

**立法會**  
**Legislative Council**

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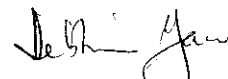
From : Clerk to Bills Committee

To : 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 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

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

---- I forward for members' perusal copies of correspondence between the Legal Service Division and the Administration relating to the Committee Stage amendments proposed by the Administration.



(Ms Debbie YAU)  
for Clerk to Bills Committee

Encl

c.c. Hon LAU Chin-shek, JP (Non-Bills Committee Member)  
Hon LEUNG Yiu-chung (Non-Bills Committee Member)  
ALA3



立法會秘書處 法律事務部  
LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

來函檔號 YOUR REF : ITBB (CR) 7/13/14(02)Pt.3  
本函檔號 OUR REF : LS/B/28/01-02  
電話 TELEPHONE : 2869 9216  
圖文傳真 FACSIMILE : 2877 5029

Secretary for Commerce, Industry and Technology  
(Attention: Ms Gracie Foo, PAS(E))  
Commerce, Industry and Technology Bureau  
8/F West Wings  
Central Government Offices  
11 Ice House Street Central  
Hong Kong

26 March 2003

**BY FAX**  
Fax No. : 2511 1458  
Total No(s) of page(s) : (2)

Dear Ms Foo,

### **Telecommunications (Amendment) Bill 2002**

I am scrutinizing the Administration's proposed Committee Stage amendments set out in LC Paper No. CB(1)1168/02-03(01) and should be grateful if you would clarify the following matters:

#### **Proposed section 7P(1)(e) and (6)(b)(ii)**

The way these two provisions is drafted suggests that where the Telecommunications Authority (TA) forms an opinion that a merger and acquisition (M&A) or a proposed M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, the carrier licensee would be required to take some action to eliminate or avoid any such anti-competitive effect. Is it envisaged that there may be suitable cases where TA may decide that no action needs to be taken by the licensee concerned although he forms the opinion that the M&A or proposed M&A has, or would have, anti-competitive effect? For instance, will TA consider it appropriate not to require the licensee to take any action under proposed section 7P(1) or (6) if TA forms the opinion that the M&A or proposed M&A would generate customer benefits which would outweigh the adverse effect of anti-competition created by the M&A concerned? If so, should provisions be included to cover this scenario?

Proposed section 7P(1A)

Should "referred to in subsection (1)" be added after "within 3 months after the change" to make the provision clearer?

Proposed section 7P(5) and (6)

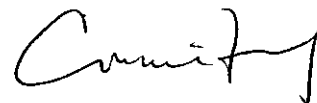
In relation to proposed M&As, will the Administration consider adding a provision similar to proposed section 7P(1)(d) to empower TA, on receiving an application for prior consent, to conduct such investigation as he considers necessary to enable him to form an opinion as to whether or not the proposed M&A would have, or be likely to have anti-competitive effect?

Proposed Schedule 2

In the heading, should "AUTHORITY" be amended to read "THE AUTHORITY"?

I would appreciate it if you could let me have a reply in both languages by 2 April 2003.

Yours sincerely,



(Connie Fung)  
Assistant Legal Adviser

cc: DoJ (Attn: Mr Michael LAM, SGC) Fax No. 2869 1302  
LA

工商及科技局  
資訊科技及廣播科  
香港中環花園道  
美利大廈一至二樓



INFORMATION TECHNOLOGY  
AND BROADCASTING BRANCH  
COMMERCE, INDUSTRY  
AND TECHNOLOGY BUREAU  
1/F-2/F Murray Building,  
Garden Road,  
Central, Hong Kong.

本月檔號 OUR REF : ITBB CR 7/13/14 (03) Pt.7  
來函檔號 YOUR REF : LS/B/27/01-02  
電話 TEL. NO. : (852) 2189 2208  
傳真 FAXLINE : (852) 2511 1458  
電子郵件 E-mail Address: lindaso@itbb.gov.hk

**BY FAX**

23 April 2003

Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
(Attn: Miss Connie Fung)  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong  
(Fax : 2877 5029)

Dear Miss Fung,

### **Telecommunications (Amendment) Bill 2002**

Thank you for your letter of 26 March 2003. Our responses are set out below :

#### **Proposed Section 7P(1)(e) and (6)(b)(ii)**

The policy objectives of the Bill are to promote effective competition and to assist investors in making informed decisions on merger and acquisition matters in the telecommunications market. Hence, the Bill aims to empower TA to intervene into a merger and acquisition which has, or is likely to have, the effect of substantially lessening competition in a telecommunications market as he sees fit. Hence, the use of "may" instead of "shall" is appropriate.

As to consumer benefit, one typical customer benefit which we envisage is that the merger and acquisition can generate efficiencies by permitting a better utilization of existing assets and the realization of economies of scale and scope which would not have been available to either firm without the merger and acquisition. To the extent that any efficiencies created by a merger and acquisition are passed on in the form of lower prices or otherwise in the form of more aggressive competitive conduct, the merger and acquisition may increase competition rather than lessen it. This is already one of the factors for consideration in assessing the competitive effect of a merger and acquisition, as set out in the "Explanatory Note on the Guidelines on the Competition Analysis of Mergers and Acquisitions in Telecommunications Market" which was issued to Members in December 2002".

#### Proposed Section 7P(1A)

The suggested change is not considered necessary. It is clear in the flow of the provisions that "the change" as mentioned in the proposed section 7P(1A) refers to the change described in proposed section 7P(1). This approach is also adopted in the original proposed section 7P(6) in relation to a "proposed change".

#### Proposed Section 7P(5) and (6)

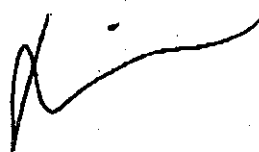
We do not consider it necessary to add a provision similar to the proposed section 7P(1)(d). Section 7P(1) deals with cases where there is no application for prior consent, and TA intervenes into a case on his own initiative. Investigation is considered a proper description of the work of TA. On the other hand, section 7P(6) deals with the cases where there is an application for prior consent. Upon receipt of the application, the TA will process the application and form an opinion. The work to be carried out by TA is more properly termed as processing an application. The existing proposed sections 7P(6) is therefore sufficient and appropriate.

#### Proposed Schedule 2

The article "The" before "Authority" in the heading of proposed Schedule 2 is not necessary. Articles are usually omitted in headings of

sections, schedules, forms, etc. in the statute (see, for example, the heading of proposed section 7P, and the heading of Schedule 1 to the Long-term Prison Sentences Review Regulation (Cap. 524 sub. leg. A): "MATTERS THAT MAY BE TAKEN INTO ACCOUNT BY BOARD").

Yours sincerely,



(Miss Linda So)  
for Secretary for Commerce, Industry and Technology

c.c.	OFTA	(Attn : Mr M H Au, Ms Jenny Chung)	2803 5111
	D of J	(Attn : Mr Michael Lam, SGC)	2869 1302