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EQUAL OPPORTUNITIES COMMISSION

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10 February 2006

Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

(Attn: Mr. Andy Lau  
Clerk to Subcommittee)

Dear Sir:

**Subcommittee to Study the Transport Needs and Provision of  
Concessionary Public Transport Fares for Persons with Disabilities**

**Meeting on 16 February 2006**

I refer to the forthcoming meeting of the Subcommittee on 16 February 2006 and confirm the Commission's attendance list sent by e-mail to you last night.

There has been discussion between the Administration and the Commission on the matters set out in your letter dated 11 January 2006. The Administration has kindly let the Commission have sight of a draft of its paper to be submitted to the Subcommittee, which has encapsulated the gist of the Commission's views on the relevant matters.

In the circumstances, in order to avoid unnecessary repetition, the Commission does not propose to put forward a formal paper for the meeting on 16 February 2006. Nevertheless, on the issue of the

non-provision of concessionary fares to Persons with Disabilities (PwDs) who need to be accompanied by a carer to use public transport and/or their carers, the Commission would like to take this opportunity to reiterate the following:-

1. If the obligation to pay fare applies to all passengers, regardless of any disability, there is unlikely to be any direct discrimination on the ground of disability;
2. However, if the obligation to pay fare for both the PwD and the carer causes difficulty to them affecting their use of the transport facilities, there is a possible argument for indirect discrimination;
3. The question of indirect discrimination is one that can only be determined upon a careful balance of all the relevant factors on a case-by-case basis. These factors may include:-

3.1. What is the disability of the complainant?

- (a) What is the degree of impact the disability has on the complainant affecting his / her use of the facilities?
- (b) The disability may be such that the complainant needs to be accompanied by carer throughout the journey; or that the complainant only needs a carer to overcome certain obstacles inherent in the facilities.

3.2. Whether it could be said that a condition or requirement is imposed when fares are charged for both the complainant and his carer?

- (a) Is it the fare structure itself which is said to be the condition?
- (b) Is it the state of the facilities, independent of the fare structure, which is said to be the condition?
- (c) Is it some other formulation of the condition or requirement?

- 3.3. Whether it could be established that the proportion of persons with the disability of the complainant who could comply with the condition of a fare-paying carer is considerable smaller than persons without the disability of the complainant?
- 3.4. Whether the condition is justifiable irrespective of the complainant's disability?
- (a) Are there other alternatives to charging regular fares for both the complainant and his carer? If there are other alternatives (e.g. improvement on facilities and services, or fare concession), what is the impact on the operator if they are adopted?
- (i) What are the technical, financial or other resources available to the operator?
- (ii) Given the nature of the operator, what weight can reasonably be placed on the objective of maximization of profit among other legitimate objectives?
- (iii) What is the fare level and profit margin?

One will appreciate from the above that the interplay of the relevant factors can be complex. It is prudent not to draw any firm conclusion without knowing all the relevant details of a specific case.

Yours sincerely,



Raymond TANG  
Chairperson  
Equal Opportunities Commission

c.c. Mr. William Sung, Chief Executive Officer/Rehabilitation,  
Health, Welfare and Food Bureau