

C019-E

A Bill to Amend the Telecommunications Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice published in the Gazette.

2. Guidelines

Section 6D of the Telecommunications Ordinance (Cap. 106) is amended---

(a) in subsection (2), by adding---

"(aa) specifying the matters that he shall take into account before forming an opinion under section 7P(1) or (6)(a) or (b);";

(b) by adding---

"(2A) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2)(aa), carry out such consultation as is reasonable in all the circumstances of the case with persons who may be affected by the operation of section 7P.".

3. Section added

The following is added---

"7P. Power of Authority to regulate changes in control exercised over carrier licensees, etc.

(1) Where the Authority is of the opinion that any change occurring after the commencement of this section 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,

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 any such anti-competitive effect.

(2) The Authority shall, before forming an opinion and issuing a direction under subsection (1)---

(a) give the carrier licensee concerned a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made by the licensee under paragraph (a).

(3) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (1), the action may include the procuring of modifications to---

- (a) the control exercised over the licensee;
- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(4) A carrier licensee served with a notice under subsection (1) shall comply with the direction in the notice.

(5) Where there is a proposed 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,
- the licensee may apply in writing to the Authority for consent to the proposed change.

(6) Where the Authority, on receiving an application made under subsection (5)---

- (a) is of the opinion that the proposed change would not have, or not be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to give consent; or
- (b) is of the opinion that the proposed change would have, or be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to---

(i) refuse to give consent; or

(ii) give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate any such anti-competitive effect.

(7) The Authority shall, before forming an opinion under subsection (6)(b) and (if applicable) issuing a direction under subsection (6)(b)(ii)---

- (a) give the carrier licensee concerned a reasonable opportunity to make representations to the Authority; and
- (b) consider the representations, if any, made by the licensee under paragraph (a).

(8) The Authority shall, by notice in writing served on the carrier licensee concerned, inform the licensee of---

- (a) the decision made under subsection (6)(a) or (b)(i) or (ii);
- (b) in the case of subsection (6)(b)(ii), the action that the Authority directs the licensee to take.

(9) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (6)(b)(ii), the action may include the procuring of modifications to---

- (a) the control exercised over the licensee;

- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(10) Where a proposed change referred to in subsection (5) takes effect--

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- (a) pursuant to the consent given by the Authority under subsection (6)(a); or
 - (b) pursuant to the consent given, and in compliance with the direction issued, by the Authority under subsection (6)(b)(ii),
- the Authority shall not issue a direction in respect of the change under subsection (1).

(11) The amount of any costs or expenses incurred by the Authority---

- (a) in making a decision under subsection (6)(a) or (b)(i) or (ii); 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 concerned.

(12) For the purposes of subsections (1)(a) and (5)(a), there is a change in the control exercised over a carrier licensee if---

- (a) a person becomes a director or principal officer of the licensee;
- (b) a person becomes the beneficial owner of more than 15% of the voting shares in the licensee;
- (c) a person becomes a voting controller of more than 15% of the voting shares in the licensee; or
- (d) 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.

(13) In this section---

"voting control" (表決控制權) means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a carrier licensee---

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a chargor of voting shares in a carrier licensee unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor

under the charge of an intention to exercise the right to vote attaching to such voting shares;

"voting controller" (表決控權人) means a person who either alone or with one or more other persons holds voting control;

"voting shares" (有表決權股份) means shares in the carrier licensee which entitle the registered owner of such shares to vote at meetings of shareholders of the licensee.

(14) For the purposes of this section, the fact that the particular voting share or shares in relation to which a person is a voting controller cannot be identified is immaterial."

4. Part heading amended

The heading to Part VC is amended by repealing "and 7N" and substituting ", 7N and 7P".

5. Interpretation

Section 32L is amended---

(a) in the definition of "appeal", by adding "or (1A)" after "32N(1)";

(b) by repealing the definition of "appeal subject matter" and substituting---

""appeal subject matter" (標的事項)---

(a) in relation to an appeal under section 32N(1), means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1)---

(i) to the extent to which it relates to section 7K, 7L, 7M or 7N or any licence condition relating to any such section; and

(ii) which is the subject of the appeal;

(b) in relation to an appeal under section 32N(1A), means a direction of the Authority issued under section 7P(1) or a decision of the Authority made under section 7P(6)(a) or (b)(i) or (ii);".

6. Appeals to Appeal Board

Section 32N is amended by adding---

"(1A) Any carrier licensee aggrieved by a direction of the Authority issued under section 7P(1) or a decision of the Authority made under section 7P(6)(a) or (b)(i) or (ii) may appeal to the Appeal Board against the direction or decision (and whether or not the direction or decision was issued or made in respect of the licensee)."

7. Procedure and powers of Appeal Board, etc.

Section 320(2) is amended by repealing the full stop and substituting ", or before the direction or decision referred to in section 32N(1A) was issued or made."

Explanatory Memorandum

This Bill amends the Telecommunications Ordinance (Cap. 106) ("the Ordinance")---

- (a) to empower the Telecommunications Authority ("the Authority") to regulate any change or proposed change in the control exercised over, or in the beneficial ownership or control of the voting shares, in a carrier licensee which, in the opinion of the Authority, has, or is likely to have, the effect of substantially lessening competition in a telecommunications market (clause 3, new section 7P);
- (b) to enable a carrier licensee who is aggrieved by a direction issued or decision made by the Authority in the exercise of such power to appeal to the Telecommunications (Competition Provisions) Appeal Board against the direction or decision (clause 6, new section 32N(1A));
- (c) to require the Authority to---
 - (i) issue guidelines on the matters that he must take into account before he forms the opinion mentioned in subparagraph (a) above (clause 2(a), new section 6D(2)(aa));
 - (ii) carry out consultation before such guidelines are issued (clause 2(b), new section 6D(2A)); and
- (d) to make consequential and related amendments to the heading to Part VC and sections 32L and 32O(2) of the Ordinance (clauses 4, 5 and 7).