

立法會
Legislative Council

LC Paper No. CB(1) 357/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

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

**Meeting on
Wednesday, 6 November 2002, at 10:45 am
in the Chamber 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 Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
- Members absent** : Dr Hon David CHU Yu-lin, JP
Hon CHAN Kwok-keung
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok, JP
- Public officers
Attending** : Ms Eva CHENG, 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

Ms Rosalind MA
Senior Assistant Secretary (1)9

I Confirmation of minutes
(LC Paper No. CB(1)174/02-03)

The minutes of the third meeting held on 7 October 2002 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1) 187/02-03(01))

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

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

Admin 3. In response to deputations' views, the Administration undertook to:

- (a) amend section 32N such that an appeal to the Appeal Board would suspend the operation of the direction of the Telecommunications Authority (TA) under proposed section 7P(1) or a decision of the TA under proposed section 7P(6) (a) or (b)(i) or (ii); and

- (b) seek legal advice on the question of whether a person who proposed to acquire ownership/control of a carrier licensee could apply for TA's consent for the merger and acquisition (M&A).

4. To facilitate consideration of the Bill, some members stressed that further details of the draft guidelines to be issued by TA on matters to be taken into account in deciding whether a particular M&A activity would substantially lessen competition in a telecommunications market (the guidelines) must be made available for members' perusal. Members also agreed that the industry must be consulted on the guidelines.

Admin 5. At the request of members, the Administration would provide the following information to the Bills Committee:

- (a) further details of the draft guidelines on detailed arrangements including the criteria of "substantially lessening competition", the definition of "market" in which the competition analysis would be made, the recovery mechanism for costs and expenses incurred by TA, the time limit within which TA must assess a proposed M&A etc;
- (b) the composition of overseas regulators, whether they were individual persons or a board consisting of several members; and
- (c) given the special nature of M&A activities, whether it was appropriate to use the existing mechanism of the Telecommunications (Competition Provisions) Appeal Board (Appeal Board) to deal with M&A.

6. As a separate issue, members also noted that the procedures of the Appeal Board would be codified by way of subsidiary legislation which would be introduced into LegCo.

Dates of next meeting

7. Members agreed that the next two meetings of the Bills Committee would be scheduled for Tuesday, 3 December 2002 at 2:30 pm and Thursday, 12 December 2002 at 8:30 am.

III Any other business

8. There being no other business, the meeting ended at 12:35 pm.

Appendix

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
Wednesday on Wednesday, 6 November 2002, at 10:45 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 000145	Chairman	Introductory remarks and confirmation of minutes of meeting held on 7 October 2002.	
000146 - 003518	Administration	Briefed members on the Administration's response to deputations' views.	
003525 - 004000	Mr YEUNG Yiu-chung Administration	The preventive nature of M&A regulation as proposed under the Bill.	
004001 - 004149	Chairman Administration	Interpretation of "substantially lessening of competition".	
004150 - 005158	Mr Eric LI Administration	<ul style="list-style-type: none"> (a) Mr Eric LI declared his interest as an independent, non-executive director of SmarTone Telecommunications Holdings Ltd; (b) Light-handed approach in regulating M&A; (c) <i>Ex post</i> regime with the objective to minimize compliance burden; (d) Concerns about checks and balance of TA's power and the need to set clear and reasonable thresholds; (e) Functions of the Telecommunications (Competition Provisions) Appeal Board; and (f) Extensive consultation on the draft guidelines. 	

005159 - 005934	Mr Albert CHAN Administration Chairman Assistant Legal Adviser	(a) TA's power to regulate changes in control over carrier licensees would only be exercised when the changes had or was likely to have the effect of "substantially lessening competition". (b) Interpretation of proposed section 7P(1).	
005935 - 010821	Ms Emily LAU Administration	(a) Welcomed further submissions from the industry and other parties concerned. (b) Role of TA. (c) Effectiveness of the Appeal Board. (d) Clearer definition of "In the opinion of the TA". (e) Further information on the levels of fees to be recovered by the TA and the mechanism in determining such levels.	Admin to include detailed arrangements in the guidelines
010822 - 011547	Chairman Administration	Whether it was more appropriate for a "Board of members" than for an individual to act as the regulator.	
011548 - 011929	Mr Albert CHAN Administration	Proposed section 7P(3), (4) and (5).	
011930 - 012723	Ms Emily LAU Administration	Procedures of the Appeal Board would be set out in subsidiary legislation.	
012725 - 014037	Mr Eric LI Chairman Administration	(a) Whether or not the court would seek to intervene into the subjective judgement of the regulator. (b) Rationale for setting the threshold of a change in the control of more than 15% of the voting shares in the licensee. (c) TA's power under proposed section 7P(1) to be clearly spelt out.	Admin to provide further details in the draft guidelines

014038 - 014538	Chairman Administration Mr Eric LI	(a) Chairman requested further information on the composition of overseas regulators and the appropriateness to use the existing mechanism of the Appeal Board to deal with M&A. (b) The Bills Committee would continue with the scrutiny of the Bill while the Administration would expedite work on the guidelines.	Admin to provide the relevant information
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Note : The audio records of the above proceedings are kept at the LegCo Library