

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 17 May 2002**

**Legal Service Division Report on
Telecommunications (Amendment) Bill 2002**

I. SUMMARY

- 1. Object of the Bill**

To amend the Telecommunications Ordinance (Cap. 106) to provide a clear and comprehensive regulatory framework to regulate mergers and acquisitions in the telecommunications market with a view to promoting fair and effective competition in the market.
- 2. Comments**

 - (a) The Bill proposes to confer on the Telecommunications Authority a specific regulatory power to regulate any change or proposed change in the ownership or control over a carrier licensee which, in the opinion of TA, has, or is likely to have, anti-competitive effect.
 - (b) A number of procedural safeguards are proposed to ensure the fair exercise of the proposed statutory power.
 - (c) Non-compliance with the provisions of the Bill will render a carrier licensee liable to sanctions including financial penalties, suspension or cancellation of licence.
- 3. Public Consultation**

The public and the telecommunications industry were consulted on the proposal in April to June 2001.
- 4. Consultation with LegCo Panel(s)/Committee(s)**

The policy aspects of the Bill were discussed at the meetings of the Panel on Information Technology and Broadcasting on 28 May 2001 and 13 May 2002.
- 5. Conclusion**

As the Bill involves some controversial issues relating to the regulation of merger and acquisition activities in the telecommunications industry, a Bills Committee may be formed to study the Bill in detail.

II. REPORT

Object of the Bill

To amend the Telecommunications Ordinance (Cap. 106) ("the Ordinance") to provide a clear and comprehensive regulatory framework to regulate mergers and acquisitions in the telecommunications market with a view to promoting fair and effective competition in the market.

LegCo Brief Reference

2. ITBB(CR)7/13/14(02) Pt. 3 dated 3 May 2002 issued by the Information Technology and Broadcasting Bureau.

Date of First Reading

3. 15 May 2002.

Comments

4. At present, regulation of mergers and acquisitions in the telecommunications market is primarily done by the Telecommunications Authority ("TA") through licence conditions, where there is a transfer of licence, or under some licences, transfer of the shares of the licensee. However, where the merger and acquisition activities take place at the holding company level which do not involve transfer of licences or transfer of shares in the licensee, TA's prior consent would not be required with regard to such activities.

5. To ensure that the level of competition in the telecommunications market should not be adversely affected by merger and acquisition activities in the market, the Bill proposes a clear and comprehensive statutory regulatory framework to regulate these activities. The regulatory framework is proposed to apply initially to carrier licensees who are fixed and mobile telecommunications network operators. According to the Administration, TA may consider extending the proposed regulatory framework to non-carrier licensees if there is concern about possible over-concentration of market power in the provision of public telecommunications services as a result of merger and acquisition activities in the telecommunications markets involving non-carrier licensees.

6. The Bill proposes to confer on TA the following regulatory powers to regulate mergers and acquisitions involving carrier licensees:

- (a) Where TA is of the opinion that a 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, he may direct the licensee to take such action as he considers necessary to eliminate any such anti-competitive effect;

- (b) in the case of a proposed change in ownership or control in a carrier licensee, TA may, on the application of the licensee, determine the application, taking into account the effect of the proposed change on competition in a telecommunications market. TA may give consent, refuse to give consent, or give consent subject to the direction that the carrier licensee takes such action that TA considers necessary to eliminate any anti-competitive effect.

7. A number of procedural safeguards are proposed under the Bill to ensure that TA will exercise the proposed new power fairly. These safeguards are :

- (a) to require TA to issue guidelines on the matters that he must take into account before he forms an opinion on whether a change or proposed change in the ownership or control over a carrier licensee has, or is likely to have, the effect of substantially lessening competition;
- (b) to require TA to carry out consultation with the affected persons before issuing the relevant guidelines;
- (c) to require TA to give the carrier licensee concerned a reasonable opportunity to make representations before forming an opinion and issuing a direction in the exercise of the proposed new power; and
- (d) to enable a carrier licensee who is aggrieved by a direction issued or decision made by TA in the exercise of the new power to appeal to the Telecommunications (Competition Provisions) Appeal Board against the direction or decision.

8. If a carrier licensee fails to comply with a direction issued by TA requiring the carrier licensee to take action to eliminate any anti-competitive effect, the sanctions against the licensee concerned will be those currently available under the Ordinance against non-compliance with the provisions of the Ordinance. These sanctions include financial penalties, suspension and cancellation of licence.

9. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice published in the Gazette.

Public Consultation

10. According to the LegCo Brief, the public and the industry were consulted in April to June 2001 on the proposal. A total of 17 submissions were received during the consultation. In general, the telecommunications user groups such as the Hong Kong Information Technology Federation and the Consumer Council support the proposal. While most submissions from the industry support the policy objectives of the proposal, some industry submissions oppose the proposal on the grounds that the regulation of merger and acquisition activities should be universal

and not industry-specific, or that the regulatory power should be exercised by a competition authority.

Consultation with LegCo Panel(s)/Committee(s)

11. When consulted on the legislative proposals on 28 May 2001 and 13 May 2002, the Panel on Information Technology and Broadcasting noted the Government's current policy to adopt sector-specific measures to promote competition. Some Panel members were gravely concerned about the wide scope of powers proposed to be conferred on TA and asked whether the powers to regulate merger and acquisition activities should be vested with an independent body instead. Members also sought further information on the guidelines to be issued by TA since those guidelines would provide the basis on how TA would assess the potential effect of the merger or acquisition on market competition. They also stressed the need to consult the industry on the guidelines. Some members enquired about the views collected during public consultation on the subject, as well as the powers of overseas regulatory authorities in imposing sanctions on merger and acquisition activities. As the Bill involved a number of controversial issues, the Panel in general considered that a Bills Committee should be formed to study the Bill.

Conclusion

12. The Bill contains policy aspects which various sectors of the community have concerns. Members of the Panel on Information Technology and Broadcasting also generally consider that a Bills Committee should be formed. It is recommended that a Bills Committee be formed.

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