

The Legislative Council
Bills Committee on Telecommunications (Amendment) Bill 2002

Administration's Reply to Further Issues
Raised by the Bills Committee on 12 May 2003

Introduction

At the meeting of the Bills Committee on 12 May 2003, Members asked the Administration to respond to the issues set out in this paper.

Commencement Procedure

2. Under our proposed Committee Stage Amendments (CSA), clauses 1A, 2, 8 and 9 of the Bill will commence upon gazettal such that the Telecommunications Authority (TA) will be empowered to consult and publish the Mergers and Acquisitions (M & A) Guidelines. When the Guidelines are published, the Administration will bring into operation the other clauses of the Bill which contain the substantive provisions. We propose in the CSA that the Commencement Notice will be published in the Gazette by the TA. Our proposal is legally in order.

3. In view of Members' suggestion that the Policy Secretary should issue the Commencement Notice of the Bill, we agree to accept the suggestion and amend the CSA to clause 1(3) of the Bill as follows:

“(3) Sections 3, 4, 5, 6 and 7 shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.”

Knowledge of M&A Transactions

4. In the *ex post* regime proposed in the Bill, there is no requirement for licensees to notify the TA or the public of their M&A activities upon completion. This would be an onerous requirement which would exceed the statutory disclosure requirement for shareholding changes under the Companies Ordinance (Cap.32). This would not be consistent with the light-handed approach which the Administration intends to adopt. Australia and UK also adopt an *ex post* regime, and neither of them mandate notification to the relevant authorities of the M&A activities.

5. In practice it is very unlikely that the TA or the public would not be aware of an M&A which could have the effect of substantially lessening competition in the market, since it is likely to be a sizeable transaction which would attract the attention of the industry or even the public. In previous cases involving changes in shareholdings, our experience has been that licensees and investors, supported by their merchant banks, accountants or lawyers, would usually seek to discuss the transactions with the TA so as to identify and address any possible regulatory concern at an early stage. Furthermore there is a strong incentive for the parties to ensure that the TA is aware of the transaction so as to limit the period of uncertainty during which the TA could intervene and issue a direction to the parties.

6. We propose that the M&A Guidelines will explain the objective behind and the working of the proposed section 7P(1A) of the Bill so as to encourage parties to notify the TA of an M&A as soon as it is completed, if the parties have not sought prior consent of the TA under the proposed section 7P(5) of the Bill. The Guidelines will also encourage parties to discuss any transactions in advance with the TA so as to address any concern he may have at an early stage.

Timeline for Publication of the TA's Opinions, Directions and Decisions

7. Members asked if the TA might stipulate a timeline to publish TA's opinions, directions and decisions to avoid any possible delay between the forming/issuing/making and publication of those opinions, directions and decisions. In practice, there may be a short time gap between the date when the TA forms/issues/makes the opinions, directions and decisions and their publication if it is necessary to consult the parties about the inclusion or exclusion of certain data that is commercially sensitive in the published version of the opinions, directions and decisions. This time gap will be limited to the minimum necessary and is not expected to be more than a few days in the majority of cases. The TA will specify the arrangement for publication of TA's opinions, directions and decisions in the M&A Guidelines, which will go out for consultation before finalisation.

Commerce, Industry and Technology Bureau

16 May 2003