

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."."