

立法會
Legislative Council

LC Paper No. CB(1) 583/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

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

**Meeting on
Thursday, 12 December 2002, at 8:30 am
in Conference Room B 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 Fred LI Wah-ming, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
- Members absent** : Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, 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

I Meeting with the Administration

LC Paper No. CB(1)499/02-03(01) - Information paper on "Further information on regulation of mergers and acquisitions in Telecommunication industry by the Telecommunications Authority" provided by the Administration in response to members' request at the 6 November 2002 meeting.

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

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

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

2. Members considered the information provided by the Administration on how overseas countries enforced merger and acquisition (M&A) regulation. The

Administration reiterated that it would inform members of its key proposals contained in the guidelines 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) outlining, inter alia, the definition of "market" in which competition analysis would be made, the methodology of conducting economic analysis in determining whether there was substantially lessening of competition etc before the next meeting.

Clause 3- proposed section 7P(14)

3. The Administration would clarify the intent and operation of the proposed section and further examine the drafting of the proposed provision having regard to similar provisions, if any, in other legislation such as the Securities and Futures Ordinance (Cap. 571).

Clause 5 - proposed section 32L

4. The Administration was requested to clarify the scope of "appeal subject matter" in relation to an appeal under section 32N(1) and in relation to an appeal under the proposed section 32N(1A); and whether as currently drafted, the subject matters which could be appealed against under the proposed section 32N(1A) were more restricted than those under section 32N(1). ALA3 was also requested to comment in due course.

Clause 6 - proposed section 32N

5. The Administration would move a Committee Stage Amendment to the proposed section 32N such that an appeal to the Telecommunications (Competition Provisions) Appeal Board (the Appeal Board) would suspend the operation of the direction of the TA under proposed section 7P(1) or a decision of the TA under proposed section 7P(6)(a) or (b)(i) or (ii).

Dates of next two meetings

6. Members noted that the 7th and 8th meetings of the Bills Committee would be held on Tuesday 7 January 2003 and 21 January 2003, both at 8:30 am.

II Any other business

7. There being no other business, the meeting ended at 10:05 am.

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
on Thursday, 12 December 2002, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 000154	Chairman	Introductory remarks	
000155 - 002849	Chairman Administration Mr Howard YOUNG Mr Abraham SHEK	(a) Noted the paper on overseas practices in regulating M&A activities. (LC Paper No. CB(1)499/02-03(01)) (b) The Appeal Board would be empowered to review the merits of TA's decisions/directions, and not just the procedural fairness and lawfulness of the decisions/directions. (c) Proposals in the Guidelines to include the definition of "market" in which competition analysis would be made and the methodology of conducting economic analysis on market competition etc. (d) TA's expertise and integrity in handling M&A matters.	The Admin to inform members of its major proposals contained in the Guidelines before the next meeting.
002850 - 003526	Chairman Administration Mr Eric LI Mr Howard YOUNG	Clause 3 - proposed section 7P(12) (a) Duty on a person to disclose the percentage of voting shares held. (b) Mr Eric LI's comment that the drafting of proposed section 7P(12)(c) imposed a very wide duty on the person concerned.	
003527 - 004547	Chairman Administration Mr Eric LI	Clause 3 - proposed sections 7P(13) and 7P(14) The intent and operation of the proposed section 7P(14) and the drafting of the proposed provision having regard to similar provisions, if any, in other legislation such as the Securities and Futures Ordinance (Cap. 571).	The Admin to clarify and to examine the drafting.
004548 - 004614	Chairman Administration	Clause 4	

004615 - 010030	Chairman Administration ALA3 Mr Eric LI	Clause 5 - proposed section 32L The scope of "appeal subject matter" in relation to an appeal under section 32N(1) and the proposed section 32N(1A); and whether the subject matters which could be appealed against under the proposed section 32N(1A) were more restricted than those under section 32N(1).	The Admin and ALA3 to consider.
010031 - 011825	Chairman Administration Mr Eric LI ALA3	Clause 6 - proposed section 32N (a) Whether TA's inaction on an M&A activity should also be subject to appeal. (b) The Administration confirmed its intention of adopting a light-handed approach to regulate M&A activities and that the industry supported such an approach in principle. (c) To amend section 32N such that an appeal to the Appeal Board would suspend the operation of the direction of the TA under proposed section 7P(1) or a decision of the TA under proposed section 7P(6)(a) or (b)(i) or (ii). (d) Whether the public or consumers at large should also be given the opportunity to appeal against TA's decisions.	The Admin to move a Committee Stage Amendment to section 32N.
011826 - 012127	Chairman Administration Mr Eric LI	Clause 7	
012128 - 012710	Chairman Administration	Members agreed in principle to seek the views of the industry and other interested parties on the Administration's major proposals to be contained in the Guidelines.	The Bills Committee to follow-up.
012711 - 012740	Chairman Administration	Dates of next two meetings.	

Note : The audio records of the above proceedings are kept at the LegCo Library