

18 June 2003

Hon. SIN Chung-Kai  
Chairman  
Bills Committee on the  
Telecommunications (Amendment) Bill 2002  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

### **Regulation of Mergers and Acquisitions in the Telecommunications Market**

The Council has been provided with a copy of a paper by Commerce, Industry and Technology Bureau dated 18 June 2003, headed 'Additional Committee Stage Amendments Proposed by the Administration' (the Administration proposals) that address a set of Committee Stage Amendments proposed by yourself. The Council would like to respond to the Administration proposals for the benefit of Bills Committee Members.

As noted in previous correspondence with the Bills Committee, the Council's main concern is that the safeguards inherent in the legislation are introduced as soon as possible. In this regard, the Council notes that some of the issues of concern to industry, i.e. change in control, recovery of costs, and time limits, have been addressed by the Administration. As far as the Council can ascertain the proposals are workable and achieve a balance between the interests of industry and those of efficient regulation. Accordingly, the proposals are supported by the Council.

The Administration proposals also address your Committee Stage Amendments in relation to an over riding 'public interest' element that may be applied where a merger or acquisition has, or is likely to have, the effect of substantially lessening competition, thereby allowing the merger or acquisition to proceed. The Administration has proposed that instead of a public interest test, a 'consumer benefits' test be used to allow a merger or acquisition to proceed even though it has failed the competition test.

P.2/Providing...

Providing that the legislative regime retains a power to make conditions on a licensee to ensure that claimed consumer benefits do arise from a merger or acquisition that has or is likely to have the effect of substantially lessening competition, then the Council would support the introduction of a 'consumer benefit/public interest' test. The condition should be to ensure that the consumer benefits arising from the claimed efficiencies are actually met.

The Council trusts the important safeguards in the proposed legislation will be introduced as soon as possible.

Mrs CHAN WONG Shui  
Chief Executive

- c.c. - Mrs. Marion LAI, Commerce, Industry and Technology Bureau  
- Mr. Anthony WONG, OFTA  
- Industry representatives, c/o Mr. Stuart CHIRON, Director Regulatory Affairs, PCCW