approved amendments including but not limited to new installation, diversion, reinstatement or removal. That means the master plans at the licensees' office should reasonably cover networks that have already been installed. Licensees are required to supply copies of the master plans and other relevant documents at no cost to the Government upon the request of LandsD as the licensor. As such, the CA fails to see any need to retain SC 14.3 in the Carrier Licences. Furthermore, the CA wishes to draw the

¹⁰ Extract of SC 14 on Network Location:

14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.

14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

attention of LandsD to GC 8 of the UCL, requiring licensees to keep records and plans of overall network as well as cable route maps and to provide such information to the CA upon its request. GC 8 will remain in force. As to the availability of trained staff on site to indicate the location and nature of the network, licensees shall continue under SC 16 of the UCL to coordinate and cooperate among themselves and any other authorised person in respect of road opening. Being the authorities authorising and regulating road opening works, HyD and LandsD may from time to time seek reasonable cooperation of telecommunications licensees in this aspect.

19. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SCs 14.1, 14.3, 14.4 of the UCL (and their equivalence in other Carrier Licences), viz. item (a) in Table 1, should be removed from the Carrier Licences.**

SC on Requirements of Installation of Lines or Cables

(SC 17 of UCL as provided below, and its equivalence in other Carrier Licences)

- 17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.
- 17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –
- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
 - (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

20. In gist, SC 17 requires the licensee to install the network at a depth, course, route and position as may be determined by DHy or DL, exercise all reasonable care in establishing and maintaining its network, and to make good any physical damage caused including payment of compensation in lieu.

Views and Comments Received

21. All the responding operators agreed to the proposed removal of SC 17 from the UCL, except HKT which suggested retaining SC 17.2, which requires the licensee to make good any physical damage caused, on the grounds that neither the cross-sectoral legislation nor section 18 of the TO could provide the same degree of recompense for the damage caused in the course of establishing and maintaining the telecommunications network. It considered that SC 17.2 allowed the harmed party to seek damage including financial compensation for loss of business, in addition to reimbursement of the expenses incurred in rectifying the physical damage.

22. LandsD considered that the entire SC 17 should stay put in the UCL. The reasons are first, the conditions in the XP issued by HyD referred to in the Consultation Paper were irrelevant since SC 17.1 covers both underground and above ground installations. Second, the reinstatement and safety precaution provisions under the LMPO did not cover private properties as SC 17.2 does.

Responses of the CA

23. On SC 17.1 of the UCL, it is not inaccurate to say that it covers both underground and above ground installations, but to put things in their proper context, virtually all the above ground telecommunications installations contain an underground element involving road opening works. For instance, telephone poles are partially underground and overhead cables are hanged over two telephone poles. Irrespective of SC 17.1, the DL or DHy regulates the minimum depth and related requirements for underground services and installations based on the XP regulatory regime. As such, the proposed removal of the concerned SC from the UCL will not prejudice the power of the Government in regulating road opening works. Meanwhile, the CA, in granting authorisation under section 14(1) of the TO, will determine whether the licensee has a genuine need to conduct road opening works.

24. On SC 17.2 of the UCL, the requirements of exercising reasonable care in the course of establishing and maintaining telecommunications installations and making good any damage caused in public streets and unleased Government land are enshrined in the LMPO and the XP issued under it. According to section 18 of the

TO, any person who carries out any work and affects a telecommunications line or radiocommunications installation shall take all reasonable precautions to prevent damage to such line or installation. The provision also allows the affected party to recover from the person who carries out the work any expenses incurred in making good any damage to the line or installation caused by a failure to take such precautions. As to damages caused on private land, the aggrieved party can always seek remedy according to the civil law. Regarding HKT's suggestion of retaining SC 17.2 to enable operators whose networks are damaged by reckless parties undertaking excavation works to seek the required financial compensation resulting from loss of telecommunications services to its customers, it is doubtful whether the clause could achieve such a purpose as the SC imposes an obligation on the licensee to make good any physical damage to any person having a lawful interest in the land rather than conferring the right for the licensee to claim the financial loss from any person undertaking excavation works. In any event, SC 17.2 does not extend the jurisdiction of the CA to non-licensees regarding their liability for any damage to a telecommunications network.

25. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 17 of the UCL (and its equivalence in the other Carrier Licences), viz. item (b) listed in Table 1, should be removed from the Carrier Licences.**

SC on Works in Public Streets

(SC 18 of UCL as provided below, and its equivalence in other Carrier Licences)

- 18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –
- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
 - (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
 - (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
 - (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

26. In gist, SC 18 requires the licensee to obtain the approval of the DHy or DL when its needs to open or break up any public street. The licensee is also required to maintain the site of works in a safe manner, complete the works with all due speed and diligence, and reinstate the street to the satisfaction of the DHy or DL.

Views and Comments Received

27. All the responding operators agreed to the proposed removal of SC 18 from the UCL. LandsD did not have comments on the proposal.

Responses of the CA

28. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 18 of the UCL (and its equivalence in other Carrier Licences), viz. item (c) in Table 1, should be removed from the Carrier Licences.**

SC on Interference with Works of Others

(SC 19 of UCL as provided below, and its equivalence in other Carrier Licences)

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to

in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

29. In gist, SC 19 requires the licensee not to remove, displace or interfere with any telecommunications line and other utility installations (e.g. gas pipe, water pipe, drain, wire, etc.) located in any public street, unless it has obtained the proper consent from the relevant parties or the approval of the DHy.

Views and Comments Received

30. All responding operators agreed to the proposed removal of SC 19. LandsD noted that as utility installations like gas pipe and electricity supply lines were protected under the relevant ordinances, the CA might consider if telecommunications lines would be subject to similar protection under the TO.

Responses of the CA

31. As explained in the paragraph 24 above, protection of telecommunications lines is provided under section 18 of the TO. It allows the licensee to recover from the person any expenses incurred in making good any damage to a telecommunications line or radiocommunications installation caused by a failure to take the necessary precautions in work affecting such lines and installations.

32. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 19 of the UCL (and its equivalence in other Carrier Licences), viz. item (d) in Table 1, should be removed from the Carrier Licences.**

SC on Licensee to Alter Network on Notice

(SC 20 of UCL as provided below, and its equivalence in other Carrier Licences)

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

33. In gist, SC 20 requires the licensee to alter the course, depth, position or mode of attachment of any apparatus forming part of the network at its own expense, and within the time and in such manner as directed by the DHy or DL.

Views and Comments Received

34. All the responding operators agreed to the proposed removal of SC 20 from the UCL. Conversely, LandsD suggested retaining the SC in order not to jeopardise the overall control of the Government in requiring the licensee to alter the alignment and position of any telecommunication installation, if required.

Responses of the CA

35. The requirement on licensees under SC 20 falls within the power of DHy and DL. The XP issued by HyD and LandsD under the LMPO requires that all pipes, cables, ducts, etc. laid by the permittee shall be adjusted, realigned or removed at no expense to the Government whenever deemed necessary by the Government.¹¹ In addition, DL has full power under the block licence to require the licensee to remove, divert, reinstate or otherwise change or alter the position of the installations at his own expense and within the time limit as may be imposed by the licensor. Therefore, the CA does not agree that the proposed removal of SC 20 in the UCL, which does not affect the LMPO regime, will jeopardise the overall control of the Government on the relevant matter.

36. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the CA remains of the view that SC 20 of the UCL (and its equivalence in other Carrier Licences), viz. item (e) in Table 1, should be removed from the Carrier Licences.**

¹¹ The XP issued by LandsD is not a public document, but reference can be made to the XP issued by the HyD which is available at:
[http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/doc/XP%20conditions%20\(Normal\)%20Ver%2017.0.pdf](http://www.hyd.gov.hk/en/publications_and_publicity/publications/technical_document/xppm/condition/doc/XP%20conditions%20(Normal)%20Ver%2017.0.pdf).

GENERAL CONDITION ON RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

37. The Identified Licence Condition on restrictions on attachment to public buildings and trees was proposed to be removed from the Carrier Licences, i.e. item (f) in Table 1 above. Comments were received from the operators and relevant Government departments.

GC on Restrictions on Attachment to Public Buildings and Trees

(GC 10 of the Carrier Licences is provided below)

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

38. In gist, GC 10 of the Carrier Licences requires the licensee to seek the prior consent of the Government Property Administrator for the attachment of any part of the network to any Government building, and of the Director of Agriculture, Fisheries and Conservation or the Director of Leisure and Cultural Services for the attachment to any tree on any Government land.

Views and Comments Received

39. All the responding operators supported the proposal, save for CMHK which expressed reservation on the removal of GC 10 as it considered the GC as useful in providing guidance to operators on the relevant consent to be obtained when attachment has to be made to Government buildings and trees. Regarding the Government departments, AFCD and LCSD expressed that they had no objection or no objection in principle to the proposed removal. Yet LCSD suggested consultation be conducted with other core tree maintenance departments and the bureau on tree management policy, as LCSD is only one of the many tree maintenance departments.

Responses of the SCED

40. The SCED notes the position of CMHK in retaining GC 10 in order to ensure compliance with the requirement of various Government departments. However, it has to be pointed out that a licence condition is not and should not be

kept for the sole purpose of reminding licensees of certain administrative procedures. OFCA is, as it has always been, prepared to provide assistance to licensees in regard to regulatory compliance with the requirements of various Government departments, where necessary.

41. In regard to the proposal to consult other core tree maintenance departments and the bureau on tree management policy, given that among them, only AFCD and LCSD are the relevant authorities named in GC 10, which is proposed to be removed from the Carrier Licence, the SCED does not see any need to involve parties other than the two departments in the consultation exercise.

42. On the basis of the justifications as set out in the Consultation Paper and having duly considered all the submissions received, **the SCED remains of the view that GC 10, viz. item (f) in Table 1, should be removed from the Carrier Licences.**

IMPLEMENTATION

43. The SCED will proceed to prepare the amendment regulation under section 7(2) of the TO to remove GC 10 from Schedule 1 of the Regulation and table it before the Legislative Council for vetting. The removal of GC 10 will be effected upon completion of the legislative process.

44. The removal of the five SCs of the Identified Licence Conditions does not require any legislative process and the CA intends to implement them as soon as possible. Such an arrangement should be welcomed by the industry judging from the general support expressed by network operators in their submissions. The CA will exclude the five SCs from any UCLs issued after the date of publication of this joint statement. As for the existing Carrier Licences, the CA will issue a circular letter to invite the licence holders to return their licences for effecting the corresponding removal of the SCs. For the avoidance of doubt, licence holders who do not return their licences for amendment will continue to be subject to all the licence conditions as contained in their existing licences until the expiry of those licences or the replacement with new UCLs.

OTHER LICENCE CONDITIONS

45. The Consultation Paper solicits the views of the industry and interested parties on the way forward with the Identified Licence Conditions as identified based on the criteria as set out in paragraph 5 above. Some of the respondents provided in the submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present review. We have set out in **Annex C** the responses of the SCED and the CA to these views.

Secretary for Commerce and Economic Development
Communications Authority
10 March 2015

**Full Text of the Identified Licence Conditions on
Road Opening Works**

SC 14.1, SC 14.3 and SC 14.4 of UCL (equivalent to SC 15.1, SC 15.3 and SC 15.4 of FCL)

14 NETWORK LOCATION

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.

14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

SC 17 of UCL (equivalent to SC 18 of FCL)

17 REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance,

in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

SC 18 of UCL (equivalent to SC 19 of FCL)

18 WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government

any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

SC 19 of UCL (equivalent to SC 20 of FCL)

19 INTERFERENCE WITH WORKS OF OTHERS

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

SC 20 of UCL (equivalent to SC 21 of FCL)

20 LICENSEE TO ALTER NETWORK ON NOTICE

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

**Full Text of the Identified Licence Condition on
Restrictions on Attachment to Public Buildings and Trees**

GC 10 of UCL (equivalent to GC 10 of FCL, MCL, MCRL and SSCL)

10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

**Summary of Views and Comments Received
on Other Licence Conditions and
the Responses of the SCED and the CA**

Some of the respondents provided in the submissions their views on other conditions in the Carrier Licences which fall outside the scope of the present review. A summary of their views and the responses of the SCED and the CA to these views are set out below.

Views and Comments Received

2. HKBN, HKT, Hutchison, SmarTone and WTT regarded the scope of the present review as too limited. They urged for a more comprehensive review of all the conditions in the Carrier Licences, considering that the need to comply with licence conditions which were not necessary would add to the compliance cost of the licensees. They pointed out that the competitive landscape of the telecommunications market had undergone significant changes over the past two decades, which rendered some of the licence conditions inapplicable. Some other licence conditions were considered as duplicating or conflicting with the provisions in some other cross-sectoral legislation, including the Competition Ordinance (Cap. 619) (“CO”), Trade Descriptions Ordinance (Cap. 362) (“TDO”), and Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). HKT, Hutchison and WTT also claimed that there were duplications in the conditions in the Carrier Licences with the provisions under the TO and laws relating to health and safety, including the Occupational Safety and Health Ordinance (Cap. 509) (“OSHO”). They therefore suggested removing a number of the GCs and SCs from the Carrier Licences. On the other hand, HKT suggested strengthening SC 34 of the UCL on channels within the in-building coaxial cable distribution systems (“IBCCDS”) in order to ensure that other carrier licensees would not be obstructed by the owner of the IBCCDS when seeking access to provide services to end users.

Responses of the SCED and the CA

3. The CA is the statutory authority enforcing the TO in regard to the provision of telecommunications services in Hong Kong. Regarding the comments concerning the possible overlapping of the licence conditions in the Carrier Licences with the provisions under the TO, it has to be pointed out that the TO sets out the general regulatory principles while conditions prescribed in the Carrier Licences serve to specify the detailed requirements, which are in line with the relevant

provisions in the TO, to enable effective enforcement of the TO. It is hence reasonable and necessary to have similarities between some of the provisions in the legislation and the licence conditions albeit the latter contains more detailed regulation developed in line with the overarching statutory provisions.

4. On the possible overlapping of GC 7¹ of the UCL on confidentiality of customer information with the PDPO, it should be noted that the scope of “customer information” as referred to under GC 7 of the UCL covers non-personal data of residential customers and information of corporate customers, which may not be entirely covered by the PDPO which governs only personal data of individuals.

5. As to the suggestion of removing GC 14² on safety from the UCL due to its overlapping with laws relating to health and safety, taking the OSHO as an example, it aims to provide safety and health protections to employees at workplace, the purpose of GC 14 is to safeguard life and property in relation to the installation and operation of all telecommunications equipment. Furthermore, some of the safety concerns like electrical and radiation hazards are specific to the telecommunications industry warranting separate regulation.

6. In regard to HKT’s suggestion of strengthening SC 34³ of the UCL on channels within the IBCCDS, it should be noted that SC 34 deals with the

¹ GC 7 CONFIDENTIALITY OF CUSTOMER INFORMATION

7.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.

7.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

² GC 14 SAFETY

14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.

14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

³ SC 34 CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEM

34.1 Subject to Special Conditions 34.2, 34.3, 34.4, 34.5, 34.6 and 34.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.

34.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.

34.3 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make

assignment and usage of the IBCCDS channels by carrier licensees, which are not necessarily the infrastructure owner of the IBCCDS. The SC is considered sufficient for general regulation on the use of IBCCDS channels for service provisioning. In the case where the carrier licensee is an infrastructure owner of the IBCCDS, it would be governed by additional non-standard SCs in order to facilitate access by other carrier licensees to its IBCCDS for the provision of services to end users.⁴

7. Having said that, the SCED and the CA agree that the licence conditions in the Carrier Licences may warrant a further review in its own right at a later stage to take into account the changing market environment, the emergence of new legislation such as the amended TDO and the CO, as well as the Government's plan to review the TO and the Broadcasting Ordinance (Cap. 562). While we will consider when it will be an opportune and appropriate time to conduct another round of review on the licence conditions, the present review with specific assessment criteria focuses on the Identified Licence Conditions only.

Secretary for Commerce and Economic Development
Communications Authority
10 March 2015

representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.

34.4 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.

34.5 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.

34.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under Special Condition 34.

34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

⁴ Reference can be made to the UCL No. 042 of the Hong Kong Cable Television Limited, which establishes and maintains its own IBCCDS at buildings, as provided in the link below:
http://app1.coms-auth.hk/apps/telecom/lic/doc/licence/ucl_042.pdf.