

**FINAL DECISION OF
THE COMMUNICATIONS AUTHORITY**

**BREACH BY HONG KONG BROADBAND NETWORK LIMITED OF
GENERAL CONDITION 32(1) OF ITS FIXED
TELECOMMUNICATIONS NETWORK SERVICES LICENCE
CONCERNING MINIMUM DEPTH REQUIREMENT**

Licensee Concerned:	Hong Kong Broadband Network Limited (“HKBN”)
Issue:	<p>The Director of Highways (“DH_y”) has determined that HKBN has failed to comply with the Minimum Depth Requirement (“MDR”) stipulated in the excavation permit issued under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) (“LMPO”) in 77 cases.</p> <p>DH_y has referred his determination in these 77 cases to the Communications Authority (“CA”) for consideration of whether there is a possible breach by HKBN of General Condition (“GC”) 32(1) of its Fixed Telecommunications Network Services (“FTNS”) Licence No. 006.</p>
Relevant Instruments:	GC 32(1) of HKBN’s FTNS Licence No. 006
Decision:	Breach of GC 32(1) of HKBN’s FTNS Licence No. 006
Sanction:	Written warning
Case Reference:	LM T 108/11 in OFCA/R/R276 C

BACKGROUND

On 16 February, 14 May and 4 June 2012, DH_y referred to the Office of the Communications Authority (formerly the Office of the Telecommunications Authority, hereinafter collectively referred to as “OFCA”) inter-alia 77 cases of his determination on failure of HKBN to comply with the MDR specified in GC 32(1) of its FTNS licence (“the 77 Non-compliance Cases”).

2. The Highways Department (“HyD”) advised HKBN, vide its letters of 7 March, 29 May, 1 June, 13 June and 18 June 2012, DHy’s determination of HKBN’s non-compliance with the MDR in the 77 Non-compliance Cases and requested HKBN to rectify the non-compliance. The letters were copied to OFCA.

3. In response to HyD’s letters, HKBN submitted to DHy vide its letters of 8 March, 13 July and 27 August 2012 that -

- (a) it had instructed the contractors concerned to rectify all its non-compliance with the MDR in relation to the 77 Non-compliance Cases and proposed a full-scale rectification programme and control measures;
- (b) it would apply/had applied to HyD for the excavation permits to rectify the 77 Non-compliance Cases; and
- (c) it had offered to DHy to inspect all its underground facilities including all its manholes/joint boxes and promised to rectify any non-compliance found.

The replies from HKBN were copied to OFCA.

4. According to HKBN, as of 21 August 2012, it has completed inspection of around 30% of the total number of its manholes/joint boxes. HKBN has also agreed to arrange for rectification of the non-compliance revealed from the inspections.

5. OFCA completed its investigation and submitted its findings to the CA on 8 September 2012. Having considered the findings of OFCA, the CA issued its Provisional Decision to HKBN on 12 September 2012 and invited it to make representations within 14 days. HKBN submitted its representations to OFCA on 26 September 2012.

THE CA’S CONSIDERATIONS AND DECISION

6. GC 32(1) of HKBN’s FTNS licence sets out the requirement of installation of lines or cables. It specifies that -

- (1) *The Network¹, or any part of it, if installed under, in, over or upon any public street or other unleased Crown land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.*

7. Having considered the determinations made by DHy which were conveyed to HKBN vide HyD's letters of 7 March, 29 May, 1 June, 13 June and 18 June 2012 and having been satisfied that HKBN has been afforded a reasonable opportunity to make representations to DHy and noting HKBN's replies of 8 March, 13 July and 27 August 2012 to DHy's determination and HKBN's representations of 26 September 2012 on the CA's Provisional Decision, the CA is of the view that HKBN has failed to comply with GC 32(1) of its FTNS licence in respect of the MDR in the 77 Non-compliance Cases.

8. In considering the sanction to be imposed in respect of the 77 Non-compliance Cases, the CA notes that -

- (a) under GC 32(1) of HKBN's FTNS licence and the LMPO, DHy is the statutory authority to determine compliance with the MDR and HyD is the enforcement agency to conduct the investigation into the non-compliance with the MDR;
- (b) HKBN has undertaken to DHy to rectify all its non-compliance with the MDR in relation to the 77 Non-compliance Cases;
- (c) HKBN has further offered to DHy to inspect all its underground facilities including all its manholes/joint boxes and undertaken to rectify any non-compliance found; and
- (d) as of 21 August 2012, HKBN had inspected around 30% of the total number of its manholes/joint boxes. HKBN has also agreed to rectify any non-compliance found during the inspections.

9. Having considered the above and the representations of HKBN in response to its Provisional Decision of 12 September 2012, the CA has decided to issue a public warning to HKBN, in the form of this decision, for it to comply with the MDR as determined by DHy.

¹ The "Network" refers to a telecommunications network described in Schedule 2 of HKBN's FTNS licence.

10. The CA has further decided that, should HKBN fail to honour its undertaking to DHy and rectify any of the 77 Non-compliance Cases to the satisfaction of DHy and in accordance with the timeframe as reasonably determined by DHy, the CA will issue a direction to HKBN compelling it to implement the rectification work to the satisfaction of DHy.

**The Communications Authority
October 2012**