

立法會
Legislative Council

LC Paper No. CB(1) 1729/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

**Bills Committee on
Telecommunications (Amendment) Bill 2002**

**Meeting on
Monday, 12 May 2003, at 2:30 pm
in the Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP
- Members absent** : Dr Hon David CHU Yu-lin, JP
Hon Abraham SHEK Lai-him, JP
- Public officers
Attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology
(Information Technology and Broadcasting)
- Ms Gracie FOO
Principal Assistant Secretary for Commerce, Industry
and Technology
(Information Technology and Broadcasting)
- Miss Linda SO
Assistant Secretary for Commerce, Industry and
Technology
(Information Technology and Broadcasting)

Mr M H AU, JP
Deputy Director-General of Telecommunications

Mr Edward WHITEHORN
Head, Competition Affairs Branch, Office of the
Telecommunications Authority

Mr Michael LAM
Senior Government Counsel, Department of Justice

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

I Confirmation of minutes

LC Paper No. CB(1)1621/02-03 -- Minutes of 10th meeting on 30 April
2003

The minutes of the meeting held on 30 April 2003 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)1620/02-03(01) -- Administration's further proposed
Committee Stage Amendments and
other improvements

LC Paper No. CB(1)1620/02-03(02) -- Summary of deputations on
Administration's proposed
Committee Stage Amendments and
other improvements and
Administration's response on issues
not covered in the paper of
"Administration's further Committee
Stage Amendments and other
improvements"

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| LC Paper No. CB(1)1636/02-03 | -- | Updated marked-up copy of the Committee Stage Amendments proposed by the Administration to the Bill prepared by the Legal Service Division |
| LC Paper No. CB(1)1578/02-03 | -- | Correspondence between the Legal Service Division and the Administration relating to the Committee Stage amendments proposed by the Administration |
| LC Paper No. CB(1)1168/02-03(01) | -- | Administration's proposed Committee Stage Amendments and other improvements |
| LC Paper No. CB(3)593/01-02 | -- | The Bill |
| LC Paper No. CB(1)2256/01-02(03) | -- | Marked-up copy of the Bill |
| LC Paper No. CB(1)1620/02-03(03) | -- | Checklist on issue which require further consideration/follow-up action (as at 7 May 2003) |
| LC Paper No. CB(1)1657/02-03 <i>(Tabled and subsequently circulated to members on 13 May 2003)</i> | -- | Letters from (a) Hutchison Global Communications Limited, Hutchison Telephone Company Limited and Hutchison 3G HK Limited; (b) PCCW Limited; and (c) Telstra International |

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**)

Issues which required follow-up actions/consideration by the Administration

3. (a) Clause 1
The Administration to consider designating the Secretary for Commerce, Industry and Technology instead of the Telecommunications Authority (TA) to be the public officer responsible for appointing the day on which the substantive provisions of the Ordinance should come into operation by notice published in the Gazette.
- (b) Proposed section 7P(1A)
(i) The Administration to consider whether a mechanism should be devised whereby the TA would be made aware of M&As, such as by requiring non-listed companies involved in M&As to notify

the TA of completed M&As.

(ii) Where TA considered investigation unnecessary for certain M&As, whether such M&As should also be made known to the public.

(c) Proposed section 7P(11A)

The Administration to consider specifying a timeframe within which the TA had to publish the opinion formed or direction issued under proposed section 7P(1) and the opinion formed, decision made or direction issued under proposed section 7P(6).

(d) The Administration to provide responses to deputations' further submissions which the Bills Committee would soon receive, as well as Committee Stage Amendments (CSAs) proposed by individual members, if any.

4. The Bills Committee also requested the Assistant Legal Adviser to scrutinize the Chinese version of the CSAs proposed to the Bill by the Administration and to examine the drafting of the Bill.

Stance of members

5. Mr Eric LI expressed his reservation on the Bill although he would not object to the resumption of the Second Reading debate of the Bill. He cast doubt on the appropriateness of introducing the Bill at this point of time when the telecommunications industry was in a consolidation period. Ms Emily LAU supported the pro-competition and sector-specific regulatory regime enshrined in the Bill although she considered that the most preferable approach was the introduction of a universal competition law. Mr Howard YOUNG said that he could support the resumption of Second Reading debate of the Bill.

Date of next meeting

6. Members noted that the next meeting of the Bills Committee would be held on Friday, 23 May 2003 at 4:30pm.

III Any other business

7. There being no other business, the meeting ended at 4:10 pm.

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
on Monday, 12 May 2003, at 2:30 pm
in the Conference Room A of the Legislative Council Building**

| Time Marker | Speaker | Subject(s) | Action required |
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| 000000 - 000124 | Chairman | Introductory remarks and confirmation of minutes of meeting on 30 April 2003 | |
| 000125 - 001410 | Chairman Administration | The Administration introduced the paper (LC Paper No. CB(1) 1620/02-03(01)). | |
| 001411 - 002620 | Chairman Mr YEUNG Yiu-chung Administration Ms Emily LAU | (a) Pros and cons of the proposed mechanism whereby the decision on merger and acquisition (M&A) activities made by the Telecommunications Authority (TA) would be subject to appeal to the Telecommunications (Competition Provisions) Appeal Board (Appeal Board). The mechanism would also be subject to regular review after the enactment of the Bill. (b) Threshold on change in control adopted for the licensing of third generation mobile services. | |
| 002621 - 003544 | Chairman Mr Eric LI Administration | (a) Mr Eric LI was concerned that the Bill would impose a heavy regulatory burden on the industry at a time when the industry was in a consolidation period. (b) Whether the Bill would provide more certainty to M&A activities and hence encourage investment or otherwise. | |
| 003545 - 003913 | Chairman Administration | (a) Implications of unreasonable M&A Guidelines. (b) The Appeal Board could disregard the M&A Guidelines if they were unreasonable. | |
| 003914 - 004726 | Chairman Ms Emily LAU Mr Eric LI Administration | (a) Ms Emily LAU upheld the pro-competition and sector-specific regulatory regime enshrined in the Bill although she considered that the most preferable approach was the | |

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| | | <p>introduction of a universal competition law.</p> <p>(b) Whether or not the Bill was conducive to attracting investment in the telecommunications market.</p> | |
| 004727 - 005027 | Chairman Administration | Pros and cons for M&A Guidelines to be made subsidiary legislation, having regard that M&A Guidelines were not subsidiary legislation in overseas jurisdictions. | |
| 005028 - 005747 | Chairman Ms Emily LAU Administration | <p>(a) Members noted the letters from the deputations indicating their intention to make further submissions (LC Paper No CB(1) 1657/02-03) tabled at the meeting and would consider these views upon receipt.</p> <p>(b) Members examined the updated marked-up copy of the Committee Stage Amendments (CSAs) proposed by the Administration to the Bill. (LC Paper No CB(1) 1636/02-03)</p> <p>(c) <u>Clause 1:</u></p> <p>(i) Whether the Secretary for Commerce, Industry and Technology instead of the TA should be designated as the public officer responsible for appointing the day on which the substantive provisions of the Ordinance should come into operation by notice published in the Gazette.</p> <p>(ii) The Administration intended to commence the Bill around end 2003.</p> <p>(iii) The commencement notice was subsidiary legislation subject to negative vetting by the Legislative Council.</p> | The Administration to consider (c) (i) |
| 005748 - 005944 | Chairman Administration | Proposed sections 2, 6D and 7 | |
| 005945 - 012345 | Chairman Administration Mr Eric LI Ms Emily LAU Mr MA Fung-kwok Mr Howard YOUNG ALA3 | <p><u>Proposed sections 7P(1) and 7P(1A)</u></p> <p>(a) Whether a mechanism should be introduced whereby the TA would be made aware of M&As, such as by requiring non-listed companies involved in M&As to notify TA of completed M&As.</p> <p>(b) Where TA considered investigation unnecessary for certain M&As,</p> | The Administration to consider (a) and (c) |

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| | | whether such M&As should also be made known to the public. (c) Drafting of proposed section 7P(1A). | |
| 012346 - 012609 | Chairman Administration | Proposed sections 7P(2) to 7P(6) and 7P(13) | |
| 012610 - 012632 | Chairman Administration | Proposed sections 7P(7) to 7P(10) | |
| 012631 - 012909 | Chairman Administration Mr Eric LI | <u>Proposed sections 7P(11), (11A) and (12)</u> To consider specifying under the proposed section 7P(11A) a timeframe within which the TA had to publish the opinion formed or direction issued under proposed section 7P(1) and the opinion formed, decision made or direction issued under proposed section 7P(6). | The Administration to consider |
| 012910 - 013335 | Chairman Administration Mr Eric LI | Proposed sections 32L, 32N, 32O, Schedule 1 and Schedule 2 | |
| 013356 - 013750 | Chairman Mr Eric LI Ms Emily LAU Mr Howard YOUNG | (a) Mr Eric LI expressed his reservation on the Bill although he would not object to the resumption of the Second Reading debate of the Bill. (b) Mr Howard YOUNG said that he could support the resumption of Second Reading debate of the Bill. (c) Members noted the Administration's intention to resume Second Reading debate of the Bill on 18 June 2003 and raised no objection. (d) Members to consider the following issues at the next meeting to be held on Friday, 23 May 2003 at 4:30 pm: (i) The Administration's response to members' views raised at the meeting and further CSAs, if any; (ii) Deputations' further submission(s) and the Administration's response thereto; and (iii) CSAs proposed by individual members, if any. | The Administration to provide responses as stated in paragraph 3(d) of the minutes. |