

Review of Carrier Licence Conditions concerning Road Opening Works

**Telecommunications Regulatory Affairs Advisory Committee
22 August 2013**

Background

- Last year, the Highways Department referred to OFCA cases of carrier licensees' failure to comply with the minimum depth requirement
- The anomaly of subjecting carrier licensees to both the sectoral and cross-sectoral regimes on road opening works was brought into sharp focus
- A review on whether our licence conditions on road opening works which have overlapped with the cross-sectoral regime should be removed

Review Criteria

- a) The policy or operational premise for imposing the licence condition falls outside the telecommunications perspectives
- b) Cross-sectoral legislation is already in place to regulate the same activity, the enforcement authority of which is not the CA
- c) There is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls on top of the cross-sectoral legislation
- d) The CA and OFCA do not have the statutory authority or the necessary expertise to determine compliance with the licence condition. Enforcement by the CA of the licence condition requires reliance upon other competent authorities with the statutory jurisdiction

Identified Licence Conditions

- The licence conditions that are related to road opening works in public streets or unleased Government land and meet the review criteria are :

UCL	FCL	FTNS Licence	Examples of requirement under the condition
SC 14.1	SC 15.1	GC 28(1)	To obtain consent from Director of Lands (DL) before any road opening works
SC 14.3	SC 15.3	GC 28(3)	To consult Director of Highways (DH)/DL on the map scale for drawing route plans
SC 14.4	SC 15.4	GC 28(4)	To provide network location information to DH/DL
SC 17	SC 18	GC 32	To comply with the minimum depth requirement as determined by DH/DL
SC 18	SC 19	GC 34	To complete works with due speed and diligence, maintain fencing and adequate warning lighting, and reinstate the street to the satisfaction of DH/DL
SC 19	SC 20	GC 35	Not to interfere with any gas pipe, water pipe, drain, sewer or electricity supply lines
SC 20	SC 21	GC 37	To alter the network within the time and in manner as directed by DH/DL

Origin of the Identified Conditions

- Requirements concerning road opening works were introduced into the telecommunications regulatory regime as early as in 1925 when the Telephone Ordinance was enacted for regulating the incumbent operator
- Road opening provisions in the Telephone Ordinance were enforced by the Director of Public Works (and later DH) instead of the telecommunications regulator
- When the local fixed market was liberalised in 1995, road opening provisions were transplanted from the Telephone Ordinance to the FTNS licences

Cross-Sectoral Regulatory Regime on Road Opening Works

- Statutory control by DH and DL on road opening works under excavation permit (XP) regime was put in place since 1972 when the Crown Land Ordinance (Cap. 28) was enacted
- Cap. 28 was renamed as Lands (Miscellaneous Provisions) Ordinance (LMPO) in 1997
- LMPO was amended in 2004 to strengthen the regulatory control on road opening works

OFCA's Considerations

- a) The need to impose controls on road opening works stems from policy or operational considerations which fall outside the telecommunications perspectives
- b) Cross-sectoral regulatory regime (LMPO, XP and other laws) is already in place, under which the CA is not the enforcement authority. The breach of most of the relevant clauses under the cross-sectoral regime would constitute criminal offence
- c) No justification from the telecommunications policy or operational perspectives to subject carrier licensees to additional controls on top of the cross-sectoral regulatory regime
- d) Enforcement by the CA of the identified licence conditions would require reliance upon other competent authorities with the statutory jurisdiction

Next Steps

- OFCA proposes to remove from the carrier licences the identified licence conditions concerning road opening works
- OFCA will recommend to the CA to conduct a public consultation on the matter

Thank you