

Telecommunications (Amendment) Bill 2002
Major issues covered by the Administration's original and additional proposals and
the proposed CSAs by Hon SIN Chung-kai

Major Issue	Administration's original Proposal	Proposed CSAs by Hon SIN Chung-kai (LC Paper No. CB(1)2006/02-03(01))	Additional CSAs proposed by the Administration (LC Paper No. CB(1) 2020/02-03(01))
1. The M&A Guidelines	(a) TA will formulate a set of guidelines on the matters he must consider in reviewing M&As after enactment of the Bill and before processing any M&A cases. Before issuing these guidelines, TA must conduct such consultation with the industry as required under TO.	(a) The M&A Guidelines and any subsequent amendments shall be subject to the review and written approval of the Appeal Board before issuance. (b) The TA and the Appeal Board shall take into account matters specified in the M&A Guidelines when reviewing M&As. (c) TA shall, upon issuing M&A Guidelines or any amendments to such guidelines, publish a notice in the Gazette to the effect that such guidelines or amendments have been issued. (d) The Secretary for Commerce, Industry and Technology shall not publish the Commencement Notice in the Gazette until the M&A Guidelines have been issued.	(a) Same as original proposal.
2. Authority in reviewing M&As	(a) Heading of the proposed section 7P: Power of Authority to regulate changes in control exercised over carrier licensees, etc. (b) TA is the primary authority for reviewing	(a) Heading of the proposed section 7P: Power to regulate changes in control exercised over carrier licensees, etc. (b) TA should only be empowered to make investigation and grant approvals to M&As. If TA believes that an M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, TA should refer the case	(a) Heading of the proposed section 7P: Authority may regulate changes in relation to carrier licensees (b) and (c) Same as original proposal.

	<p>M&As.</p> <p>(c) Any carrier licensee, or an interested person relating to the relevant M&A, aggrieved by the opinion, direction or decision of the TA may appeal to the Appeal Board.</p>	<p>to the Appeal Board for investigation and determination.</p> <p>(c) Proposed section 32OA prescribes the procedures and powers of Appeal Board under section 7P of TO.</p> <p>(d) Parties to the M&A, i.e. the carrier licensee concerned and the acquirers may appeal to the Court of Appeal against the Appeal Board's opinion, direction or decision. The lodging of such an appeal shall suspend the operation of any direction issued under the proposed section 7P. The Court of Appeal may allow or dismiss the appeal; and may make such directions and order as to costs as it thinks fit.</p> <p>(e) Where the TA or the Appeal Board serves any notice in writing under the proposed section 7P, such notice shall include a statement of the reasons for any opinion, decision or direction contained in that notice.</p>	
<p>3. Time limits in reviewing M&As</p>	<p>(a) An investigation may only be commenced within 1 month after the change occurs or within 1 month after TA knows, or ought reasonably to have known of, the change, as the case may be.</p> <p>(b) To specify in the M&A Guidelines (not in law) that for proposed M&As, the time limit for TA to conduct a detailed analysis is 3 months.</p>	<p>(a) An investigation may only be commenced within 2 weeks after the change occurs or within 2 weeks after TA knows, or ought reasonably to have known of, the change, as the case may be. An investigation for completed M&As shall be completed within 4 weeks of its commencement.</p> <p>(b) For proposed M&As, TA shall form an opinion or make a referral to the Appeal Board within 4 weeks of receiving an application. Within 2 days after the 4-week period, TA shall inform the licensee concerned his opinion or make a referral to the Appeal Board subject to the consent of the applicant.</p> <p>(c) For completed M&As, TA shall inform the licensee concerned his opinion or his decision to make a referral to the Appeal Board within 2 days after the investigation is completed.</p> <p>(d) An investigation by the Appeal Board shall be</p>	<p>(a) An investigation may only be commenced within 2 weeks after the change occurs or within 2 weeks after the Authority knows, or ought reasonably to have known of, the change, as the case may be.</p> <p>(b) To specify in the M&A Guidelines (not in law) that for proposed M&As, TA is obliged to finish processing of simple applications that do not involve detailed investigations within 1 month, and complex applications that involve detailed investigations within 3 months.</p>

		<p>completed within 10 weeks of a referral from the TA. Within 2 days after the 10-week period, the Appeal Board shall inform the licensee concerned of the Board's decision.</p> <p>(e) A carrier licensee or an interested person in respect of whom an opinion, direction or decision of the Appeal Board was formed, issued or made may appeal to the Court of Appeal within 2 weeks of the notice of the opinion, direction or decision.</p>	
4. Recovery of costs incurred	The TA can recover from the carrier licensee, or the interested person, who makes the application for prior consent to a proposed M&A the costs or expenses incurred in processing the application based on a cost-recovery principle.	To specify the maximum amount of any costs or expenses recoverable by TA and/or the Appeal Board in processing an application for prior consent to a proposed M&A, i.e. HK\$100,000 in a new Schedule 3.	To specify the maximum amount of any costs or expenses recoverable by TA in processing an application for prior consent to a proposed M&A, i.e. HK\$200,000 in a new Schedule 3. The Secretary for Commerce, Industry and Technology may by order published in the Gazette amend Schedule 3.
5. Triggers for reviewing M&As	Where there is a change in (a) the control exercised over a carrier licensee; (b) the beneficial ownership of any voting share in a carrier licensee; or (c) the voting control of any of the voting shares in a carrier licensee.	Where there is a change in the control exercised over a carrier licensee.	Where there is a change in relation to a carrier licensee.
6. Definition of change of control	There is a change in the control exercised over a carrier licensee if	There is a change in the control exercised over a carrier licensee if	There is a change in relation to a carrier licensee if (a) *a person, either alone or with any

	<p>(a) a person becomes the beneficial owner of more than 15% of the voting shares in the licensee;</p> <p>(b) a person becomes a voting controller of more than 15% of the voting shares in the licensee; or</p> <p>(c) a person otherwise acquires the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.</p>	<p>(a) a person becomes the beneficial owner of more than 30% of the voting shares in the licensee;</p> <p>(b) a person becomes a voting controller of more than 30% of the voting shares in the licensee;</p> <p>(c) a person otherwise acquires the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person;</p> <p>(d) a person becomes the beneficial owner of such percentage of voting shares in the licensee which entitles him to hold the greatest voting control over the licensee;</p> <p>(e) a person becomes a voting controller of such percentage of voting shares in the licensee which entitles him to hold the greatest voting control over the licensee;</p> <p>(f) another licensee in the same telecommunications market as the licensee becomes the beneficial owner of more than 15% of the voting shares in the licensee; or</p> <p>(g) another licensee in the same telecommunications market as the licensee becomes a voting controller of more than 15% of the voting shares in the licensee.</p>	<p>associated person, becomes the beneficial owner or voting controller of more than 15% of the voting shares in the licensee;</p> <p>(b) a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 30% of the voting shares in the licensee; or</p> <p>(c) a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 50% of the voting shares in the licensee or acquires the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.</p> <p>*Paragraph (a) above does not apply if the person concerned, when becoming the beneficial owner or voting controller of more than 15%, but not more than 30%, of the voting shares in the carrier licensee concerned -</p> <ol style="list-style-type: none"> i. either alone or with any associated person, is not, or does not concurrently become, the beneficial owner or voting controller of more than 5% of the voting shares in any other carrier licensee; and ii. either alone or with any associated person, does not have the power (including by holding of voting shares), or does not concurrently acquire the power (including by the acquisition of voting shares), by
--	---	---	---

			virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other carrier licensee or any other corporation or otherwise, to ensure that the affairs of such other carrier licensee are conducted in accordance with the wishes of that person.
7. Definition of "Associated person"			"Associated person" in relation to a person, has the meaning assigned to it in the definition of "associated person" in section 2 of TO, but – (a) the references to "the licensee" in that definition shall be construed as references to the person; and (b) where the person is a corporation, the reference to "associated corporation" in that definition shall be construed as a corporation over which the person has control, a corporation which has control over the person or a corporation which is under the same control as is the person; "
8. Benefit to the public interest	The Bill has no such provision.	TA or the Appeal Board may raise no objection or consent to an M&A where TA or the Appeal Board is satisfied in all the circumstances that the change or proposed change would result, or likely to result, in a benefit to the public interest and that that benefit would outweigh the detriment to the public constituted by any substantial lessening of competition that would result, or likely to result from the change or the proposed change.	(a) For a completed M&A, TA may not issue a direction to require the licensee concerned to take such action specified in the notice served by TA to eliminate or avoid any anti-competitive effect if he is satisfied that the change has, or is likely to have, a benefit to the public and that the benefit outweighs any detriment to the public that is, or is likely to be, constituted by any such effect. (b) For a proposed M&A, TA may not issue a direction to require the licensee concerned to take such action specified in the notice

			served by TA to eliminate or avoid any anti-competitive effect if he is satisfied that the proposed change would have, or be likely to have, a benefit to the public and that the benefit would outweigh any detriment to the public that would be, or would likely to be, constituted by any such effect.
--	--	--	--

Abbreviations:

Appeal Board	Telecommunications (Competition Provisions) Appeal Board
CSAs	Committee Stage Amendments
M&A	merger and acquisition
M&A Guidelines	Guidelines on the Competition Analysis of Mergers and Acquisition in Telecommunications Markets
TA	Telecommunications Authority
TO	Telecommunications Ordinance (Cap. 106)

Council Business Division 1
Legislative Council Secretariat
23 June 2003