

立法會
Legislative Council

LC Paper No. CB(1)567/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

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

**Meeting on
Tuesday, 3 December 2002, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP
- Members absent** : Hon Fred LI Wah-ming, 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

I Confirmation of minutes
(LC Paper No. CB(1)357/02-03)

The minutes of the fourth meeting on 6 November 2002 were confirmed.

II Meeting with the Administration

- 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)187/02-03(01) - Summary of deputations' views
and the Administration's response

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

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

Clause 1

3. In consideration of members' views and the Assistant Legal Adviser (ALA)'s advice on section 32 of Interpretation and General Clauses Ordinance (Cap 1), the Administration would confirm whether it would consider conducting consultation and finalizing the guidelines on matters to be taken into account in deciding whether a particular merger and acquisition (M&A) activity would substantially lessen competition in a telecommunications market (the Guidelines) after the Telecommunications (Amendment) Bill 2002 was enacted and published in the Gazette but prior to commencement of the legislation.

Clause 3 - proposed section 7P(1)

4. The Administration was requested to consider how TA might account for his decisions for those M&A cases that would not raise regulatory concerns under the Bill.

Clause 3 - proposed sections 7P(2) and 7P(7)

5. The Administration would consider
- (a) members' suggestion to also require TA to give all carrier licensees a reasonable opportunity to make representations and for TA to consider such representations; and
 - (b) extending similar treatment to other parties such as members of the public.

Clause 3 - proposed sections 7P(5) and 7P(6)

6. The Administration would provide in the Guidelines the time limit within which TA must decide on the applications.

Clause 3- proposed section 7P(7)

7. The Administration would consider the suggestion of setting out the procedures for handling representations in the Guidelines, such as by way of written submissions, conducting public hearings, recording oral representations etc.

Clause 3- proposed section 7P(11)

8. The Administration would try to provide information on the possible level of costs or expenses incurred by TA in processing an application made under proposed section 7P(5) and making a decision under proposed section 7P(6).

Clause 3 - proposed section 7P(12)

9. The Administration would consider providing a definition of "principal officer".

Date of next meetings

10. Members noted that the 6th meeting of the Bills Committee would be held on Thursday, 12 December 2002 at 8:30 am. Members also agreed that the 7th and 8th meetings of the Bills Committee would be scheduled for Tuesday, 7 January 2003 and 21 January 2003, both at 8:30 am.

III Any other business

11. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1
Legislative Council Secretariat
20 December 2002

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
Meeting on Tuesday, 3 December 2002 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 000235	Chairman	Introductory remarks and confirmation of minutes of meeting held on 6 November 2002.	
000236 - 000336	Chairman Administration	Clause 1 Updating the title of Secretary for Information Technology and Broadcasting.	
000337 - 001238	Chairman Administration Ms Emily LAU Assistant Legal Adviser	Clause 1 With reference to Section 32 of Interpretation and General Clauses Ordinance (Cap 1), the Administration to confirm whether it would consider conducting consultation on and finalizing the Guidelines after the Bill was enacted and published in the Gazette but prior to its commencement.	The Admin to confirm.
001239 - 002050	Ms Emily LAU Administration Chairman	Clause 2 (a) Noted the status of the Guidelines in serving as a reference in appeals to the Telecommunications (Competition Provisions) Appeal Board and judicial reviews; (b) Noted that some other jurisdictions did not make the Guidelines subsidiary legislation; (c) TA to balance views and interests of all parties in finalizing the Guidelines; (d) Noted the need to conduct consultation on any revision made to the Guidelines. (e) Bills Committee would be provided with the details of important parts of the Guidelines.	

002051 - 004916	Administration Ms Emily LAU Chairman	<p>Clause 3 - proposed section 7P(1)</p> <p>(a) Purpose of section 7P(1).</p> <p>(b) TA to conduct market structure analysis in terms of market concentration and barrier of market entry etc. in determining whether an M&A had, or was likely to have, the effect of substantially lessening competition.</p> <p>(c) TA to direct licensee to take action specified in section 7P(3), including procuring modification to the control exercised over the carrier licensee, etc.</p> <p>(d) To consider how the TA might account for decisions for M&A cases that would not have regulatory concerns.</p>	The Admin to consider making known TA's decisions for cases in (d).
004917 - 010840	Administration Ms Emily LAU Chairman Mr Eric LI	<p>Clause 3 - proposed sections 7P(2) and 7P(7)</p> <p>(a) Duration and time limit of 'reasonable opportunity'.</p> <p>(b) Whether parties eligible to make representations for TA's consideration and response should include all carrier licensees.</p> <p>(c) Public to make representations.</p>	The Admin to consider extending the scope of parties eligible to make representations to all carrier licensees.
010841 - 011205	Administration Chairman Mr Eric LI	<p>Clause 3 - proposed section 7P(3)</p> <p>(a) Courses of actions taken by TA.</p> <p>(b) Meaning of voting control as defined in proposed section 7P(13).</p>	
011206- 011350	Administration Ms Emily LAU Mr Eric LI	<p>Clause 3- proposed section 7P(4)</p> <p>(a) Noted the consequence and penalty for non-compliance.</p> <p>(b) Discussed that there would be no regulatory power to discontinue a potential transaction.</p>	
011351 - 012031	Administration Mr Eric LI Chairman Ms Emily LAU	<p>Clause 3 - proposed sections 7P(5) and 7P(6)</p> <p>(a) Time limit for TA to make a decision on whether or not to give his consent.</p> <p>(b) Consequences if TA refused to give his consent.</p>	The Admin to set out time limit in the Guidelines.

012032 – 014040	Administration Chairman Ms Emily LAU Mr Eric LI	Clause 3- proposed section 7P(7) (a) How representations were to be made. (b) Overseas practice of receiving representations. (c) Pros and cons of public hearings. (d) Bills Committee may need to revisit the clauses after considering the information submitted by Administration on the Guidelines	The Admin to consider setting out in the Guidelines procedures for handling representations.
014041 – 014137	Administration	Clause 3- proposed section 7P(8)	
014138 – 014200	Administration	Clause 3- proposed section 7P(9)	
014201 - 014309	Administration Chairman	Clause 3- proposed section 7P(10)	
014310 - 014600	Administration Chairman Ms Emily LAU Mr Eric LI	Clause 3- proposed section 7P(11) (a) The estimated cost or expenses incurred by TA under proposed sections 7P(5) and 7P(6).	The Admin to consider providing the estimates.
014601 - 015020	Administration Chairman Mr Eric LI	Clause 3: Section added - 7P(12) (a) Definition of "principal officer". (b) Cases in which a person had acquired more than 15% of the voting shares in the licensees but not being known to the management of the licensees.	The Admin to consider providing a definition of "principal officer".
015021 - 015156	Chairman Administration Members	(a) Date of next meeting: 12 December 2002, 8:30 am. (b) Date of subsequent two meetings: 7 & 21 January 2003, 8:30 am.	