

TELECOMMUNICATIONS (AMENDMENT) BILL 2002

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Commerce,  
Industry and Technology

Clause

Amendment Proposed

1 By deleting subclause (2) and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(3) Sections 3, 4, 5, 6 and 7 shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette."

New By adding -

**"1A. Interpretation**

Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended, in the definition of "carrier licence", by repealing "the Schedule" and substituting "Schedule 1"."

2 By deleting everything before paragraph (b) and substituting -

**"2. Guidelines**

Section 6D is amended -

(a) in subsection (2) -

- (i) in paragraph (a), by repealing everything after "方式" and substituting "(包括發牌準則以及他擬考慮的其他有關事宜)的指引";
- (ii) by adding -
  - "(aa) subject to subsection (2A), specifying the matters, including but not limited to those listed in Schedule 2, that he shall take into account before forming any opinion under section 7P(1) or (6) (a) or (b);"
- (iii) in paragraph (b) -
  - (A) by adding "關於" before "第14(6)(a)條";
  - (B) by repealing everything after "問題" and substituting

"的指引，但該指引的發出須

受第(3)款的規限。";

- (iv) by repealing "就以下事項發出指引" and substituting "發出";".

New By adding -

**"2A. Issue of licences**

Section 7(4) is amended by repealing "the Schedule" and substituting "Schedule 1".

3 In the proposed section 7P -

- (a) by deleting subsection (1) and substituting -

"(1) Where, after the commencement of this section, there is a change in -

- (a) the control exercised over a carrier licensee;
- (b) the beneficial ownership of any of the voting shares in a carrier licensee; or
- (c) the voting control of any of the voting shares in a carrier licensee,

the Authority may -

- (d) subject to subsection (1A), conduct such

investigation as the Authority considers necessary to enable him to form an opinion as to whether or not the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market; and

- (e) (where the Authority, after conducting such investigation, forms an opinion that the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market) by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate or

avoid any such anti-  
competitive effect.

(1A) An investigation under subsection (1)(d) may only be commenced within 1 month after the change occurs or within 1 month after the Authority knows, or ought reasonably to have known of, the change, as the case may be.";

(b) by deleting subsection (2) and substituting -

"(2) The Authority shall, before forming any opinion or issuing any direction under subsection (1) -

(a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made under paragraph (a).";

(c) in subsection (3), by deleting "(1)" and substituting "(1)(e)";

(d) in subsection (4), by deleting "(1)" and substituting "(1)(e)";

(e) in subsection (5), by adding "or any interested person" after "the licensee";

(f) in subsection (6) -

(i) in paragraph (a) -

- (A) by deleting "is of the opinion" and substituting "forms an opinion";
- (B) by adding "作出的" after "建議";
- (ii) in paragraph (b) -
  - (A) by deleting "is of the opinion" and substituting "forms an opinion";
  - (B) by deleting subparagraph (ii) and substituting -
    - "(ii) give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate or avoid any such anti-competitive effect.";
  - (C) by adding "作出的" after "建議";
- (g) by deleting subsection (7) and substituting -
  - "(7) The Authority shall, before forming any opinion, making any decision or issuing any direction under subsection (6) -
    - (a) give all carrier licensees and any interested person

a reasonable opportunity  
to make representations to  
the Authority; and

(b) consider the  
representations, if any,  
made under paragraph (a).";

(h) by deleting subsection (8) and substituting -

"(8) The Authority shall, by notice  
in writing served on the carrier licensee  
referred to in subsection (5) and (where  
an interested person makes an application  
under that subsection) the interested  
person, inform the licensee and (if  
applicable) the person of -

(a) the decision made under  
subsection (6)(a) or (b)(i)  
or (ii);

(b) where a decision is made  
under subsection  
(6)(b)(ii), the action  
that the Authority directs  
the licensee to take.";

(i) in subsection (10), by deleting "in respect of  
the change under subsection (1)" and  
substituting "under subsection (1)(e) in  
respect of the change";

(j) in subsection (11), by deleting "the carrier  
licensee concerned" and substituting "the

carrier licensee, or the interested person,  
who makes the application under subsection  
(5)";

(k) by adding -

"(11A) The Authority shall publish -

(a) where he forms any  
opinion or issues any  
direction under  
subsection (1), the  
opinion or direction; or

(b) where he forms any  
opinion, makes any  
decision or issues any  
direction under  
subsection (6), the  
opinion, decision or  
direction,

in such manner as he considers  
appropriate.";

(l) by deleting subsection (12) (a);

(m) in subsection (13), by adding -

"interested person" (有利害關係的人) means -

(a) in relation to a change  
referred to in subsection  
(1), a person who -

(i) does any of the  
acts referred to  
in subsection



(12) (b), (c) or  
(d) in relation  
to the carrier  
licensee  
concerned;

(ii) becomes the  
beneficial owner  
of the voting  
shares concerned;  
or

(iii) becomes the  
voting  
controller of  
the voting  
shares concerned;

(b) in relation to a proposed  
change referred to in  
subsection (5), a person  
who proposes to -

(i) do any of the  
acts referred to  
in subsection  
(12) (b), (c) or  
(d) in relation  
to the carrier  
licensee  
concerned;

(ii) become the  
beneficial owner  
of the voting  
shares concerned;  
or

(iii) become the  
voting  
controller of  
the voting  
shares  
concerned;".

- 5 (a) In paragraph (a), by deleting "or (1A)" and  
substituting ", (1A), (1B) or (1C)".
- (b) In paragraph (b), in the proposed definition of  
"appeal subject matter", by deleting paragraph (b)  
and substituting -
- "(b) in relation to an appeal under section  
32N(1A), (1B) or (1C), means an opinion,  
direction or decision of the Authority  
published under section 7P(11A);".

6 By deleting the clause and substituting -

**"6. Appeals to Appeal Board**

Section 32N is amended -

(a) by adding -

"(1A) Any carrier licensee  
aggrieved by an opinion,

direction or decision of the Authority published under section 7P(11A) may appeal to the Appeal Board against the opinion, direction or decision (and whether or not the opinion, direction or decision was formed, issued or made in respect of the licensee).

(1B) Any person who -

(a) is, in relation to a change referred to in section 7P(1), an interested person within the meaning of paragraph (a) of the definition of "interested person" in section 7P(13); and

(b) is aggrieved by an opinion or direction of the Authority published under

section

7P(11A) (a) in

respect of the

change,

may appeal to the Appeal Board  
against the opinion or  
direction.

(1C) Any person who -

(a) is, in relation

to a proposed

change referred

to in section

7P(5), an

interested

person within

the meaning of

paragraph (b) of

the definition

of "interested

person" in

section 7P(13);

and

(b) is aggrieved by

an opinion,

decision or

direction of the

Authority

published under

section  
7P(11A) (b) in  
respect of the  
proposed change,

may appeal to the Appeal Board  
against the opinion, decision  
or direction.";

(b) in subsection (3), by adding  
"subsection (1A), (1B) or (1C) or"  
before "section 36C".

7 By deleting everything after "substituting" and  
substituting "", or before the opinion, direction or  
decision referred to in section 32N(1A), (1B) or (1C)  
was formed, issued or made, as the case may be.".

New By adding -

**"8. Licences which are not carrier licences  
within the meaning of section 2**

The Schedule is renumbered as Schedule 1.

**9. Schedule 2 added**

The following is added -

"SCHEDULE 2 [s. 6D(2)]

MATTERS TO BE TAKEN INTO ACCOUNT BY AUTHORITY

1. The height of barriers to entry to a  
telecommunications market.

2. The level of market concentration in a telecommunications market.

3. The degree of countervailing power in a telecommunications market.

4. The likelihood that the change would result in the carrier licensee or interested person being able to significantly and substantially increase prices or profit margins.

5. The dynamic characteristics of a telecommunications market, including growth, innovation and product differentiation.

6. The likelihood that the change would result in the removal from a telecommunications market of a vigorous and effective competitor.

7. The extent to which effective competition remains or would remain in a telecommunications market after the change.

8. The nature and extent of vertical integration in a telecommunications market.

9. The actual and potential level of import competition in a telecommunications market.

10. The extent to which substitutes are available in a telecommunications market."."