

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

Additional Committee Stage Amendments
Proposed by the Administration

Introduction

At the Bills Committee meeting on 9 June 2003, the Hon Sin Chung-kai proposed a set of Committee Stage Amendments (referred to as “Member’s CSAs” in this paper). Subsequent to the meeting, the Hon Sin revised the Member’s CSAs which were tabled at the Bills Committee meeting on 13 June 2003. The Administration has reservation on the Member’s CSAs as some of them do not meet the policy objectives of the Bill while others are not entirely workable. The reasons for the Administration’s considerations are given separately in the paper entitled “Administration’s Response to Committee Stage Amendments Proposed by the Hon Sin Chung-kai”.

2. The Administration however appreciates the concerns of the industry as reflected in the Member’s CSAs . The Administration has now proposed additional CSAs in revision mode at Annex that would address these concerns without compromising the policy objectives and principles, while at the same time workable. These CSAs as proposed by the Administration are explained below.

Change in Control

3. We appreciate the concerns of the industry about the proposed sections 7P(1)(b) and (c) and 7P(5)(b) and (c) of the Bill which empower the Telecommunications Authority (TA) to examine the effect on competition of *any* change in beneficial ownership or voting control of the voting shares of a carrier licensee. However, we cannot simply delete these provisions without compromising the policy objectives of the Bill. Our concerns are explained below:

- (a) In case where a person has beneficial ownership or voting control of more than 15% of the voting shares in a carrier licensee, there can be potential effect on competition in the

telecommunications market if that person raises the level of influence or control in the carrier licensee. Legislation in other countries therefore carries provisions to enable the competition authorities to examine such increase in the level in ascending order of influence or control. For example, in the Enterprise Act 2002 of UK, three distinct levels of influence or control over a company are recognized, namely, “material influence”, “de facto control” and “de jure control”/“legal control”. When a person already with a certain level of influence or control increases his influence or control to the next level, the change may be subject to the scrutiny of the competition authorities.

- (b) There would be a significant loophole in the law if only the beneficial ownership or voting control of a person in isolation is considered in the thresholds. The beneficial ownership or voting control of the associated persons, if any, of the person in question should be taken into account. The reason is that the person and its associated persons may act in concert and therefore their aggregate influence or control should be considered by the TA in assessing the effect on competition. "Associated person" is not a new concept in the Telecommunications Ordinance. It is already defined in section 2 and applies to section 7K relating to anti-competitive practices. We should therefore apply the existing definition of "associated person", as appropriate, to the new section 7P to plug any legal loophole.

4. To address the concerns of the industry, we propose to delete the proposed sections 7P(1)(b) and (c) and 7P(5)(b) and (c) of the Bill. But in order to restore the integrity of the regulatory mechanism under the Bill, we consider it necessary to incorporate the following amendments into the proposed section 7P(12):

- (a) Instead of empowering the TA to examine any change in beneficial ownership or voting control of the voting shares of a carrier licensee, we propose to provide for only three specific thresholds of more than 15%, more than 30% and majority control. The three levels of thresholds are

appropriate, objective and transparent. The TA will be empowered to review only changes that would result in the person's beneficial ownership or voting control in the voting shares of the carrier licensee crossing any of the three thresholds, subject to the test on whether the change may substantially lessen competition.

- (b) In examining whether the beneficial ownership or voting control of a person is exceeding the thresholds, the TA should take into account the aggregate shareholding of the person and its associated persons.

5. The significance of the three thresholds is elaborated upon as follows:

- When a person becomes the beneficial owner or voting controller of more than 15% but up to 30% of the voting shares in a carrier licensee, he may have acquired “material influence” over the carrier licensee and the TA should be empowered to examine the effect on competition.
- When the person increases the beneficial ownership or voting control to more than 30% but up to 50% of the voting shares in a carrier licensee, he may have acquired “effective control” over the carrier licensee and the TA should again be empowered to examine the effect on competition.
- Likewise, the TA should be empowered to examine the effect on competition if the person acquires “majority control” or more than 50% of the voting shares in the carrier licensee.

No examination by the TA will be triggered if the influence or control of the person stays within the “material influence” zone (e.g. over 15% to 30%) or “effective control” zone (e.g. over 30% to 50%) or the person already in “majority control” increases further his beneficial ownership or voting control of the voting shares in the carrier licensee. This is a significant improvement over our original proposal by deleting the

proposed sections 7P(1)(b) and (c) and 7P(5)(b) and (c) whereby TA is empowered to examine any change.

6. We have noted the concerns of the industry about the regulatory hurdle for new entrants to the telecommunications market. They accept that for a carrier licensee acquiring another carrier licensee, the 15% threshold should apply. They are of the view that there should be a higher threshold at 30% for new entrants with minimal stake in any of the other carrier licensees because acquisition by a new entrant in most cases would not increase the market share of the acquired carrier licensee, let alone that of other licensees. There is validity in this argument. Therefore, we propose in a CSA not to apply the 15% threshold (i.e. the first level of regulatory threshold) to a new entrant. For a person to benefit from this, the person must not have or concurrently acquire beneficial ownership or voting control of more than 5%^{Note} of the voting shares in any one of the other carrier licensees.

7. We believe the above proposals go a long way towards addressing the concern behind the Member's CSAs, and yet enable TA to exercise his regulatory power appropriately.

Recovery of costs and expenses

8. Under the Government's proposal, TA is empowered to recover the costs or expenses incurred by TA fully from the licensee or the proposed acquirer for processing an application for prior consent. This arrangement is similar to that already put into practice in respect of determinations on interconnections under section 36A of the Ordinance. Member's CSAs aim to cap the amount of costs or expenses that may be levied to HK\$100,000.

9. We have explained our reasons for objection to the CSAs, mainly because it is a matter of principle that the carrier licensee or a proposed acquirer should be required to pay for the cost of the Office of the Telecommunications Authority (OFTA)'s service. However, in the light of Member's concerns, we can accept a higher cap at \$200,000 per application under the proposed section 7P(5) to be set by the Policy

^{Note} The 5% threshold is set having regard to the recently set threshold requiring notification under the Securities and Futures Ordinance (Cap. 571).

Secretary by regulation. This is because a higher cap would mean that almost all, if not all, of the cases could be charged at cost, minimizing the risk of TA having to pay out his coffers to subsidise the service (TA envisages that, based on his experience in the levy of fees for interconnection cases, the level of fees for M&A cases would be around HK\$55,000 per case for minor cases and HK\$110,000 per case for major cases). It would however provide the certainty which the industry desires. Consultation with OFTA under the informal channel, and OFTA's own action under the proposed section 7P(1) after the M&A has taken place will not be subject to the fee.

Public Benefit

10. Member's CSAs seek to introduce new provisions to allow M&As which may substantially lessen competition but with benefit to public interest outweighing such effect. We accept that this is a valid point since there may actually be cases where although an M&A may not be conducive to competition, there may be public benefits to be derived if it is allowed to go ahead.

11. Working on Member's CSAs, we propose to require TA to consider "public benefits" of an M&A after he has found that the M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market. If the public benefits should outweigh the detriment to the public arising from the substantially lessened competition in the telecommunications market, the TA may not issue a direction to intervene in the M&A under the proposed section 7P(1); or refuse to give consent, or give consent subject to a direction, under the proposed section 7P(5).

Time Limits

12. Member's CSAs seek to shorten the time limits for TA to conduct investigation into a completed M&A or process an application for prior consent. We fully appreciate that M&As are time sensitive. Hence, we have already shortened the time limits put forth in our original proposal in December 2002 (for details please see the paper entitled "Administration's Further Proposed Committee Stage Amendments and Other Improvements" issued in May 2003). In response to the appeal of

the industry, we have further reviewed critically the timelines for TA to process M&A matters. To give them certainty, the TA undertakes to put the following further shortened time limits in the guidelines, which will be subject to consultation:

- (a) Investigation into a completed M&A – TA is empowered to initiate an investigation within **2 weeks** only (i.e. the backstop date), as provided for in the Bill. He is obliged to finish investigation within another **3 months**.

[This is a significant improvement from our original proposal put forth in December 2002, whereby the TA is empowered to initiate an investigation within 3 months, and finish investigation within 4 months. They are also shorter than their overseas counterparts. In Australia, the backstop date is 3 years. In UK, the investigation period for the Office of Fair Trading is 4 months.]

- (b) Processing an application for prior consent – 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**.

[This is a significant improvement over our original proposal put forth in December 2002 whereby TA is to decide whether to conduct detailed investigation within 1 month, and if so, another 3 months for detailed investigation. It is shorter than the time limit adopted in EU whereby the European Commission is obliged to finish investigation within 5 months (1 month for initial investigation and four months for detailed investigation) from date of notification.]

Conclusions

13. We have carefully considered the concerns of the industry as reflected in the Member's CSAs. We believe that the above CSAs proposed by the Administration would be able to address valid concerns

without compromising the policy objectives of the Bill. We urge Members to consider the additional CSAs favourably and support the Bill with the CSAs proposed by the Administration during the resumption of the second reading of the Bill.

Commerce, Industry and Technology Bureau
18 June 2003

TELECOMMUNICATIONS (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

Clause

Amendment Proposed

1 By deleting subclause (2) and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(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."

New By adding -

"1A. Interpretation

Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended, in the definition of "carrier licence", by repealing "the Schedule" and substituting "Schedule 1"."

2 By deleting everything before paragraph (b) and substituting -

"2. Guidelines

Section 6D is amended -

(a) in subsection (2) -

(i) in paragraph (a), by
repealing everything after
"方式" and substituting
"(包括發牌準則以及他擬考慮的其
他有關事宜)的指引";

(ii) by adding -

"(aa) subject to
subsection (2A),
specifying the
matters,
including but
not limited to
those listed in
Schedule 2, that
he shall take
into account
before forming
any opinion
under section
7P(1) or (6)(a)
or (b);";

(iii) in paragraph (b) -

(A) by adding "關於"
before "第14(6)(a)條";

(B) by repealing
everything after "問

題" and substituting

"的指引，但該指引的發出須

受第(3)款的規限。";

- (iv) by repealing "就以下事項發出指引" and substituting "發出";".

New By adding -

"2A. Issue of licences

Section 7(4) is amended by repealing "the Schedule" and substituting "Schedule 1".

3 In the proposed section 7P -

(a) by deleting the heading and substituting -

"Authority may regulate changes
in relation to carrier
licensees";

(ba) by deleting subsection (1) and substituting -

"(1) Where, after the commencement of this section, there is a change in relation to a carrier licensee -

~~(a) the control exercised over a carrier licensee;~~

~~(b) the beneficial ownership of any of the voting shares in a carrier licensee; or~~

~~(c) the voting control of any
of the voting shares in a
carrier licensee,~~

~~the Authority may~~

(da) subject to subsection
(1A), the Authority may
conduct such investigation
as ~~the Authority~~he
considers necessary to
enable him to form an
opinion as to whether or
not the change has, or is
likely to have, the effect
of substantially lessening
competition in a
telecommunications market;
and

(eb) (where the Authority,
after conducting such
investigation, forms an
opinion that the change
has, or is likely to have,
the effect of
substantially lessening
competition in a
telecommunications market)
the Authority may, by
notice in writing served

on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate or avoid any such anti-competitive effect, but the Authority may not issue such direction if the Authority 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 anti-competitive effect.

(1A) An investigation under subsection (1)(~~ae~~) may only be commenced within ~~1 month~~ 2 weeks after the change occurs or within ~~1 month~~ 2 weeks after the Authority knows, or ought reasonably to have known of, the change, as the case may be." ;

(~~bc~~) by deleting subsection (2) and substituting -

"(2) The Authority shall, before forming any opinion or issuing any direction under subsection (1) -

(a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made under paragraph (a).";

(ed) in subsection (3), by deleting "~~(1)~~everything after "subsection" and substituting "~~(1)(e)~~"(1)(b), the action may include the procuring of modifications to the change."";

(de) in subsection (4), by deleting "(1)" and substituting "(1)(eb)";

(ef) ~~in subsection (5), by adding "or any interested person" after "the licensee";~~by deleting subsection (5) and substituting -
"(5) Where there is a proposed change in relation to a carrier licensee, the licensee or any interested person may apply in writing to the Authority for consent to the proposed change.";

(fg) in subsection (6) -

(i) in paragraph (a) -

- (A) by deleting "is of the opinion" and substituting "forms an opinion";
- (B) by adding "作出的" after "建議";
- (ii) in paragraph (b) -
 - (A) by deleting "is of the opinion" and substituting "forms an opinion";
 - (B) in subparagraph (i), by deleting "or" at the end;
 - (BC) by deleting subparagraph (ii) and substituting -
 - "(ii) give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate or avoid any such anti-competitive effect.";
 - or
 - (iii) give consent without issuing a direction under subparagraph (ii) if the Authority 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 anti-competitive
effect.";

(ED) by adding "作出的" after "建議";

(sh) by deleting subsection (7) and substituting -

"(7) The Authority shall, before forming any opinion, making any decision or issuing any direction under subsection (6) -

(a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made under paragraph (a).";

(hi) by deleting subsection (8) and substituting -

"(8) The Authority shall, by notice in writing served on the carrier licensee referred to in subsection (5) and (where an interested person makes an application under that subsection) the interested person, inform the licensee and (if applicable) the person of -

(a) the decision made under subsection (6)(a) or
 (b)(i), ~~or (ii)~~ or (iii);

(b) where a decision is made under subsection (6)(b)(ii), the action that the Authority directs the licensee to take.";

(j) in subsection (9), by deleting everything after "modifications" and substituting "to the proposed change.";

(k) in subsection (10), ~~—~~ —

(i) in paragraph (a), by adding "or (b)(iii)" after "(6)(a)";

(ii) by deleting "in respect of the change under subsection (1)" and substituting "under subsection (1)~~(e)~~(b) in respect of the change";

~~(j1) in subsection (11), by deleting "the carrier licensee concerned" and substituting "the carrier licensee, or the interested person,~~

~~who makes the application under subsection (5)";~~ by deleting subsection (11) and substituting -

"(11) Subject to subsection (11A), the amount of any costs or expenses incurred by the Authority -

(a) in making a decision under subsection (6)(a) or (b)(i), (ii) or (iii); or

(b) in relation to the processing of an application made under subsection (5),

is recoverable as a debt due to the Authority from the carrier licensee, or the interested person, who makes the application under subsection (5).";

~~(11m)~~ by adding -

"(11A) The amount recoverable under subsection (11) shall not exceed the amount specified in Schedule 3.

(11B) The Authority shall publish -

(a) where he forms any opinion or issues any direction under subsection (1), the opinion or direction; or

(b) where he forms any opinion, makes any decision or issues any direction under subsection (6), the opinion, decision or direction,

in such manner as he considers appropriate."

(11C) The Secretary may by order published in the Gazette amend Schedule 3."

(1n) by deleting subsection (12)~~(a)~~ and substituting -

"(12) For the purposes of subsections (1) and (5), there is a change in relation to a carrier licensee if -

(a) a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 15% of the voting shares in the licensee;

(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

(c) a person, either alone or
with any associated person,
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~~."~~;

provided that satisfaction of
subsection (a) only shall not
constitute a change if the
person referred to in
subsection (a), either alone or
with any associated person,
does not have or does not
concurrently acquire -

(i) beneficial ownership or voting control in more than 5% of the voting shares in any of the other carrier licensees; and
(ii) any powers conferred by the memorandum or articles of association or other instrument regulating any of the other carrier licensees or any other corporation or otherwise to ensure that the affairs of any of the other carrier licensee are conducted in accordance with the wishes of that person."

(m) in subsection (13) -

(i) in the definition of "表決控權人", by deleting the full stop at the end and substituting a semicolon;

(ii) by adding -

"associated person" (相聯人士), in relation to a person, has the meaning assigned to it in the definition of

"associated person" in

section 2(1), 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;

"interested person" (有利害關係

的人) means -

(a) in relation to a
change referred
to in subsection
(1), a person
who -

~~(i)~~ does any of
the acts
referred to in
subsection
(12)(~~ba~~), (~~eb~~)
or (~~dc~~) in
relation to the
carrier licensee
concerned;

~~(ii)~~ becomes the
beneficial
owner of
the voting
shares
concerned;
or

~~(iii)~~ becomes the
voting
controller

~~of the
voting
shares
concerned;~~

(b) in relation to a proposed change referred to in subsection (5), a person who proposes to –

~~(i)~~ do any of the acts referred to in subsection (12)(~~ba~~), (~~eb~~) or (~~dc~~) in relation to the carrier licensee concerned; ".

~~(ii) become the beneficial owner of the voting shares concerned;~~

~~or~~

~~(iii) become the voting~~

~~controller
of the
voting
shares
concerned;".~~

- 5 (a) In paragraph (a), by deleting "or (1A)" and substituting ", (1A), (1B) or (1C)".
- (b) In paragraph (b), in the proposed definition of "appeal subject matter", by deleting paragraph (b) and substituting -
- "(b) in relation to an appeal under section 32N(1A), (1B) or (1C), means an opinion, direction or decision of the Authority published under section 7P(11~~BA~~);".

6 By deleting the clause and substituting -

"6. Appeals to Appeal Board

Section 32N is amended -

(a) by adding -

"(1A) Any carrier licensee aggrieved by an opinion, direction or decision of the Authority published under section 7P(11~~BA~~) may appeal to the Appeal Board against the opinion, direction or decision (and whether or not the

opinion, direction or decision was formed, issued or made in respect of the licensee).

(1B) Any person who -

- (a) is, in relation to a change referred to in section 7P(1), an interested person within the meaning of paragraph (a) of the definition of "interested person" in section 7P(13); and
- (b) is aggrieved by an opinion or direction of the Authority published under section 7P(11~~BA~~)(a) in respect of the change,

may appeal to the Appeal Board
against the opinion or
direction.

(1C) Any person who -

(a) is, in relation
to a proposed
change referred
to in section
7P(5), an
interested
person within
the meaning of
paragraph (b) of
the definition
of "interested
person" in
section 7P(13);
and

(b) is aggrieved by
an opinion,
decision or
direction of the
Authority
published under
section
7P(11~~BA~~)(b) in
respect of the
proposed change,

may appeal to the Appeal Board
against the opinion, decision
or direction.";

- (b) in subsection (3), by adding
"subsection (1A), (1B) or (1C) or"
before "section 36C".

7 By deleting everything after "substituting" and
substituting "", or before the opinion, direction or
decision referred to in section 32N(1A), (1B) or (1C)
was formed, issued or made, as the case may be.".

New By adding -

**"8. Licences which are not carrier licences
within the meaning of section 2**

The Schedule is renumbered as Schedule 1.

9. Schedules 2 and 3 added

The following ~~is~~are added -

"SCHEDULE 2 [s. 6D(2)]

MATTERS TO BE TAKEN INTO ACCOUNT BY AUTHORITY

1. The height of barriers to entry to a
telecommunications market.

2. The level of market concentration in a
telecommunications market.

3. The degree of countervailing power in a telecommunications market.

4. The likelihood that the change would result in the carrier licensee or interested person being able to significantly and substantially increase prices or profit margins.

5. The dynamic characteristics of a telecommunications market, including growth, innovation and product differentiation.

6. The likelihood that the change would result in the removal from a telecommunications market of a vigorous and effective competitor.

7. The extent to which effective competition remains or would remain in a telecommunications market after the change.

8. The nature and extent of vertical integration in a telecommunications market.

9. The actual and potential level of import competition in a telecommunications market.

10. The extent to which substitutes are available in a telecommunications market. ".".

SCHEDULE 3

[s. 7P]

SPECIFIED AMOUNT

\$200,000. ". ".

擬稿

《2002 年電訊(修訂)條例草案》

委員會審議階段

由工商及科技局局長動議的修正案

《2002 年電訊(修訂)條例草案》

委員會審議階段

由工商及科技局局長動議的修正案

條次

建議修正案

1 刪去第(2)款而代以 —

“ (2) 除第(3)款另有規定外，本條例自在憲報刊登當日起實施。

(3) 第 3、4、5、6 及 7 條自工商及科技局局長以憲報公告指定的日期起實施。”。

新條文 加入 —

“1A. 釋義

《電訊條例》(第 106 章)第 2(1)條現予修訂，在“傳送者牌照”的定義中，在“附表”之後加入“1”。

2 刪去在(b)段之前的所有字句而代以 —

“2. 指引

第 6D 條現予修訂 —

(a) 在第(2)款中 —

(i) 在(a)段中，廢除在
“方式”之後的所有
字句而代以“(包括發
牌準則以及他擬考慮
的其他有關事宜)的指
引；”；

(ii) 加入 —

“(aa) 指明他在
根據第
7P(1)條
得出任何
意見或在
得出第
7P(6)(a)
或(b)條
所指的任
何意見前
須考慮的
事宜(包
括但不限
於附表 2
所列的事
宜)的指
引，但該
指引的發
出須受第
(2A)款的
規
限；”；

(iii) 在(b)段中 —

(A) 在“第 14(6)
(a)條”之前加
入“關於”；

(B) 廢除在“問題”之後的所有字句而代以“的指引，但該指引的發出須受第(3)款的規限。”；

(iv) 廢除“就以下事項發出指引”而代以“發出”；”。

新條文 加入 —

“2A. 發出牌照

第 7(4)條現予修訂，在“附表”之後加入“1”。

3 在建議的第 7P 條中 —

(a) 刪去標題而代以 —

“局長可規管就傳送者牌照持牌人作出的改變”；

(ba) 刪去第(1)款而代以 —

“(1) 如在本條生效後有就某傳送者牌照持牌人作出的在以下方面出現任何改變，則 —

(a) 對某傳送者牌照持牌人作出的控制；

~~(b) 某傳送者牌照持牌人的任何有表決權股份的實益擁有權；或~~

~~(c) 某傳送者牌照持牌人的任何有表決權股份的表決控制權。~~

~~局長可~~

~~(a)~~ 在第(1A)款的規限下，局長可作出他局長認為為使他能就該項改變是否具有或相當可能具有大幅減少電訊市場中的競爭的效果得出意見而需要的調查；及

~~(b)~~ (如局長在作出上述調查後，得出意見認為該項改變具有或相當可能具有大幅減少電訊市場中的競爭的效果)局長可藉送達書面通知予該持牌人，指示該持牌人採取局長認為為消除或防止出現任何該等反競爭效果而需要、並在該

通知指明的行動，但局長如信納該項改變令或相當可能令公眾得益，並信納任何該等反競爭效果對或相當可能對公眾造成的任何損害，輕於該項得益，則可不發出該指示。

(1A) 第(1)(~~a~~)款所指的調查只可於有關改變出現後的1個月-2個星期內或於局長知道或理應知道有關改變後的1個月-2個星期內(視屬何情況而定)展開。”；

(~~c~~) 刪去第(2)款而代以 —

“(2) 局長在根據第(1)款得出任何意見或發出任何指示前，須 —

(a) 給予所有傳送者牌照持牌人及任何有利害關係的人合理機會向局長作出申述；及

(b) 考慮根據(a)段作出的申述(如有的話)。”；

(~~d~~e) 在第(3)款中，刪去~~“(1)”~~在“第”之後的所有字句而代以“(1) ~~(e)~~(b)款可指示有關傳送者牌照持牌人採取的行動的一般性質的原則下，該行動可包括致使就有關改變作出改動。”；

(~~e~~d) 在第(4)款中，刪去“(1)”而代以“(1) ~~(b)~~e)”；

(~~f~~e) ~~刪去在第(5)款而代以 — 中，在“該持牌人”之後加入“或任何有利害關係的人”；~~

“(5) 如有就某傳送者牌照持牌人建議作出的改變，該持牌人或任何有利害關係的人可書面向局長申請同意該項建議作出的改變。”；

(~~g~~f) 在第(6)款中 —

(i) 在(a)段中 —

(A) 刪去“is of the opinion”而代以“forms an opinion”；

(B) 在“建議”之後加入“作出的”；

(ii) 在(b)段中 —

(A) 刪去“is of the opinion”而代以“forms an opinion”；

(B) 在第(i)節中，刪去末處的“或”；

(CB) 刪去第(ii)節而代以 —

“(ii) 在內容為有關傳送者牌照持牌人須採取局長認為為消除或防止出現任何該等反競爭效果而需要的行動的指示的規限下，給予同意~~。~~”；或

(iii) (如局長信納有關建議作出的改變會令或相當可能會令公眾得益，並信納任何該等反競爭效果會對或相當可能會對公眾造成的任何損害，輕於該項得益)給予同意而不發出第(ii)節所指的指示。”；

(DE) 在“建議”之後加入“作出的”；

(hg) 刪去第(7)款而代以 —

“ (7) 局長在得出第(6)款所指的任何意見或根據該款作出任何決定或發出任何指示前，須 —

(a) 給予所有傳送者牌照持牌人及任何有利害關係的人合理機會向局長作出申述；及

(b) 考慮根據(a)段作出的申述(如有的話)。”；

~~(i)~~ 刪去第(8)款而代以 —

“ (8) 局長須藉送達書面通知予第(5)款提述的傳送者牌照持牌人及(如某有利害關係的人根據該款提出申請)有關的有利害關係的人，告知該持牌人及(如適用的話)該人 —

(a) 根據第(6)(a)或(b)(i)、~~或(ii)~~ 或(iii)款作出的決定；

(b) (如根據第(6)(b)(i)款作出決定)局長指示該持牌人採取的行動。”；

(j) 在第(9)款中，刪去在“括”之後的所有字句而代以“致使就有關建議作出的改變作出改動。”；

(k) 在第(10)款中 —，刪去“(1)”而代以
“(1)(e)”；

(i) 在(a)段中，在“(6)(a)”之後加入
“或(b)(iii)”；

(ii) 刪去“(1)”而代以“(1)(b)”；

(l) 在第(11)款中，刪去“向有關傳送者牌照持牌人”而代以“而向根據第(5)款提出申請的傳送者牌照持牌人或有利害關係的人”；刪去第(11)款而代以 —

“(11) 在第(11A)款的規限下，
局長 —

(a) 因根據第(6)(a)
或(b)(i)、(ii)
或(iii)款作出決
定而招致；或

(b) 就處理根據第(5)
款提出的申請而
招致，

的任何費用或開支的款額可作為拖欠局
長的債項而向根據第(5)款提出申請的
傳送者牌照持牌人或有利害關係的人追
討。”；

(m) 加入 —

“(11A) 根據第(11)款可予追討
的款額，不得超逾附表 3 指明的款額。

(11A-B) 如局長 —

- (a) 根據第(1)款得出任何意見或發出任何指示，他須以他認為適當的方式發表該意見或指示；或
- (b) 得出第(6)款所指的任何意見或根據該款作出任何決定或發出任何指示，他須以他認為適當的方式發表該意見、決定或指示。”~~；~~

(11BC) 政策局局長可藉在憲報刊登的命令，修訂附表 3。”；

(n+) 刪去第(12) ~~(a)~~款 ~~；~~而代以 —

“(12) 為施行第(1)及(5)款，如有以下情況，即屬有就某傳送者牌照持牌人作出的改變 —

- (a) 某人(不論單獨或連同任何相聯人士)成為該持牌人多於 15%的有表決權股份的實益擁有人或表決控權人；或
- (b) 某人(不論單獨或連同任何相聯人士)成為該持牌人多於 30%的有表決權股份的實益擁

有人或表決控權人；或

(c) 某人(不論單獨或連同任何相聯人士)憑藉規管該持牌人或任何其他法團的組織章程大綱或組織章程細則或其他文書所賦予的權力，或憑藉在其他情況下獲賦予的權力，而取得(包括藉收購有表決權股份而取得)確保該持牌人的事務是按照該人意願處理的權力。”—；

但如(a)款所指的某人(單獨或連同任何相聯人士)沒有持有或同時取得任何其他傳送者牌照持牌人—

(i) 多於 5% 的有表決權股份的實益擁有權或表決控制權；及

(ii) 憑藉規管任何其他傳送者牌照持牌人或任何其他法團的組織章程大綱或組織章程細則或其他文書所賦予的權力，或憑藉在其他情況下獲賦的權

力，而取得（包括藉收購有表決權股份而取得）確保任何其他傳送者牌照持牌人的事務是按照該人意願處理的權力

則只符合（a）款並不構成改變。”；

(0#) 在第(13)款中，~~加入~~ —

(i) 在“表決控權人”的定義中，刪去末處的句號而代以分號；

(ii) 加入 —

““有利害關係的人”
(interested
person) —

(a) 就第(1)款提述的改變而言，指~~—~~就
有關傳
送者牌
照持牌
人作出
第
(12)(a)
、(b)或
(c)款提
述的任
何作為

的人；

~~(i)~~ 就有關
傳送者
牌照持
牌人作
出第
~~(12)(b)~~
~~→(c)~~或
~~(d)~~款提
述的任
何作為
的人；

~~(ii)~~ 成為有
關有表
決權股
份的實
益擁有
人的
人；或

~~(iii)~~ 成為有
關有表
決權股
份的表
決控權
人的
人；

(b) 就第(5)
款提述
的建議
作出的
改變而
言，
指擬
就有關

傳送者
牌照持
牌人作
出第
(12)(a)
、(b)或
(c)款提
述的任
何作為
的人；

~~(i) 擬就有
關傳送
者牌照
持牌人
作出第
(12)(b)
、(c)或
(d)款提
述的任
何作為
的人；~~

“相聯人士” (associated
person) 就某人而言，
具有第 2(1) 條中“相
聯人士”的定義所給
予的涵義，但 —

(a) 在該定
義中對
“該持
牌人”
的提
述，須
解釋為
對該人
的提
述；及

(b) 在該人
屬法團
的情況
下，在
該定義
中對
“相聯
法團”
的提
述，須
解釋為
對由該
人控制
的法團
、控制
該人的
法團或
如該人
般受同
樣控制
的法團
的提
述。”
。

~~(ii) 擬成為~~
~~有關有~~

~~表決權
股份的
實益擁
有人的
人；或~~

~~(iii) 擬成為
有關有
表決權
股份的
表決控
權人的
人；”
。~~

- 5
- (a) 在(a)段中，刪去“或(1A)”而代以“、(1A)、(1B)或(1C)”。
- (b) 在(b)段中，在建議的“標的事項”的定義中，刪去(b)段而代以 —
- “ (b) 就根據第 32N(1A)、(1B)或(1C)條提出的上訴而言，指局長根據第 7P(11~~BA~~)條發表的意見、指示或決定；”。

6 刪去該條而代以 —

“6. 向上訴委員會提出上訴

第 32N 條現予修訂 —

(a) 加入 —

“(1A) 任何傳送者牌照持牌人如因局長根據第 7P(11~~AB~~)條發表的意見、指示或決定而感到受屈，可針對該意

見、指示或決定向上訴
委員會提出上訴，不論
該意見、指示或決定是
否就該持牌人而得出、
發出或作出的。

(1B) 任何人

如 一

(a) 就第
7P(1)
條提
述的
改變
而
言，
屬第
7P
(13)
條中
“有
利害
關係
的
人”
的定
義的
(a)段
所指
的有
利害
關係
的
人；
及

(b) 因局
長根

據第
7P
(11A-B)
) (a)
條就
該項
改變
發表
的意
見或
指示
而感
到受
屈，

可針對該意見或指示向上
訴委員會提出上訴。

(1C) 任何人

如 —

(a) 就第
7P(5)
條提
述的
建議
作出
的改
變而
言，
屬第
7P
(13)
條中
“有
利害
關係
的

人”
的定義的
(b)段
所指的有
利害關係
的人；
及

(b) 因局長根據第7P
(11A-B)
(b) 條就該項建議作出的改變發表的意見、決定或指示而感到受屈，

可針對該意見、決定或指示向上訴委員會提出上訴。”；

- (b) 在第(3)款中，廢除“關涉第36C條”而代以“屬第(1A)、(1B)或(1C)款或第36C條所訂範圍之內”。”。

7 刪去在“代以”之後的所有字句而代以““，亦不令任何人有權要求上訴委員會收取和考慮在第32N(1A)、(1B)或(1C)條所提述的意見、指示或決定得出、發出或作出(視屬何情況而定)之前的任何時間並沒有向局長呈交或提供的任何材料。”。

新條文 加入 —

“8. 不屬第2條所指的傳送者牌照的牌照

現將附表重編為附表1。

9. 加入附表2及3

現加入 —

“附表2 [第6D(2)條]

局長須考慮的事宜

1. 進入電訊市場的障礙難度。
2. 在電訊市場中，市場集中的水平。
3. 在電訊市場中，抵銷力量的強弱。
4. 有關改變會導致有關傳送者牌照持牌人或有利害關係的人能夠顯著及大幅提高價格或利潤幅度的可能性。

5. 電訊市場急速轉變的特性，包括增長、創新技術及產品差異。
6. 有關改變會導致清除電訊市場中任何有實力及有效的競爭者的可能性。
7. 有關改變出現後，在電訊市場中保留或會保留有效競爭的程度。
8. 在電訊市場中，垂直整合的性質及程度。
9. 在電訊市場中，輸入競爭的實際及潛在水平。
10. 在電訊市場中，有替代品目可供採用的程度。” ”。

附表 3

[第 7P 條]

指明款額

\$200,000 ” ”。