

**Hutchison Global Communications Limited and Hutchison Telephone Company Limited**

**Joint Response to Consultation Paper by Secretary for Commerce and Economic Development and Communications Authority “Review of Licence Conditions in Carrier Licences Issued under the Telecommunications Ordinance” dated 5 September 2014 (“the CP”)**

Hutchison Global Communications Limited and Hutchison Telephone Company Limited operate fixed and mobile telecommunications services respectively in Hong Kong. This submission is made on behalf of both of these companies.

We agree with the proposal in the CP that the conditions of the carrier licences which duplicate or have been superseded by cross-sectoral regulation should be removed. However, we believe that the review should not just include conditions which fall within this category.

First, there are certain conditions which are redundant because they duplicate, not cross-sectoral legislation, but the Telecommunications Ordinance (“TO”) itself: these should also be removed. A good example of this is Special Condition (“SC”) 6 of the Unified Carrier Licence (“UCL”) (Requirement to Furnish Information to the Authority), which duplicates the provisions of Sections 7I and 35A of the TO.

Secondly, there are certain licence conditions which do not duplicate, but actually conflict with legislation. Prime examples are the requirements on price publication and discounts under SC7 and 8 of the UCL. Such requirements appear to conflict with the competition provisions of the TO, and the Competition Ordinance (“CO”), which prohibit publication of commercially sensitive information where it may distort market competition.

Thirdly, and even more important than the two previous factors, there are conditions which – even if they were needed previously for public policy reasons – are no longer needed in the current highly-competitive market environment, because they serve no useful public policy objective. Maintaining licence conditions which are no longer needed results in overly-intrusive and disproportionate regulation, unnecessary “red tape” (contrary to the Government’s “Smart Regulator” Initiative) and waste of resources (i.e. inefficiency) for both businesses and the regulatory authorities, to the detriment of the Hong Kong economy, and consumers.

The provisions on price publication and discounts in SC7 and 8 fall into this category (as well as conflicting with the TO, and CO, as noted above). Other examples include the requirement to provide good service quality to customers under General Condition (“GC”) 5 of the UCL. All of these provisions are unnecessary in today’s highly competitive telecommunications sector, where the market itself produces the desired outcomes in terms of service quality and prices.

Even taking into account what appears to be the primary objective of this review, namely to remove certain licence conditions which duplicate or are superseded by cross-sectoral legislation (see paragraph 7 of the CP), the CP omits certain licence conditions which clearly fall within this category. To give just two examples:

- GC7 of the UCL (Confidentiality of Customer Information) is more than adequately covered by the (recently strengthened) Personal Data (Privacy) Ordinance (“PDPO”); and
- SC30 of the UCL (Provision of Information to Customers) is more than adequately covered by the (recently strengthened) Trade Descriptions Ordinance (“TDO”).

Why is it that such conditions have not been included in the proposed review? The reason appears to be that the proposed criteria for removal, set out in paragraph 10 of the CP, are too stringent. For example, the mere fact that cross-sectoral regulation is in place to deal with the matter should be sufficient in itself to justify a removal of the relevant condition. However, paragraph 10 states that this is just one of four conditions that all need to be satisfied to justify removal.

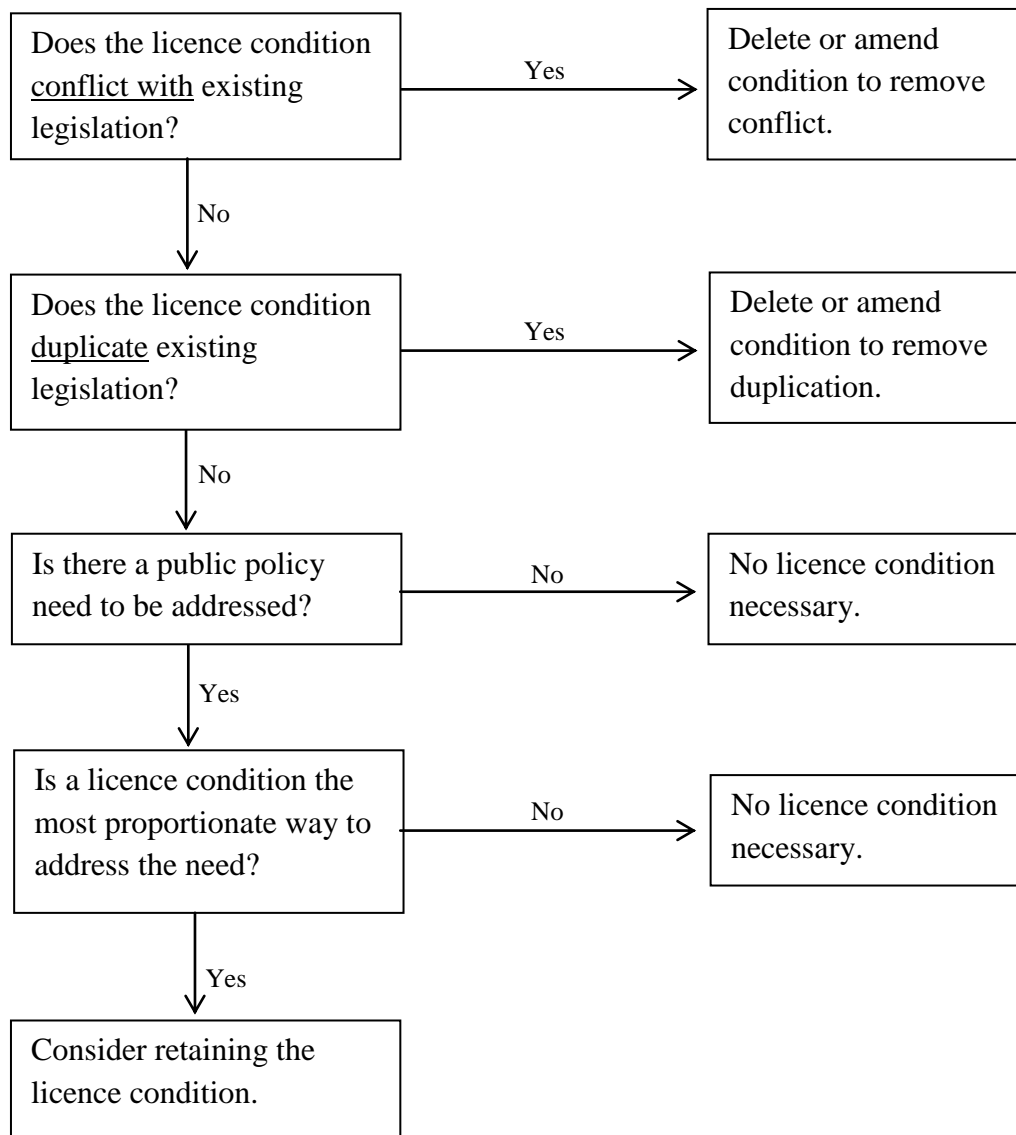
We appreciate that this review concerns licence conditions, and not the underlying legislation (the TO) which is being subject to a separate review. We therefore assume, for the purpose of this review, that the policy objectives of existing legislation are still valid. On this basis, we believe that the first step should be to remove (or amend) licence conditions, if and to the extent that they conflict with existing legislation, i.e. public policy. As noted above, licence conditions on pricing and discounts – SC7 and 8 – appear (at least) to fall within the category.

The next step is to remove those conditions which duplicate existing legislation – whether this legislation is cross-sectoral (e.g. the PDPO or TDO) or sector-specific (i.e. the TO).

This leaves licence conditions which supplement existing legislation. For these licence conditions, a proper Regulatory Impact Assessment (“RIA”) needs to be conducted. In accordance with international best practice, this includes the following basis steps:

- Is there a public interest problem which needs to be addressed?
- If so, are licence conditions needed to address the problem, or would less intrusive measures (e.g. self-regulation) be sufficient? In other words, are licence conditions a proportionate response to the problem?

This approach can be shown in the following flow-chart:



Applying this approach to the UCL, a substantial number of licence conditions can be deleted. The deletion of these unnecessary conditions will result in cost savings for both businesses and the regulatory authorities. The relevant licence conditions, and a brief explanation of why they can and should be deleted, is contained in the Annex.

Hutchison Global Communications Limited and  
Hutchison Telephone Company Limited  
20 October 2014

## ANNEX – UCL LICENCE CONDITIONS WHICH SHOULD BE REMOVED

	<b>Conflicts with legislation</b>	<b>Duplicates legislation</b>	<b>No policy need</b>
GC 4 (Compliance Generally)			The licensee is obliged to comply with these matters anyway.
GC 5 (Provision of Service)			In today's competitive market, it is in each operator's interest to offer the highest service quality they can. Reputational harm also ensues if they do not.
GC 6 (Customer Charter)			Ditto.
GC 7 (Confidentiality of Customer Information)		This condition duplicates the requirements of the PDPO. The requirement for the CA to approve the form of consent goes further than the PDPO and is unnecessary.	
GC 10 (Restrictions on Attachment to Public Buildings and Trees)		As proposed by SCED/CA.	
GC 11 (Compliance)			The licensee would be in breach of licence even if due to acts/omissions of contractor.
GC 14 (Safety)			The licensee is legally responsible for these matters anyway under health and safety legislation and the law of tort.

	<b>Conflicts with legislation</b>	<b>Duplicates legislation</b>	<b>No policy need</b>
GC 15 and 16 (Prohibition of Claims against Government; Indemnity)			There is no valid reason to protect the Government in these ways. The conditions are unfair.
SC 1 (Compliance with Codes of Practice)			As under other legislation such as the TDO, PDPO, and CO, Guidelines and Codes of Practice should be <u>non-binding</u> standards of best practice and/or give <u>non-binding</u> guidance on compliance with existing regulation. This condition effectively turns them into overly-intrusive and unnecessary legal obligations.
SC 5 (Accounting Practices)		Dealt with under GAAP.	
SC 6		Duplicates Section 7I and 35A of the TO.	
SC 7 and 8 (Tariffs and Discounts)	These conditions restrict price competition, contrary to the objective of the TO's competition provisions and the CO.		These conditions are unnecessary in today's highly competitive telecommunications sector.
SC 10 (Provision of Service)			In consequence of removal of SC 7 and 8.
SC 14 (Network Location)		As proposed by SCED/CA. But SC 14.2 should also be removed as such records need to be kept in any event for the purpose of obtaining an excavation permit.	

	<b>Conflicts with legislation</b>	<b>Duplicates legislation</b>	<b>No policy need</b>
SC 17 (Requirements of Installation of Lines or Cables)		As proposed by SCED/CA.	
SC 18 (Works in Public Streets)		As proposed by SCED/CA.	
SC 19 (Interference with Works of Others)		As proposed by SCED/CA.	
SC 20 (Licensee to Alter Network on Notice)		As proposed by SCED/CA.	
SC 30 (Provision of Information to Customers)		The need for this condition has been superseded by the TDO, in particular the offence of Misleading Omissions. It is also duplicated to some extent by the Code of Practice on Telecommunications Service Contracts.	In today's highly competitive telecommunications market, operators in practice have to disclose most of these matters to customers anyway.