

**Application for Authorization of
the Communications Authority pursuant to Section 14(1A) of the
Telecommunications Ordinance (Cap. 106)
for Placing and Maintaining Radiocommunications Installations
in Tai Lam Tunnel
by Hong Kong Telecommunications (HKT) Limited**

Preliminary Analysis

Background

On 16 April 2018, Hong Kong Telecommunications (HKT) Limited (“HKT”) made an application to the Communications Authority (“CA”) for an authorization pursuant to Section 14(1A) of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”) to place and maintain its radiocommunications installations in Tai Lam Tunnel (the “Tunnel”) for the provision of its second generation (“2G”) services and third generation (“3G”) services under the Unified Carrier Licence (“UCL”) No. 008 (the “Application”). The Tunnel is maintained and operated by Route 3 (CPS) Company Limited (“R3CPS”) in accordance with the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474).

2. HKT had maintained a commercial agreement with R3CPS for placing and maintaining radiocommunications installations for the provision of 2G and 3G services in the Tunnel (the “Agreement”) which was signed on 16 July 2013 with a contractual period of five years and it expired on 15 July 2018. According to the Agreement, the monthly fee payable by HKT to R3CPS shall be subject to adjustment that takes effect on each anniversary date (i.e. 16 July of each year) during the term of the Agreement by –

- (a) increasing a percentage equivalent to the inflation rate¹; or
- (b) where the inflation rate is negative, there shall be no change to the monthly fee by reference to that relevant year.

The monthly licence fee payable by HKT is HK\$[~~¥~~] for the provision of its 2G and 3G services in the Tunnel for the period 16 July 2017 to 15 July 2018.

¹ According to the Agreement, “inflation rate” means, in relation to any review date (i.e. 15 July of each year), the figure which is equal to the percentage difference between the Consumer Price Index (B) most recently published (by Census and Statistics Department of Hong Kong) on or before such review date and the Consumer Price Index (B) published in the corresponding month of the previous year.

3. HKT and R3CPS started their negotiations in or around March 2018. HKT offered R3CPS to renew the Agreement (i.e. for its 2G and 3G radiocommunications installations) and also to incorporate its fourth generation (“4G”) radiocommunications installations for the provision 4G services in the Tunnel with a monthly aggregated licence fee of HK\$[X] subject to annual adjustment based on Consumer Price Index (B) (“CPI(B)”), in a five-year term contract that would start on 16 July 2018.

4. On 27 March 2018, R3CPS counter-offered a monthly aggregated licence fee of HK\$[X] that covered HKT’s existing 2G and 3G networks in the Tunnel, as well as its 4G network to be set up in the Tunnel (or in any combinations of the three types of networks). R3CPS also reminded HKT that should no new commercial agreement be reached between the two parties by the expiry of the Agreement, HKT was obligated to cease the operation of its 2G and 3G services in the Tunnel on 16 July 2018.

5. On 3 April 2018, HKT responded to R3CPS that it did not accept the abovementioned counter-offer of R3CPS because HKT considered that the counter-offered monthly aggregated licence fee was too high comparing with the amounts paid by HKT for provision of mobile services in other build-operate-transfer (“BOT”) tunnels. HKT counter-proposed to renew the Agreement with a monthly licence fee of HK\$[X] per system (i.e. a total of HK\$[X] per month for 2G and 3G systems) with CPI(B) adjustment. On 9 April 2018, R3CPS rejected HKT’s counter-proposal and insisted its offer as mentioned in paragraph 4 above. HKT did not accept R3CPS’s offer and subsequently it submitted an application to the CA for authorization pursuant to section 14(1A) of the Ordinance for placing and maintaining its 2G and 3G radiocommunications installations in the Tunnel.

6. After receiving the Application, the Office of the Communications Authority (“OFCA”) asked both parties to continue their endeavour to resolve their disagreements by way of commercial negotiation. Later, HKT continued to negotiate with R3CPS between May and July 2018 but the parties still failed to reach a long term agreement. On 13 July 2018, to avoid any possible disruption of HKT’s public mobile services to its customers when the Agreement expired in July 2018, a temporary agreement was reached between HKT and R3CPS on the arrangement for HKT’s 2G and 3G networks in the Tunnel upon the expiry of the Agreement such that HKT could continue to provide 2G and 3G services in the Tunnel after 15 July 2018.

7. The proposed radiocommunications installation (the “Installation”) is set out in Appendix #4 of HKT’s letter to OFCA of 27 April 2018 which supplemented its Application dated 16 April 2018.

Legal Basis

8. The CA is empowered under section 14(1A) of the Ordinance to grant an authorization to any licensee to –

- (a) place and maintain a radiocommunications installation in, over or upon any land for the purpose of providing a radio communications service to a public place; and
- (b) enter any such land for the purpose of
 - (i) inspecting it; or
 - (ii) other activities which are for the purpose of or incidental to the maintenance and placement of the installation.

9. Under section 14(1B) of the Ordinance, the CA shall not grant an authorization referred to in section 14(1A) –

- (a) unless it is satisfied that the authorization is in the public interest;
- (b) except after taking into account –
 - (i) whether an alternative location can be reasonably utilised for placing the radiocommunications installation to which the authorization, if granted, will relate;
 - (ii) whether or not there are technical alternatives to the installation;
 - (iii) whether or not the utilisation of the land to which the authorization, if granted, will relate is critical for the supply of the service by the licensee seeking the authorization;
 - (iv) whether or not that land has available capacity to be so utilised having regard to the current and reasonable future needs of the occupants of that land; and
 - (v) the costs, time, penalties and inconvenience to the licensee and the public of the alternatives, if any, referred to in subparagraph (ii);
- (c) unless it has given a reasonable opportunity to the persons having a lawful interest in the land concerned and to the licensees concerned to make representations and has considered all representations made before it decides whether or not to grant the authorization; and
- (d) unless it –
 - (i) gives reasons in writing for the grant of the authorization; and
 - (ii) specifies in writing the technical requirements, if any, of the right of access arising from the authorization.

10. Having considered the information provided by the respective parties, the CA is satisfied that the Application falls within the framework of section 14(1A) of the Ordinance for the following reasons –

- (a) the Application is for placing and maintaining a radiocommunications installation of HKT, being a unified carrier licensee licensed to operate public mobile radiocommunications services; and
- (b) the Tunnel constitutes a “public place” as defined under the Ordinance.

The Proceedings

11. The CA invited R3CPS to make representations in relation to the Application. In response to the CA’s request, HKT provided its clarifications on 27 April 2018 and submitted further information on 24 May 2018. R3CPS gave its representations in writing on 14 June 2018 and 10 July 2018. HKT provided its comment on R3CPS’s representations on 26 July 2018.

Representations and CA’s Preliminary View

12. The comments and representations of the parties and the preliminary views of the CA after taking into consideration all the submissions and representations made by the parties are given in the paragraphs below.

Public Interest – Section 14(1B)(a)

HKT’s Representations

13. HKT submitted that the Tunnel, being 3.8 kilometres in length connecting Ting Kau, Tsuen Wan and Au Tau in Yuen Long, serves as a major access route between Hong Kong and Mainland China, with around 61,000 vehicles using the Tunnel daily. HKT claimed that public interest would be served if commuters who used the Tunnel were able to continue to have uninterrupted and reliable mobile coverage. HKT submitted that a disconnection of HKT’s services in the Tunnel would trigger public safety issue for the Tunnel users because its customers would not be able to use their mobile phones while they are travelling in the Tunnel.

R3CPS’s Representations

14. R3CPS did not agree with HKT’s claim that placing and maintaining the Installation was in the interest of the public. It considered that HKT could only claim that placing and maintaining the Installation was in the interest of its customers solely but not the public at large, given that HKT was not the only mobile operator in Hong Kong.

15. Having been repeatedly urged by the Government to seek other revenue streams in order to defer or minimise the impact of its toll increase to the public, R3CPS considered that the acceptance of a “lower-than-reasonable” licence fee that is proposed by HKT might lead to a subsidisation of HKT’s commercial interest at the expense of the public if R3CPS will need to increase its toll fee.

HKT’s Further Representations

16. In response to R3CPS’s representations stated above, HKT said that it totally disagreed with R3CPS’s argument, and considered that being a holder of UCL licensed to provide a **public** telecommunications network service, it offered mobile services to the public and that anyone can choose freely to join its mobile services.

CA’s Preliminary View

17. The CA, when considering the public interest of the Application under section 14(1B)(a) of the Ordinance, has taken into account the following factors –

- (a) whether the provision of an extensive and reliable radio coverage of public radiocommunications services to the general public is consistent with the policy of the Government;
- (b) the inconvenience to the general public if the authorization under section 14(1A) of the Ordinance is not granted;
- (c) whether the parties had engaged in negotiations for a protracted period of time but failed to reach an agreement; and
- (d) the maintenance of a light-handed regulatory environment, with a view to refraining from regulatory intervention unless so justified.

18. The CA considers that there is public interest to ensure the continuation of uninterrupted and reliable radiocommunications services for the road users when using the Tunnel. Such services would be unduly hindered if HKT could not reasonably place and maintain the Installation within the Tunnel. Based on the available evidence, the CA is of the view that it is unlikely that HKT and R3CPS are able to reach an agreement in the near future given the parties have started their negotiations in March 2018 and their views on the reasonable amount of licence fee remain divergent.

19. Having considered the parties’ representations, the CA is satisfied that its intervention in this case is justified and the grant of an authorization under section 14(1A) of the Ordinance is in the public interest.

Considerations under Section 14(1B)(b)

Whether an alternative location can reasonably be utilised for placing the Installation

20. HKT submitted that given the Tunnel was a 3.8 km long tunnel tube situated under Tai Lam Country Park and entirely enclosed by mountains, it was impossible for HKT to provide adequate 2G and 3G mobile coverage through neighbouring outdoor radiocommunications installations. HKT also pointed out that the physical landscape presented difficulties for providing mobile coverage through 2G and 3G radio signals from outdoor radio stations as the radio signals could hardly penetrate enclosed concrete structure like the Tunnel. HKT proposed to preserve the Installation in the existing positions to minimise the impact and interruption to the public due to equipment migration.

21. R3CPS disagreed on HKT's preferred positions for placing the Installation as set out in Appendix #4 of its letter on 27 April 2018. R3CPS opined that the Installation should not be limited to those preferred positions put up by HKT because other mobile network operators ("MNOs") have made use of other positions in the Tunnel for placing their mobile radiocommunications installations for the provision of mobile services along the Tunnel.

22. HKT commented that the Installation has been placed in those preferred positions since the first day of implementation in the Tunnel. It considered that there was no point to relocate the Installation to other equipment rooms unless there were special reasons (such as safety concerns). HKT considered that R3CPS could counter-propose the location for the Installation in the new agreement but this should not be a consideration to stop granting the authorization.

23. Taking into account the nature and length of the Tunnel and its shielded environment, the CA considers that HKT would not be able to provide reliable 2G and 3G radiocommunications services through outdoor base stations to the mobile phone users when using the Tunnel.

24. Having been satisfied that reasonable opportunity has been given to the parties to make representations on this issue and having considered their representations, the CA is of the view that the parties' disagreement mainly lies in the locations for the Installation and there is no serious disagreement that there is no alternative location other than the land in the Tunnel that can be reasonably utilised for placing the Installation for providing uninterrupted and reliable radio coverage to areas within the Tunnel. Without prejudice to the parties' further agreement on the location for the Installation, the CA did not find HKT's preferred positions for placing the Installation as set out in Appendix #4 of its letter on 27 April 2018 (the "land concerned") to be inappropriate or unreasonable since the 2G and 3G radiocommunications installations had already been established there for a long period of time without causing any inconvenience or hazard to the public.

Whether or not there are technical alternatives to the Installation

25. Having explored different technical alternatives to replace the Installation in order to maintain the 2G and 3G coverage, HKT submitted that given the present available technology and geographical constraints, there was no satisfactory technical alternative to provide 2G and 3G radiocommunications coverage to the areas within the Tunnel.

26. R3CPS submitted that it was not in a position to comment on the availability of other technical alternatives.

27. Given the present state of technology and geographical constraints, the CA is satisfied that there is no other technical alternative to the Installation for the provision of 2G and 3G services to the mobile users travelling in the Tunnel.

Whether or not the utilisation of the land to which the authorization, if granted, will relate is critical for the supply of the services by the licensee seeking the authorization

28. HKT stated that the land concerned was a unique and important location essential for the smooth and uninterrupted operation of HKT's 2G and 3G services. HKT considered that the utilisation of the tunnel area concerned was critical for it to continue to provide quality 2G and 3G services to its customers travelling in the Tunnel and therefore it was in the interest of the public that the services be continued without interruption.

29. R3CPS submitted that it was not in a position to comment on whether the utilisation of the land concerned was critical for the supply of services by HKT.

30. For the provision of adequate 2G and 3G coverage to the Tunnel, the CA agrees that the Installation is necessary for the provision of uninterrupted and satisfactory 2G and 3G services within the Tunnel. The utilisation of the land concerned for which the authorization is sought is therefore critical for the supply of the services by HKT.

Whether or not that land has available capacity to be so utilised having regard to the current and reasonable future needs of the occupants of that land

31. According to HKT, it surrendered one of its two 2G and 3G installations in the Tunnel at the end of 2015 and had vacated the related equipment space. HKT considered that the Tunnel did have structural and physical capacity available to accommodate the Installation.

32. R3CPS submitted that subject to the scrutiny on technical plan submitted by HKT, it believed that space in the Tunnel was available for the Installation.

However the location of the space may be different from HKT's preferred positions for placing the Installation as set out in Appendix #4 of its letter on 27 April 2018.

33. In view of the fact that there was no dispute in respect of the availability of the land concerned for the Installation, the CA is of the view that there is available capacity in the Tunnel to be utilised for placing the Installation in the light of the current and reasonable future needs of occupants there.

The cost, time, penalties and inconvenience to the licensee and the public of the alternatives, if any, referred to in subparagraph (ii) of section 14(1B)(b)

34. As, in respect of sections 14(1B)(b)(i) and (ii) of the Ordinance, there are no alternative locations for placing or technical alternatives to the Installation, the CA is of the view that this consideration is not applicable.

Other Considerations

HKT's Representations

35. HKT requested the CA to specify in the authorization that the electric power supply for its 2G and 3G radiocommunications installations must be maintained by R3CPS.

36. Concerning the terms and conditions of the authorization, HKT is also seeking the CA's determination of separate interim fees for its 2G and 3G radiocommunications installations pursuant to section 14(1D)(a) of the Ordinance (including the terms and conditions in accordance with which the fee shall be payable) to be paid by HKT to R3CPS.

R3CPS's Representations

37. R3CPS advised the CA to note its obligations under section 16(6) of Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) that R3CPS had to treat all applications for installation of utilities within the toll area fairly and in a similar manner; and shall impose similar terms and conditions (including charges), as regards to such installation, especially for dealing with similar applications where there are successful precedent cases to follow.

CA's Preliminary View

38. The CA notes that the disagreement between the parties is mainly on the amount of licence fee. The CA will address the parties' disagreement on this point in the paragraphs below.

Request for Determination on Interim Fee

39. Under section 14(1D) of the Ordinance, the CA shall, upon application made to it, specify in writing an interim fee (including the terms and conditions in accordance with which it shall be payable) to be paid by the licensee to the landowner. In any future arbitration proceedings for the determination of the fee under section 14(5)(b) of the Ordinance, regard shall not be given to the amount of interim fee imposed by the CA. In a determination under section 14(5)(b), the arbitrator shall, in specifying the fee to which the determination relates, include provisions for set-off of any interim fee paid.

HKT's Representations

40. HKT submitted that when considering the appropriate interim fee payable by it for placing and maintaining its 2G and 3G radiocommunications installations in the Tunnel, the CA should make reference to the interim fee i.e. HK\$[X] per month per system which was determined by the CA for placing HKT's 4G radiocommunications installations in the Tunnel after carefully considering all the relevant evidence of the case. For reserving more flexibility of systems provision, HKT preferred to separate the interim fee for placing its 2G and 3G radiocommunications installations in the determination.

41. In comparison to the other tunnels, HKT considered that its proposed interim fee was higher than the licence fee per system of other tunnels, even though the average daily traffic in the Tunnel was not the highest of all the tunnels in Hong Kong. The monthly licence fee per system payable by HKT to other private tunnel operators in Hong Kong for placing and maintaining radiocommunications installations were HK\$[X] for Western Harbour Tunnel and HK\$[X] for Tate's Cairn Tunnel. That gave an average monthly licence fee of HK\$[X] per system. In this connection, HKT considered that its proposed interim fee of HK\$[X] per month per system was reasonable.

R3CPS's Representations

42. R3CPS submitted that it had made various offers to HKT with different system combinations, together with some substantial discount offers. The proposed licence fees were market rates based on established agreements made by R3CPS with other MNOs. The market rates reflect the recent commercial value of mobile phone network in the Tunnel. R3CPS considered that any new agreement should make reference to the latest market rates for radiocommunications installations in the Tunnel instead of the monthly fee of the expiring agreement which was established under different market conditions, or the interim fee determined in the authorization granted by the CA for HKT's 4G radiocommunications installation in 2017.

43. The average monthly licence fee per system being paid by the four MNOs to R3CPS was approximately HK\$[] each based on the material and information submitted by it.

44. R3CPS also offered to HKT on 10 May 2018 on a bundling basis –

Option	Combination	Bundled Fee
A	2G + 3G	HK\$[]
B	3G + 4G	HK\$[]
C	2G + 3G + 4G	HK\$[]

R3CPS considered that its offers for individual systems should be consistent with the latest market rates derived from established agreements with other MNOs, as well as reflecting the functionality of each system. R3CPS considered the licence fees for placing MNO's 2G, 3G or 4G systems in the Tunnel should be as follows according to its reasons which also stated below –

System	Monthly Licence Fee	Rationale of R3CPS
2G	HK\$[]	Monthly licence fee payable by one MNO under the agreement for placing its 2G system in the Tunnel
3G	HK\$[]	Average of the monthly licence fee for placing 2G system and 4G system as quoted above and below
4G	HK\$[]	Monthly licence fee payable by one MNO under the agreement for placing its 4G system in the Tunnel

45. R3CPS submitted that it offered to HKT on 15 May 2018 a combined monthly licence of HK\$[] for placing and maintaining HKT's 2G, 3G and 4G radiocommunications installations in the Tunnel, with other conditions of the agreement to be agreed separately between R3CPS and HKT. The combined monthly licence fee could be reduced by HK\$[] if HKT chooses to operate 3G and 4G radiocommunications installations in the Tunnel only from the second year onward.

HKT's Further Representations

46. As regard R3CPS's representation that it offered the licence fee based on the market rates, HKT considered that all private tunnel operators in Hong Kong were charging excessive licence fee to MNOs, in comparison with the licence fee for placing and maintaining mobile base stations in commercial buildings or Government tunnels.

47. On the other hand, HKT disagreed that the market rate should be based purely on the agreements made by R3CPS with other MNOs, as MNOs have different business strategies and some of them may be willing to pay higher licence fee for the tunnel access due to special situations which would distort the market rates. HKT argued that the market rate should at least draw references from the licence fees of all the other private tunnels in Hong Kong instead of only the Tunnel as all the other tunnels are also making similar provisions to MNOs for serving their own customers. Based on its arguments, HKT counter-offered the licence fee at HK\$[X] per month per system on 25 May 2018 which was rejected by R3CPS.

48. As regards R3CPS's claim that all applications for installation of utilities within the Tunnel had to be fairly treated and in a similar manner, HKT considered that for MNOs who had only been assigned with spectrum to run 2G and 4G systems, it was likely that they were willing to pay a higher licence fee for the 4G system to cater for its mobile data service needs. The higher licence fee paid by some MNOs for 4G system should not be used as the only reference for R3CPS to charge the other MNOs deploying only 2G and 3G systems in the Tunnel to cater for mobile service demand of their customers. A fair licence fee should be set by comparing all the private tunnels in Hong Kong instead of only a few specific cases, and such comparison should also include licence fee for deploying purely 2G system, or licence fee for 2G and 3G systems to avoid any biased result and distortion.

CA's Preliminary View

49. The CA considers that, in line with the approach adopted in dealing with the previous applications for authorization under section 14(1A) of the Ordinance, it would not go into details of the merits of each party's submissions in support of their respective proposed fees. The determination of the fee is a matter for the arbitrator. Any detailed assessment of the relevant considerations should be left to the arbitrator, who is obligated under section 14(6)(a) of the Ordinance to have regard to the guidelines issued by the CA on the principles to be adopted for determining a fee. It is expressly provided in section 14(6) of the Ordinance that the arbitrator shall not give regard to the amount of any interim fee specified by the CA.

50. The interim fee to be set needs to be fair and reasonable in all the circumstances of the case as it is required by the law. While the past cases would be of some referential value to the CA, it has to exercise its judgement and discretion in individual cases. For the avoidance of doubt, nothing herein shall prejudice the contentions by each party in any future arbitration.

51. The CA notes the following evidence and information provided by the parties –

- (a) In this Application, HKT proposed the interim fee to be HK\$[X] per month for one system for 2G and 3G radiocommunications installations in the Tunnel, which is based on a previous determination by the CA on 21 April 2017 for 4G radiocommunications installations in the Tunnel;
- (b) HKT had placed and maintained its 2G and 3G radiocommunications installations in the Tunnel under the Agreement. The total monthly licence fee was HK\$[X] as of 15 July 2018 (i.e. the expiry date of the Agreement), thus giving an average monthly fee of HK\$[X] per system. According to the Agreement, there is an adjustment on each anniversary date (i.e. 16 July of each year) according to the arrangement as described in paragraph 2 above;
- (c) HKT provided information concerning the licence fees that it paid Western Harbour Tunnel and Tate's Cairn Tunnel at the amount of HK\$[X] and HK\$[X] respectively per month per system for placing and maintaining its radiocommunications installations in their tunnels. The average monthly licence fee paid by HKT to each of these private tunnel operators is therefore HK\$[X] per system;
- (d) R3CPS's proposed monthly licence fee of HK\$[X] for 2G and 3G systems on 10 May 2018 was the last offer by R3CPS to HKT for bundling 2G and 3G systems only in the Tunnel, which gives an average monthly fee of HK\$[X] per system;
- (e) The average amount of the monthly licence fee currently paid by each of the four MNOs to R3CPS for placing and maintaining their radiocommunications installations (including 2G, 3G and 4G systems) in the Tunnel is approximately HK\$[X] per system; and
- (f) R3CPS considered the licence fee for the individual system should be based on the latest market rates, i.e. HK\$[X] per month for 2G system, and HK\$[X] per month for 3G system, but this was only based on the licence fees paid by one individual MNO to R3CPS.

52. The CA further notes that the average monthly licence fee (calculated in per system basis) currently paid by the four MNOs to R3CPS is

(HK\$[X]). While HKT proposed a monthly interim fee of (HK\$[X] per system in the Application which was the interim fee previously determined by the CA on 21 April 2017 for its placing of 4G radiocommunications installations in the Tunnel, the CA considers that in setting the interim fee in this case (for placing HKT's 2G and 3G radiocommunications installations in the Tunnel), it is more appropriate to use the monthly licence fee of HK\$[X] per system which was currently in force under the Agreement. Although this amount is around 12% lower than the average monthly licence fee paid by the other MNOs to R3CPS, that amount is already 17% higher than the average monthly licence fee paid by HKT to other private tunnel operators. Since the monthly licence fees paid by HKT to other private tunnel operators were agreed after commercial negotiation, they could be reasonably used as a benchmark for measuring the reasonableness of the level of fees for 2G and 3G systems involved in the Application.

53. Further, if the interim fee for the Installation should be set based on the monthly licence fee when the existing Agreement expired in July 2018, this level would reflect the status quo (including also the arrangement for adjustment of the monthly licence fee on each anniversary date) before the dispute arose between the parties. For the reasons stated above and in light of all circumstances of the case, the CA is of the view that the interim monthly licence fee of HK\$[X]² per system payable by HKT to R3CPS is appropriate and reasonable (with the interim fee set at the level of the last monthly licence fee of HK\$[X] per system plus the increment due to the inflation rate for the past year). Unless and until the parties reach a commercial agreement or the fee is determined by an arbitrator, the interim fee should be adjusted on each anniversary date thereafter (i.e. 16 July of each year) by –

- (a) the inflation rate³; or
- (b) where the inflation rate is zero or negative, there shall be no change to the monthly fee by reference to that relevant year.

54. The CA would like to stress that the interim fee does not prejudice any future contentions by the parties if they resurrect their commercial negotiations or opt for arbitration for the determination of the fee. For the avoidance of doubt, if the parties proceed to arbitration to determine the access fee, the arbitrator may make provisions for set-off of any interim fee paid by HKT to R3CPS.

55. The CA is aware of HKT's request to specify in the authorization that the electric power supply for its 2G and 3G radiocommunications installations must be

² The same fee adjustment method adopted in the Agreement (see footnote 1 above) is used in calculating the interim fee. An adjustment based on the inflation rate of 2.3% is applied based on year-on-year percentage change of Consumer Price Index (B) of June 2018, which is published at: <https://www.censtatd.gov.hk/hkstat/sub/sp270.jsp>

³ As defined in footnote 1 above.

maintained by R3CPS. The CA notes that the authorization cannot exhaustively set out all the terms and conditions therein. Clearly the supply of electricity is essential to the implementation of this authorization for the purpose of provision of mobile services by HKT in the Tunnel. Having said that, the CA believes that the parties would be expected to reach an agreement on this issue after the interim fee has been determined and so it will not specify the requirement in the authorization according to HKT's request.

Preliminary View on Whether or Not the Authorization should be Granted

56. Having been satisfied that a reasonable opportunity has been given to the persons having a lawful interest in the land concerned and to the licensee concerned to make representations and having considered all the representations made before it pursuant to section 14(1B)(c) of the Ordinance, the CA is satisfied that the grant of an authorization to HKT under section 14(1A) of the Ordinance for HKT to maintain the Installation on the land concerned to provide radio coverage within the Tunnel is in the public interest after taking into account that –

- (a) no alternative locations other than the land concerned can be reasonably utilised for placing the Installation to which, the authorization, if granted, will relate;
- (b) there are no technical alternatives to the Installation;
- (c) the utilisation of the land concerned for which the authorization is sought is critical for the supply of quality service by HKT;
- (d) the land concerned has available capacity to be so utilised having regard to the current and reasonable future needs of the occupants of that land; and
- (e) the cost, time, penalties and inconvenience to HKT and the public of the alternatives, if any, referred to in (b) above are irrelevant because the CA is satisfied that there is no technical alternative to the Installation.

Interim Fee

57. Pursuant to section 14(1D) of the Ordinance, the CA hereby specifies that the monthly interim fee per system payable by HKT to R3CPS should be HK\$[~~8~~] for placing and maintaining the Installation in the Tunnel and, unless and until the parties reach a commercial agreement or the fee is determined by an arbitrator, be adjusted on 16 July of each year thereafter by –

- (a) the inflation rate⁴; or
- (b) where the inflation rate is zero or negative, there shall be no change to the monthly fee by reference to that relevant year.

Invitation for Further Representations

58. The CA invites the parties to make comments and representations, if any, on this Preliminary Analysis for its due consideration before it makes the final decision as to whether the authorization under section 14(1A) of the Ordinance should be granted, and if the authorization is be granted, the level of the interim fee and the technical requirements, if any, of the right of access arising from the authorization.

**Office of the Communications Authority
21 August 2018**

⁴ As defined in footnote 1 above.