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Report of the Bills Committee on
Telecommunications (Amendment) Bill 2002

Purpose

This paper reports on the deliberations of the Bills Committee on Telecommunications (Amendment) Bill 2002 (the Bill).

Background

2. At present, acquisition and merger (M&A) activities in the telecommunications market are regulated by the Telecommunications Authority (TA) through licence conditions. However, under the current licensing regime, TA only has the power to regulate M&A cases which involve the transfer of licence, or the transfer of shares of the licensee company. On the other hand, M&As nowadays often do not involve such transfer but may take place at the level of the holding company. In order to prevent over-concentration of market power in a few operators through M&As and undesirable cross-ownership which may adversely affect competition, the Administration has considered it necessary to provide a regulatory framework to deal with M&As in the telecommunications sector.

3. The TA issued its preliminary proposals on regulating M&A activities in the telecommunications market for consultation with the public and the industry during the period April to June 2001. Having considered the views received, the Administration has set out its regulatory proposals in the Bill.

The Bill

4. The principal object of the Bill is to provide a clear and comprehensive regulatory framework on M&A activities in the telecommunications market with a view to promoting fair and effective competition. The Bill seeks to amend the Telecommunications Ordinance (Cap.106) ("TO") to provide for the following :

(a) To confer on TA the power to regulate any change or proposed change in the ownership or control over a carrier licensee which, in TA's opinion, has, or is likely to have, an effect of substantially lessening competition in a telecommunications market;

(b) to introduce a number of procedural safeguards to ensure the fair exercise of the proposed statutory powers by TA; and

(c) to require TA to issue guidelines on the matters that he must take into account before he forms an opinion on the competition effect of an M&A and to carry out consultation before such guidelines are issued.

The Bills Committee

5. Members agreed at the House Committee meeting on 17 May 2002 to form a Bills Committee to study the Bill. Hon SIN Chung-kai was elected Chairman of the Bills Committee and the membership list of the Committee is at **Appendix I**. The Bills Committee held a total of 12 meetings to examine the Bill and made a report to the House Committee on 6 June 2003. The organizations/individuals which/who have submitted views to the Bills Committee are listed in **Appendix II**.

6. At the meeting of the House Committee on 6 June 2003, the Administration issued a note to all Members urging them to support the resumption of the Second Reading debate on the Bill on 18 June 2003 as recommended in the report submitted by the Bills Committee (LC Paper CB(1) 1858/02-03). A letter signed by several major telecommunications operators was also tabled at the meeting urging for deferral of the resumption of Second Reading debate to allow time for Members to consider certain amendments proposed to the Bill which were under preparation.

7. Hon SIN Chung-kai, Chairman of the Bills Committee, informed the House Committee that the telecommunications operators had all along objected to a number of regulatory proposals in the Bill. He further reported that the eight major operators finally reached a unified view and presented a joint submission to the Bills Committee at its last meeting on 23 May 2003. Since the Administration had not accepted the operators' proposals, Hon SIN Chung-kai indicated that he would propose a number of Committee Stage Amendments (CSAs) to the Bill. Given the complexity of the CSAs and the fact that the Bills Committee and the Administration had not yet had the opportunity to consider the proposed CSAs, he sought Members' support to request the Administration to defer the resumption of Second Reading debate to allow time for the Bills Committee to examine the proposed CSAs.

8. After discussion, the House Committee agreed that the Administration should defer resumption of the Second Reading debate on the Bill. The Bills Committee held four meetings and the Chairman made two verbal reports to the House Committee on 13 and 20 June 2003 and a further report to the House Committee on 27 June 2003. In the course of the Bills Committee's deliberation, the Administration has taken up a number of amendments proposed by Hon SIN Chung-kai. A table summarizing the major issues covered by the Administration's original proposal, Hon SIN Chung-kai's proposed CSAs and the Administration's additional CSAs is at **Appendix III**.

Deliberations of the Bills Committee

9. Apart from deliberating on the policy aspects and proposed provisions of the Bill, the Bills Committee has also examined the key matters which will be included in the "Guidelines on the Competition Analysis of Mergers and Acquisitions in Telecommunications Markets" (M&A Guidelines) to be issued by TA after enactment of the Bill and which are not subsidiary legislation.

10. The Bills Committee is fully aware that the Bill has raised important regulatory issues which are of great concern to the telecommunications industry and other interested parties. It has conducted three rounds of consultation with deputations, mostly existing telecommunications operators and carrier licensees, to receive their views on the Bill and the M&A Guidelines.

11. The Bills Committee has noted that the Bill has the support in principle of the Consumer Council and some academics for the purpose of safeguarding competition in the telecommunications market. On the other hand, most of the carrier licensees which have submitted views to the Bills Committee disagree with the introduction of legislation to regulate competition matters in the telecommunications industry and have raised objection to a number of regulatory proposals in the Bill, notably whether TA should act as the regulator for M&As, the scope of M&As subject to regulation, the availability of checks and balances on TA's powers and the way in which the Administration has proposed to formulate guidelines to implement the statutory provisions. After considerable discussion, the Administration has taken on board quite a number of the suggestions and concerns raised by members and deputations, including the CSAs proposed by Hon SIN Chung-kai, and proposed relevant amendments to the Bill.

<u>Introduction of the Bill</u>

12. According to the Administration, the main purpose of introducing the Bill is to promote fair and effective competition in the telecommunications

market and to protect consumers' interests, at the same time provide a clear framework for regulating M&As in the telecommunications market to enable investors to make informed business decisions.

13. Some members of the Bills Committee support the objective of the Bill to regulate M&As in the telecommunications market which are anti-competitive. Nevertheless, they urge that a reasonable balance must be struck between regulatory action on the one hand and minimum intervention into normal business activities on the other. Some members, however, are of the view that the Administration should not have introduced the Bill at this point of time because the telecommunications industry is now fragmented and therefore needs consolidation rather than competition. They consider that the Bill will increase the regulatory burden on the local telecommunications industry and is not conducive to its development. There is a view that any legislative proposal to regulate the telecommunications market should be anti-monopoly instead of pro-competition.

14. The Administration has advised that the telecommunications market is developing from monopoly to a fully competitive one. It is necessary to put in place measures to promote competition in the interest of consumers and the healthy development of the industry. The Administration recognizes that M&As are normal activities and very often, are beneficial to the society and has assured members that TA will only intervene where such activities raise regulatory concern. The Administration has submitted to the Bills Committee that instead of imposing a regulatory burden, the Bill, if enacted, will in fact provide a clear regulatory framework which will facilitate the industry in making informed business decisions on M&As.

15. Notwithstanding the CSAs to be moved by the Administration, some members maintain their objection to the Bill per se although they would welcome the proposed CSAs as an improvement to mitigate the adverse impact of the Bill on the industry.

<u>Sector-specific legislation to deal with M&As</u>

16. The fundamental question of whether the Government should introduce a general competition law, instead of sector-specific legislation, has been raised by some members of the Bills Committee and deputations.

17. Most of the carrier licensees have stressed that sector-specific regulation of M&As is out of line with international practice and will only deter the much needed investment to the telecommunications industry which is operating in a very challenging environment. They maintain the view that if the Government considers it necessary to introduce legislation on competition, such legislation should apply to all sectors of the economy and should not be targeted at the telecommunications industry only. They query the need for the Bill as the telecommunications industry is already subject to extensive

regulation and Hong Kong's telecommunications sector is one of the most open and competitive markets in the world. On the other hand, SUNDAY, a mobile service operator, has expressed support for the objective and the proposed amendments of the Bill.

18. Some members of the Bills Committee and the Consumer Council opine that a universal competition law should be enacted. However, given the Government's stance against this option, they are prepared to support the Bill with a view to safeguarding competition in the telecommunications industry. Members are aware that in its recent review on Hong Kong's trade policy, the World Trade Organization has expressed concern about the sector-specific approach currently adopted to deal with competition. While appreciating that this subject is outside the scope of the Bill, those members who are in favour of a general competition law consider that the Administration should re-visit the subject in the light of the latest international developments, such as Singapore's recent announcement of its intention to enact a competition law in two to three years' time.

19. As to why the telecommunications industry is the subject of regulation, the Administration has explained that the telecommunications sector is characterized by structural features which are not generally conducive to competition. These include high concentration levels, high barriers to entry because of high sunk costs and/or spectrum constraints, little potential for competition from outside Hong Kong and high levels of vertical integration. It is therefore necessary to take specific measures to prevent over-concentration of market power in a few operators so as to safeguard fair competition and consumers' interest.

20. Some members and deputations have also queried why the proposed provisions on M&As will only apply to carrier licensees but not other service providers in the telecommunications sector. In response, the Administration has advised that there is currently no market factor such as high barrier to entry, high concentration level and scarcity of spectrum which may cause concern about possible over-concentration of market power for non-carrier services such as Internet service providers holding Public Non-Exclusive Telecommunications Service licences.

21. Concern has also been raised that the Bill may not be able to deal with the anti-competitive effect arising from M&As outside the telecommunications sector, as well as the possible effect on competition of an increasing overlap between the telecommunications and IT sectors as a result of "convergence". In this regard, the Bills Committee notes that because of the scope of application of TO, the Bill will only be applicable to competition issues in the telecommunications sector. Nevertheless, the Administration has confirmed that any M&A which may substantially lessen competition in a telecommunications market, including an M&A involving vertical integration, will be covered in the Bill.

Ex post regulatory regime

The regulatory approach

22. The Bill proposes an *ex post* regime under which the parties concerned are not obliged to seek TA's prior consent before proceeding with an M&A, as opposed to an *ex ante* regime where the prior consent of the regulator is required. TA will conduct the regulatory review after an M&A is completed. If TA is of the opinion that the change in ownership or control over a carrier licensee has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, the carrier licensee may be directed to take such action as TA considers necessary to eliminate any such anti-competitive effect.

23. The Administration has informed the Bills Committee that the *ex post* regulatory regime has been proposed in response to concerns expressed by the industry during the consultation in April 2001 that a mandatory requirement to obtain TA's prior consent (as in the case of an *ex ante* regime) would place a heavy compliance burden on licensees. Members also note that the regulatory approach adopted in overseas jurisdictions varies. Some countries such as Canada, the European Community, Singapore and the United States adopt an *ex ante* regulatory regime, while others like Australia and the United Kingdom adopt an *ex post* one.

24. The Bill also provides for an alternative option whereby a carrier licensee may seek the prior consent of TA on a voluntary basis before proceeding with an M&A. This will enable the licensee to obtain certainty rather than risk being sanctioned subsequently if the M&A is found to have anti-competitive effect. In exchanging views with the Bills Committee, the Administration's attention has been drawn to the possibility that besides the carrier licensee concerned, the acquirer of the carrier licensee may also wish to apply for prior consent from TA for a proposed M&A, especially in situations like hostile takeovers. After consideration, the Administration agrees to introduce a CSA to proposed section 7P(5) of the Bill to also allow an acquirer to apply for TA's prior consent.

25. The Bills Committee notes the suggestion of the Law Society of Hong Kong that to avoid uncertainty arising from an *ex post* regime, consideration may be given to requiring large scale transactions above a certain size to be subject to mandatory pre-notification. The Consumer Council has also suggested that TA should be given interim injunctive powers to prevent the continuation of an M&A which is found to have raised regulatory concerns. In response, the Administration has highlighted the need for minimal intervention in consideration that the vast majority of M&A activities pose no threat to competition and are part of normal business activities beneficial to the economy. The Bill will not therefore mandate pre-notification or propose to

confer injunctive powers on TA.

26. The Bills Committee has also examined whether a mechanism should be in place to enable TA to be notified of M&As taking place in the telecommunications market. The Administration has pointed out that this approach would be an onerous requirement which will even exceed the statutory disclosure requirement for shareholding changes under the Companies Ordinance (Cap. 32). It will also not be consistent with the light-handed approach which the Administration intends to adopt. The Administration has further advised that in practice, it is very unlikely that TA or the public will not be aware of an M&A which may have a significant effect on market competition, since it is likely to be a sizable transaction causing much public attention. Nevertheless, to address members' concern, the Administration has proposed to explain the working arrangements in the M&A Guidelines so as to encourage the parties to notify TA of an M&A as soon as it is completed, if the parties have not sought prior consent of TA under proposed section 7P(5) of the Bill. The Guidelines will also encourage parties to discuss any transactions in advance with TA so as to address any regulatory concern at an early stage.

"Back-stop date" and "safe harbour" provisions

27. Most of the carrier licensees which have presented views to the Bills Committee point out that in practice, the *ex post* approach may not necessarily reduce the compliance burden on the industry because TA's powers to review M&A activities are so broad that licensees will feel compelled to seek prior consent to avoid subsequent sanction. Members appreciate the deputations' objection to the absence of a statutory time limit beyond which TA can no longer investigate into a completed M&A. The absence of a "back-stop date" will create uncertainty over completed M&As as they might be liable to being unwound or modified by TA if he subsequently considers that the activity has anti-competitive effect.

28. The Bills Committee notes that it was the Administration's intention to include in the M&A Guidelines a "back-stop date" of three months beyond which TA is not empowered to initiate an investigation into the competition effect of a completed M&A. Most of the deputations however urge that the back-stop date should be specified in law instead of in the Guidelines which have no legislative effect. They also disagree with the proposed period of three months as they see no reason why TA should take so long to decide whether investigation is needed as the Bill will only apply to one sector of the economy. They urge for a shorter back-stop date which will increase commercial certainty in the M&A process.

29. Members acknowledge the industry's concern and agree in principle that the industry should be given greater certainty in a speedy manner. Having critically examined the concerns expressed, the Administration has agreed to shorten the back-stop date from three months to two weeks and to

specify the back-stop date in the Bill as well as in the Guidelines. It will introduce the necessary CSA to add a section 7P(1A) to the Bill. In this regard, the Administration has stressed that the back-stop date of two weeks is much shorter than those adopted in other *ex post* regimes, such as four months in the United Kingdom and three years in Australia.

30. The Bills Committee also notes that most of the carrier licensees also deplore the absence of any "safe harbour" provisions in the Bill to explicitly exclude M&A transactions which have no practical effect on market competition. They are concerned that as currently drafted, the Bill will empower TA to investigate into any change of control, irrespective of the value of the transaction or the market share of the parties concerned. In this regard, the Administration has confirmed that "safe harbour" provisions will be included in the M&A Guidelines on which the industry will be consulted. According to the Administration's proposal, TA will unlikely be concerned about changes in ownership which are purely transitory such as acquisition by banks with a view to re-selling. As regards market share, TA is unlikely to intervene if the market share of the merged entity is below 15%. TA is likely to make a detailed investigation if the combined market share is above 40%. M&As involving a market share between 15% to 40% will be considered by TA on a case by case basis.

Regulatory powers conferred on TA

The role and composition of the regulator

31. The Bill empowers TA, as the industry regulator, to investigate into M&A activities in the telecommunications sector where such activities raise regulatory concerns, and to direct the licensee concerned to take necessary actions to eliminate the anti-competitive effect of the M&A. Before making a decision on the competition effect of an M&A (whether it is a completed transaction or an application for prior consent to a proposed M&A), TA is required to give a reasonable opportunity to the carrier licensee concerned to make representations, and to set out his decisions with reasons in writing under existing section 6A(3)(b) of TO.

32. Most of the carrier licensees are of the view that the Bill has conferred very wide powers on TA who will assume the functions of the regulator, prosecutor and judge on M&A activities in the telecommunications sector. They consider this arrangement inappropriate and express grave concern about the lack of checks and balances on how TA will enforce the relevant provisions on M&A, as well as cast doubt on whether TA possesses the necessary expertise to deal with competition matters. The Consumer Council, on the other hand, considers it acceptable for TA, underpinned by the Office of the Telecommunications Authority (OFTA), to regulate M&A matters in the absence of a general competition authority in Hong Kong.

33. A major concern shared by the carrier licensees is that decisions on M&A activities in the telecommunications industry should be vested with a board/panel of members, instead of with a single person. Referring to overseas jurisdictions such as Canada, the United States, Australia, the European Union, Singapore and the United Kingdom where, irrespective of whether an *ex post* or *ex ante* regime is in place, M&A decisions are made by a panel, the deputations urge that TA should not be the sole authority to decide on M&A cases. They have raised some alternatives on the role the existing Telecommunications (Competition Provisions) Appeal Board (the Appeal Board) may play. The Bills Committee has noted that in their latest submission, the eight carrier licensees reached a common view and suggested that TA should only be empowered to investigate into and give consent to M&As. Where TA believes that an M&A has, or is likely to have, an effect of substantially lessening competition in a telecommunications market, he should refer the case to the Appeal Board for further investigation and decision.

34. Some members of the Bills Committee observe that there is a difference between enforcement of competition provisions under TO and the regulation of M&As. The former is about the regulation of licensees' conduct while the latter is about regulating investment and investors' entry into and exit from a market. TA's regulatory action into M&As may amount to a regulation of the structure of the market which far exceeds the jurisdiction of a industry-specific regulator. Members of the Bills Committee appreciate the deputations' concern that a separate panel/board should be empowered to deal with M&A matters in the telecommunications sector while TA continues to enforce other provisions in TO.

35. While agreeing that the regulatory structure and TA's role in the longer run can be further examined, the Administration does not consider it appropriate on this occasion to draw a distinction between the regulation of M&A activities from the other regulatory functions performed by TA under TO, and to empower another entity (such as the Appeal Board) to deal with M&As. It has nevertheless assured members that TA is supported by OFTA, which is equipped with expertise in all relevant fields including accounting, legal, economics and telecommunications. In particular, a Competition Affairs Branch has been set up in OFTA to provide support to TA in enforcing competition provisions including those relating to M&As.

36. In this connection, Hon SIN Chung-kai has taken up the industry's proposal and has proposed CSAs to empower the Appeal Board, instead of TA, as the main reviewing authority for M&A cases in the telecommunications market. Appeals against the decisions of the Appeal Board lie with the Court of Appeal. The Administration has reiterated its stance that the proposed drastic change to the existing institutional framework will alter and distort the nature of the Appeal Board fundamentally to that of an investigation committee of first instance with executive functions. TA will in turn be relegated to a consenting agent. Moreover, the modus operandi and

the relationship between TA and the Appeal Board under TO will be confused. The Administration has also pointed out that for practical reasons, the Appeal board, as it is currently constituted and resourced, will not be capable of performing the role of an investigation committee on M&As. Hon SIN Chung-kai's proposal has the support of some members of the Bills Committee while Hon Howard YOUNG, on behalf of Members of the Liberal Party, would support the Administration's original proposal to empower TA as the primary reviewing authority of M&As.

Transparency in TA's decision-making process

37. The Bills Committee considers that transparency in TA's decision-making process is of paramount importance in ensuring fair enforcement of the M&A provisions. However, members note that the Bill does not impose any requirement on TA to disclose his findings on investigation into M&A cases, whether completed or proposed. Despite the ongoing practice that TA usually publishes his decisions/statements on OFTA's website, members remain concerned about the absence of any statutory obligation on TA. In this respect, the Administration has agreed to introduce CSAs to the Bill to require TA to publish his opinions, decisions and directions issued in such manner as he considers appropriate. Members note that the timeframe for publishing such opinions, decisions and directions will be specified in the M&A Guidelines.

38. Under proposed sections 7P(2) and 7P(7) of the Bill, TA is required to give the carrier licensee concerned a reasonable opportunity to make representations and to consider such representations before forming an opinion on the competition effect of the M&A in question. Some members have pointed out that as an M&A in the telecommunications sector may have profound implications on other carrier licensees and may be of concern to other interested parties and the public, the opportunity to make representations should not be confined to the carrier licensee concerned only. In response to these concerns, the Administration has agreed to introduce the necessary CSAs to expand the scope of persons who may make representations to include all carrier licensees in the telecommunications market, as well as the acquirer of the carrier licensee concerned.

Appeal mechanism

39. A decision made or direction issued by TA under the Bill is subject to appeal to the Appeal Board set up under section 32M(1) of TO. On appeal, the Appeal Board is empowered to uphold, vary or quash TA's decisions or directions. Members note that TA's decisions and directions are also subject to judicial review.

40. Members have highlighted the importance of an effective appeal mechanism as a necessary check and balance on TA's powers. The

Administration will introduce CSAs to widen the scope of appeal subject matters to include all TA's decisions, opinions and directions after investigation. Regarding the industry's concern about whether a completed M&A has to be unwound or modified if an appeal against TA's decision has been lodged with the Appeal Board, the Administration has confirmed that TA's published opinions, directions or decisions will be suspended in operation once an appeal has been filed with the Appeal Board. The necessary CSAs will be introduced to this effect.

41. Under the Bill and the Administration's initial CSAs, the scope of persons who may appeal to the Appeal Board includes all carrier licensees and the acquirer of the relevant carrier licensee concerned. Subsequently, quite a number of telecommunications operators have proposed that the scope of persons should be limited to only the transacting parties of the M&A in question. Members understands that their major concern is the possibility of the lodging of frivolous or malicious appeals by competitors which may impede or delay an M&A transaction.

42. The Bills Committee notes the Administration's view that since the scope of the proposed provisions is only confined to carrier licensees, it would have no objection to the proposal of further narrowing the scope of persons who may appeal to only the transacting parties to an M&A if this can provide greater certainty to the carrier licensees without compromising the objectives of the Bill. In this regard, some members have questioned whether all carrier licensees have agreed to forego their right of appeal under these circumstances, and whether other carrier licensees and interested parties will be deprived of the opportunity to voice their views/objection and seek redress. As a related issue, members are also concerned whether TA will also take into account the views expressed by members of the public when assessing the effect of completed or proposed M&As on competition.

43. The Administration has advised that as it is aware, a number of licensees have indicated support for the proposal. In his capacity as the representative of the Information Technology constituency in the Legislative Council, Hon SIN Chung-kai has informed the Bills Committee that by and large, the telecommunications industry considers the proposal acceptable although many operators do not agree with the introduction of the Bill per se.

44. On legal remedy, the Bills Committee notes that TA's decisions, opinions and directions are subject to judicial review. Pursuant to the CSAs proposed by the Administration to proposed sections 7P(2) and 7P(7), TA is required to give all carrier licensees and any interested person a reasonable opportunity to make representations; and to consider such representations before forming any opinion, making any decision or issuing any direction in respect of completed or proposed M&As. As regards consultation by TA and how he exercises his powers, the Administration has advised that existing section 6A of TO requires, inter alia, that when forming an opinion or making a

decision under TO, TA is required to do so on reasonable grounds and having regard to relevant considerations. Moreover, under existing section 6C of TO, before TA performs any function or exercises any power under TO, he may consult persons who may be directly affected or members of the public.

45. Hon Albert CHAN is concerned that restricting the scope of persons who may lodge an appeal to the Appeal Board may not be conducive to safeguarding public interest. He therefore finds it difficult to accept the proposal. Given that there are proposed provisions requiring TA to consider representations, if any, from other carrier licensees which are not parties to the M&A and that there are existing provisions in TO relating to consultation requirements, Hon Howard YOUNG and Hon MA Fung-kwok do not see any serious problem in the proposed arrangement which may help enhance certainty of M&A transactions. The Bills Committee as a whole has not raised objection to the CSAs proposed by the Administration to this effect.

Factors for consideration in assessing M&As

Change in control over a carrier licensee

46. Under proposed sections 7P(1) and 7P(5) of the Bill, the changes in ownership and control subject to TA's review will include any change in

(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.

47. The Bills Committee is aware that proposed sections 7P(1)(b) and (c) and 7P(5)(b) and (c) of the Bill have caused grave concern to the industry because under the proposed provisions, any change in beneficial ownership or voting control of the voting shares of a carrier licensee may trigger regulatory review by TA. The industry considers the scope of the proposed sections too wide and have urged that they be deleted altogether so that TA will only be empowered to review those M&As which will result in a change in effective control of the carrier licensee concerned.

48. The Administration, on the other hand, has pointed out that the proposed sections are necessary to enable TA to look into an M&A where a person who already has more than 15% shareholding increases his shareholding such that his influence over the affairs of the licensee will be substantially increased. The Administration has reservation on simply deleting the proposed provisions as this may compromise the policy objectives of the Bill.

49. On what constitutes a change in the control exercised over a licensee, the Administration does not agree with Hon SIN Chung-kai's proposed CSAs to raise the threshold for a change in control from more than 15% to more than 30% of the voting shares in the licensee. In this connection, the Bills Committee notes the view of the industry that the threshold of 30% is consistent with the thresholds adopted in the Securities and Futures Commission (SFC)'s Code on Takeover and Share Repurchase and the Hong Kong Stock Exchange's threshold for notifying cross-ownership of competing businesses. Given the shareholding structure of most telecommunications operators in Hong Kong, some members have maintained their objection to the 15% threshold as this will catch a lot of competition-neutral mergers such as the introduction of strategic partners or investors; and will not be conducive to encouraging overseas investments in the local telecommunications industry. In fact, the industry has once requested that the threshold for triggering action by TA should be set at 40% to 50% broadly in line with the threshold adopted for defining control in a body corporate in connection with the licensing of 3G mobile services.

50. In response, the Administration considers it inappropriate to draw a comparison with the SFC's Code as the latter serves a different purpose of protecting the interest of minority shareholders of listed companies. It has also advised that 15% is already the highest threshold having regard to thresholds adopted in overseas jurisdictions. On the threshold adopted in the licensing exercise for 3G mobile services, the Administration has clarified that no entity is entitled to hold 15% or more shareholdings in more than one of the four 3G licensees.

51. In addition, a change in the control exercised over a carrier licensee will also arise under proposed section 7P(12) (a) if a person becomes a director or principal officer of the licensee. Most of the deputations have queried how a mere change in the director or principal officer should be regarded as a change in control over the carrier licensee. They hold the view that the Bill should only apply to genuine and effective changes in control. The Bills Committee has requested that a definition of "director" and "principal officer" should be provided for the sake of clarity. Having considered the concerns and the possible regulatory burden on the industry, the Administration will remove a change in director or principal officer from the scope of "a change in the control exercised over a carrier licensee" and will move CSAs to proposed section 7P(12) of the Bill accordingly.

52. After careful consideration of the concerns of members and the industry, the Administration has proposed to delete proposed sections 7P(1)(b) and (c) and 7P(5)(b) and (c), as well as to amend proposed section 7P(12) of the Bill to provide for the following:

(a) Instead of empowering TA to examine any change in beneficial ownership or voting control of the voting shares of

a carrier licensee, only three specific thresholds of more than 15%, more than 30% and more than 50% are specified. The three levels of thresholds represent the acquiring of "material influence", "effective control" and "majority control" respectively over the carrier licensee. TA will be empowered to review only those 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, TA should take into account the aggregate beneficial ownership or voting control of the person and its associated persons.

53. On concerns about the regulatory hurdle for new entrants to the telecommunications market, the Bills Committee notes that under the Administration's latest proposed CSAs, the 15% threshold (i.e. the first level of regulatory threshold) will not apply to new entrants. To benefit from this, the person must not have or concurrently acquire beneficial ownership or voting control of more than 5% of the voting shares in any one of the other carrier licensees.

The test of "substantially lessening competition" in a telecommunications market

54. Under proposed section 7P of the Bill, TA will take regulatory action if an M&A, whether completed or proposed, has, or is likely to have, the effect of substantially lessening competition in a telecommunications market.

55. In examining this criterion, query has been raised by deputations and some members of the Bills Committee that the competition test of "substantially lessening competition" is inconsistent with the existing competition test adopted under sections 7K to 7N of TO in dealing with anti-competitive practices and abuse of market position. In response, the Administration advises that the competition test for assessing M&As should be distinguished from that used for assessing anti-competitive behaviour e.g. cartel and abuse of dominant position. The proposed test of "substantially lessening competition" is modelled on comparable legislation in Australia, the United States and the United Kingdom. The Administration considers it appropriate to adopt the competition test commonly used in overseas jurisdictions to facilitate reference to international practices and jurisprudence.

56. The factors which TA must take into account in determining whether a completed or proposed M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market are of

important concern to deputations and the Bills Committee. The Bills Committee has considered the following factors proposed by the Administration for assessing the competition effect of an M&A :

(a) the height of barriers to entry to the telecommunications market;

(b) the level of market concentration in the telecommunications market;

(c) the degree of countervailing power in the telecommunications market;

(d) the likelihood that the M&A will result in the acquirer or the carrier licensee being able to significantly and substantially increase prices or profit margins;

(e) the dynamic characteristics of the telecommunications market, including growth, innovation and product differentiation;

(f) the likelihood that the M&A will result in the removal from the market of a vigorous and effective competitor;

(g) the extent to which effective competition remains or would remain in the telecommunications market after the M&A;

(h) the nature and extent of vertical integration in the telecommunications market;

(i) the actual and potential level of import competition in the telecommunications market; and

(j) the extent to which substitutes are available in a telecommunications market.

57. It was the Administration's original proposal to include the list of factors and related details in the M&A Guidelines. While the deputations have not expressed any objection to requiring TA to consider these factors when assessing the competition effect of an M&A, they have urged that these factors should be stipulated in the legislation instead.

58. Having considered the deputations' concerns, the Administration has agreed to add a Schedule to the Bill listing the above factors. Nevertheless, it has stressed that the list is not exhaustive and TA will not be prevented from considering any new and relevant factors in future. Regarding concerns about how the factors will be applied and quantified, the

Administration has advised that these will be specified in the M&A Guidelines and the industry will be consulted accordingly.

Public benefit

59. A number of deputations have submitted to the Bills Committee that apart from assessing the competition effect of an M&A, TA should also take into account other relevant benefits such as public interest and economy of scale or efficiencies achieved as a result of the M&A. The Consumer Council and an academic nevertheless caution that the benefit of efficiencies must be carefully assessed as it may not necessarily lead to enhanced consumer welfare/public benefit. In this connection, the Bills Committee reckons that one of the key proposals of the industry as contained in Hon SIN Chung-kai's proposed CSAs is to allow those M&As which have the effect of substantially lessening competition in a telecommunications market to proceed if they can bring about public benefit which outweighs any such anti-competitive effect.

60. Having examined the issue, the Administration has proposed additional CSAs to require TA to consider the public benefit 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 TA is satisfied that the benefit to the public will outweigh any detriment to the public arising from the lessened competition, TA may not issue a direction to intervene in the completed M&A; or may decide to give consent to a proposed M&A without issuing a direction. Members note that TA's decisions with regard to public benefit have to be published.

61. In this connection, the Bills Committee notes that the Consumer Council has indicated support in principle for the additional CSAs proposed by the Administration, provided that the legislative regime retains a power to make conditions on a licensee to ensure that the claimed consumer benefits do arise from an M&A which has, or is likely to have, the effect of substantially lessening competition.

62. Some members have taken on board the concern raised by the Consumer Council and sought the Administration's clarification on ways to ensure that the claimed consumer benefits arising from an M&A which has, or is likely to have, an anti-competitive effect will be realized. In response, the Administration refers to the relevant provisions in the Telecommunications Regulations relating to amendment of licences. It further advises that where TA considers it appropriate to bind the carrier licensee on the necessary measures to realize the claimed public benefit which will outweigh the anti-competitive effect of an M&A, then, TA may, with the consent of the licensee, amend the conditions under the latter's licence with a view to bringing about the claimed public benefit.

The M&A Guidelines

63. The Bills Committee has examined the key aspects of the M&A Guidelines, including the nature of the Guidelines, the relationship between the M&A Guidelines and the Bill, as well as the key proposals which will be included in the Guidelines.

Nature of the Guidelines

64. The Bills Committee notes that after enactment of the Bill and before processing any M&A cases, TA is required to formulate a set of criteria on the matters he will consider in determining whether a change or proposed change in ownership or control has, or is likely to have, the effect of "substantially lessening competition in a telecommunications market", and to issue guidelines in this respect. These guidelines are not subsidiary legislation. Before issuing the guidelines, TA must conduct such consultation as required under TO.

65. The Bills Committee attaches great importance to the M&A Guidelines as they will set out the factors which TA will take into consideration when assessing the competition effect of an M&A in the telecommunications market. The Bills Committee has conducted a special round of consultation on key proposals contained in the M&A Guidelines.

66. Most of the deputations urge that the M&A Guidelines should be in the form of subsidiary legislation subject to scrutiny by the Legislative Council. As such, there will be legislative oversight on how TA will enforce the M&A provisions in the Bill. In order that the legislature will have a greater monitoring role, the Bills Committee has asked the Administration to consider the feasibility of making the Guidelines subsidiary legislation. In this connection, the Administration has advised that the M&A Guidelines serve to provide practical guidance to the industry on the approach TA will take when assessing M&As. Because of the technical and detailed nature of the Guidelines and the need to cope with market conditions which may change from time to time, the Administration has considered that it is not appropriate to make the M&A Guidelines subsidiary legislation. According to the Administration, no other overseas jurisdictions have provided similar guidelines in the form of subsidiary legislation. It has also advised that where certain provisions in the M&A Guidelines are unreasonable or flawed, the Appeal Board is entitled not to take such provisions into account when considering an appeal against TA's decisions.

67. The Bills Committee has urged the Administration to make available the draft M&A Guidelines for consideration as the future operation of the Bill will largely depend on the guidelines. In this connection, the Administration has provided an Explanatory Note on the M&A Guidelines with an Annex setting out TA's preliminary views on the key matters that should be

addressed in the M&A Guidelines. The information is not the draft guidelines per se providing practical details, but provides the analytical framework and a list of key matters which will be covered in the future M&A Guidelines. Members in general consider that the paper lacks sufficient details and cannot serve as useful reference on how TA will exercise his powers. They also note the deputations' query that the Explanatory Note is too vague and lacks objective quantifiable yardsticks for the industry's guidance.

68. In response, the Administration stresses that the draft Guidelines can only be finalized for consultation after passage of the Bill. Upon enactment of the Bill, TA will be required under proposed section 6D(2A) to carry out consultation before issuing the M&A Guidelines under proposed section 6D(2)(aa). The Administration has assured members that the consultation will be a transparent process whereby the industry and the public may give their views.

Commencement procedure

69. Given the critical importance of the M&A Guidelines for the guidance of the industry, members of the Bills Committee are keen to ensure that the M &A Guidelines must be in place before the substantive provisions in the Bill regulating M&As commence operation. Otherwise, the industry will be placed in a disadvantaged position as they will have no knowledge of how any completed or proposed M&As will be assessed by TA.

70. To allay concerns about the M&A Guidelines, the Administration has agreed to introduce CSAs to amend clause 1 of the Bill to commence, upon gazettal of the Bill, only those sections empowering TA to conduct consultation on and issue guidelines. The other sections relating to the regulation of M&As (i.e. clauses 3,4,5,6 and 7 of the Bill) will only come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology when or after the M&A Guidelines have been issued. The Administration has also undertaken to notify the Panel on Information Technology and Broadcasting of the consultation and to brief the Panel on the draft Guidelines after consultation and before they are issued.

71. The Bills Committee notes that the relevant Commencement Notice is subsidiary legislation subject to negative vetting by the Legislative Council. As such, the Bills Committee has agreed that if necessary, Members may form a subcommittee to pursue with the Administration and deputations issues relating to the M&A Guidelines with a view to ensuring that relevant concerns are duly considered before the substantive provisions in the Bill relating to the regulation of M&As are allowed to come into operation. In this regard, the Bills Committee notes that it is the Administration's intention to bring these substantive provisions into operation before the end of this year.

Public views on M&As

72. Noting that the M&A Guidelines will set out the procedures for TA to gauge public views on the competition effect of M&As, some members have suggested that public hearings should be conducted for this purpose. The Administration however considers that this option may not be appropriate because some information on M&A matters is confidential and not suitable for public disclosure. The Administration has also informed members that apart from the Federal Communications Commission in the United States, it is not aware of any overseas regulators holding public hearings for such purposes.

Informal advice by TA on M&As

73. For proposed M&As for which the parties concerned would like to seek TA's prior consent on a voluntary basis, the Bill has provided a formal channel for seeking such consent. The Bills Committee has noted the industry's view that it will be useful if an arrangement is in place for TA to provide its advice and comments on a proposed M&A on an informal basis. Having considered the need for informal advice and overseas practice, the Administration has agreed to specify in TA's draft Guidelines procedures for an informal channel for parties concerned to seek TA's prior advice on a confidential and non-committal basis. The Bills Committee notes that any advice given under the informal channel will not be binding on TA, nor prejudice TA's duties and powers under the Bill.

Timelines for TA's regulatory action

74. On the various timeframes to be specified in the M&A Guidelines for TA's investigation, the Bills Committee has taken on board the industry's concern about the need for early decisions. After deliberation, the Administration has agreed to shorten the time limit for TA to conduct investigation into a completed M&A from four months to three months.

75. Although the Administration has not agreed to stipulate all the time limits for regulatory action by TA into the legislation, the Bills Committee notes that it has critically reviewed the various time-frames for processing M&As and has undertaken to include further reduced time limits into the M&A Guidelines which will be subject to consultation after enactment of the Bill. For example, regarding the processing of applications for TA's prior consent, the Administration will specify in the M&A Guidelines that TA is obliged to complete processing simple applications that do not involve detailed investigation and complex applications involving detailed investigation within one month and three months respectively.

76. The Administration has assured members that the proposed timelines represent the maximum duration. Depending on the nature and complexity of the case, the actual time taken may be shorter. It has also

informed members that the proposed timeframes are broadly comparable to those adopted in overseas jurisdictions.

77. Referring to proposed section 7P(11A), members are concerned about the need to specify a timeframe within which TA has to publish his opinions, directions and decisions made in respect of completed M&A cases or applications for prior consent. In response, the Administration has advised that in practice, there may be a short time gap of a few days between the date when TA forms/issues/makes an opinion/direction/decision and the date of their publication if it is necessary to consult the parties concerned about whether certain commercially sensitive data should be published. The Administration will set out in the M&A Guidelines the arrangements for the publication of TA's opinions, directions and decisions.

Definition of "market"

78. As TA will assess the competition effect of an M&A in "a telecommunications market", members consider it important to provide a clear definition of the relevant market against which TA's assessment will be made. The Bills Committee has also noted some deputations' view that the definition should take into account convergence between broadband service provided by fixed line, wireless and cable service operators. The Administration has said that it will take into consideration comments received when finalizing the draft Guidelines for consultation and has confirmed that convergence will be taken into consideration in the market definition analysis.

Recovery of costs incurred by TA

79. Under the Bill, TA is entitled to recover from the carrier licensee concerned the costs or expenses incurred in processing an application for prior consent to a proposed M&A. In response to some members' concern about the rationale for charging such fees, the Administration has explained that as a matter of principle, the carrier licensee or the acquirer should be required to pay for the costs incurred by TA in rendering its service to process an application for prior consent to a proposed M&A. Moreover, OFTA operates as a Trading Fund and is required to be funded by the income derived from the services it provides. The Administration has also highlighted that while fees are charged in connection with an application for prior consent, TA will not charge a fee for providing informal advice and when investigating into a completed M&A on his own initiative. The latter activities are regarded as TA's ongoing enforcement functions the costs of which have been factored into the licence fees. For the time being, OFTA will make use of the existing resources in its Competition Affairs Branch to take up the work arising from enactment of the Bill.

80. The Bills Committee notes the industry's grave reservation about the appropriateness for TA to charge fees and their strong request that a fixed

fee or a capbe set on the costs and expenses recoverable by TA so as to provide for greater certainty. Having examined the concerns, the Administration has advised that it can accept a cap at $200,000 per application. Having regard to TA's operational experience in the levy of fees for interconnection cases, the Administration envisages that the costs for processing M&A cases would be around HK$50,000 and HK$110,000 per case for minor cases and major cases respectively. The maximum amount of $200,000 is therefore considered adequate.

81. In considering the merits or otherwise of imposing a cap on the fees charged, some members are concerned that where the costs for processing a special application exceed the maximum amount of $200,000, TA will have to subsidize the service provided. In response, the Administration has advised that it will keep in view the costs incurred in processing applications for TA's prior consent to proposed M&As. Where the trend is indicative that $200,000 may not be sufficient to cover the costs and expenses incurred, the Administration will seek to amend the maximum amount by order published in the Gazette. Members note that pursuant to the newly proposed section 7P(11C), the aforesaid order is subsidiary legislation subject to negative vetting by the Legislative Council.

82. On some members' enquiry as to whether carrier licensees would be inclined to pay a fee for seeking TA's prior consent to a proposed M&A, the Administration has recapped that under the *ex post* regulatory regime proposed under the Bill, the parties concerned are not obliged to seek TA's prior consent before proceeding with an M&A, as opposed to an *ex ante* regime where the prior consent of the regulator is required. However, the Bill also provides for an alternative option whereby a carrier licensee may seek TA's prior consent on a voluntary basis before proceeding with a transaction. This will enable the licensee to obtain certainty rather than risk being sanctioned subsequently if the M&A is found to have an anti-competitive effect.

Committee Stage Amendments

83. Most of the CSAs have been proposed by the Administration in response to concerns raised by members and deputations. The Bills Committee will not move any CSAs in its name.

Consultation with the House Committee

84. The House Committee was consulted on 6 and 27 June 2003 and supported the resumption of the Second Reading debate of the Bill on 9 July 2003.

Council Business Division 1
Legislative Council Secretariat
4 July 2003

Appendix I

Bills Committee on
Telecommunications (Amendment) Bill 2002

Membership list

Chairman	Hon SIN Chung-kai
Members	Dr Hon David CHU Yu-lin, JP
	Dr Hon Eric LI Ka-cheung, GBS, JP
	Hon Fred LI Wah-ming, JP
	Hon CHAN Kwok-keung, JP
	Hon Howard YOUNG, SBS, 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
	(Total : 11 Members)
Clerk	Miss Polly YEUNG
Legal Adviser	Miss Connie FUNG
Date	2 July 2003

Appendix II

Organizations/individuals which/who have submitted views to the Bills Committee on Telecommunications (Amendment) Bill 2002

Telecommunications operators

1. Hong Kong CSL Limited
2. Hutchison Global Communications Limited
3. Hutchison Telephone Company Limited
4. Hutchison 3G HK Limited
5. New World Telecommunications Limited
6. PCCW Limited
7. Smartone Mobile Communications Limited
8. SUNDAY
9. Telstra Corporation Limited

Others

10. Consumer Council
11. Hong Kong Telecommunications Users Group
12. The Law Society of Hong Kong
13. Professor John URE of the University of Hong Kong
14. Professor XU Yan of the Hong Kong University of Science and Technology
15. Mr YEUNG Wai-sing, Eastern District Council Member

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

Major Issue	Administration's original Proposal	Proposed CSAs by Hon SIN Chung-kai	Additional CSAs proposed by the Administration
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	(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	(a) Heading of the proposed section 7P: Authority may regulate changes in relation to carrier licensees (b) Same as original proposal.

	authority for reviewing M&As.	telecommunications market, TA should refer the case to the Appeal Board for investigation and determination. (c) Proposed section 32OA prescribes the procedures and powers of Appeal Board under section 7P of TO. (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. (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.	
3. Time limits in reviewing M&As	(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. (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	(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. (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. (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	(a) An investigation may only be commenced within 2 weeks after the TA knows, or ought reasonably to have known (whichever is the earlier) that the change has occurred. (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.

	analysis is 3 months.	investigation is completed. (d) An investigation by the Appeal Board shall be 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. (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.	
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 (a) a person becomes the beneficial owner of more than 15% of the voting shares in the licensee; (b) a person becomes a voting controller of more than 15% of the voting shares in the licensee; or (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.	There is a change in the control exercised over a carrier licensee if (a) a person becomes the beneficial owner of more than 30% of the voting shares in the licensee; (b) a person becomes a voting controller of more than 30% of the voting shares in the licensee; (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; (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; (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; (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 (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.	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, 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. *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 - 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 references to "associated corporation" in that definition shall be construed as references to 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	Nil	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	(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

		likely to result from the change or the proposed change.	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.
9. Persons who may appeal to the Appeal Board	(a) Any carrier licensee aggrieved by an opinion, direction or decision of the TA 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). (b) The acquirer of the relevant carrier licensee concerned.	Nil	(a) Any carrier licensee aggrieved by an opinion, direction or decision of the TA may appeal to the Appeal Board against the opinion, direction or decision (but the licensee may so appeal only if the opinion, direction or decision was formed, issued or made in respect of the licensee). (b) Same as original proposal.

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
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