

**Extract from the minutes of
Information Technology and Broadcasting Panel meeting
on 28 May 2001**

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III Regulation of acquisitions and mergers in the telecommunications market

(LC Paper No. CB(1)1332/00-01(02))

32. The Senior Assistant Director of Telecommunications gave a powerpoint presentation on the subject. (The presentation notes were tabled at the meeting and issued after the meeting vide LC Paper No. CB(1)1376/00-01(02).)

33. Mr Howard YOUNG queried whether it would be more desirable to regulate acquisition and merger activities in the telecommunications market through the licensing regime instead of enacting legislation. He pointed out that from the viewpoint of consumers, the main concern was whether their interest would be adversely affected as a result of the domination of a telecommunications market by a licensee. As there were already provisions in the existing Telecommunications Ordinance (Cap. 106) dealing with market domination and anti-competitive practices, he queried the necessity of introducing the proposed regulation. He was concerned that enacting legislation to confer additional powers on the Telecommunications Authority (TA) to regulate business transactions in the telecommunications sector might result in over-regulation and discourage investment.

34. In response, the Director-General of Telecommunications (DG/Tel) advised that the main policy concern was that acquisitions and mergers in the telecommunications market should not adversely affect the level of competition in the market. While some existing licences contained provisions on the transfer of ownership or control in a licensee, the provisions varied in terms of the scope of TA's regulatory power over different types of activities affecting the ownership or control in a licensee. There was no comprehensive requirement for the TA's consent to be obtained for changes to the ownership or control of a licensee unless transfer of the licence, or under some licences, transfer of the shares of the licensee, was involved. Moreover, the existing licences did not generally contain provisions in relation to acquisition and merger activities taking place at the level of the holding company. The proposed legislation sought to provide a transparent and efficient regulatory regime to govern merger and acquisition activities in the telecommunications sector. The current plan was to apply the proposed Regulation only to carrier licensees (i.e. fixed and mobile network operators) initially, as for the time being, TA was not aware of any current market factors such as high barriers to

entry which might cause concern in telecommunications markets involving non-carrier licensees.

35. On the concern about the effect of the proposed legislation on investment in the local telecommunications market, DG/Tel advised that regulating acquisition and merger activities through licence conditions only might lack transparency and certainty as TA had the power to determine licence conditions. The enactment of legislation would ensure transparency and certainty and the legislative process would provide an open forum for public discussion of the issues concerned. The Administration therefore considered that the proposed legislation would encourage rather than discourage investment in the local telecommunications market. DG/Tel added that to further ensure openness and transparency, TA would issue guidelines to set out how he would consider proposals for mergers and acquisitions and a draft set of guidelines had been published as an Annex to the relevant consultation paper published on 17 April 2001.

36. Mr Kenneth TING enquired about the arrangements for existing licensees upon enactment of the proposed legislation and queried whether the proposed Regulation would involve a change of goal post. In response, DG/Tel confirmed that upon enactment of the proposed Regulation, the new requirements on acquisition and merger activities would apply across-the-board to all licensees irrespective of the existing licence conditions. He explained that most of the existing carrier licences contained provisions governing the transfer of control or ownership of a licensee, but the scope and types of acquisition and merger activities that were subject to TA's regulation were not expressly stipulated. As the proposed Regulation would not involve changes to the current regulatory objectives, its enactment would not constitute a change of goal post.

37. Mr YEUNG Yiu-chung enquired whether the Administration had considered alternative approaches such as issuing additional licences to promote competition in the telecommunications market. In reply, DG/Tel advised that while bringing in additional operators was an effective way of promoting competition, it might not be feasible to issue additional licences for various reasons such as limited radio frequency spectrum.

38. Miss Emily LAU concurred with the need to promulgate the regulatory requirements in respect of acquisition and merger activities in an open and transparent manner. In reply to her enquiry on how the proposed regulatory framework would compare with regulatory regimes overseas, DG/Tel advised that Australia, the United Kingdom, the United States and many European countries adopted the same principles for the regulation of acquisition and merger activities in their telecommunications markets and thus, overseas investors were familiar with these principles.

39. Noting that according to the proposed Regulation, TA would take into account a number of factors apart from market share to decide whether an acquisition and merger transaction should be approved, Mr Howard YOUNG expressed concern that the proposed Regulation would confer too much discretion on TA. Miss Emily LAU echoed Mr YOUNG's concern and questioned whether the draft guidelines would provide clear guidance for TA as well as licensees in this regard.

40. In response, DG/Tel referred members to section 3 of the draft guidelines which set out the analytical framework and the major considerations for TA to consider proposals for acquisitions and mergers. He assured members that TA would make his decision on the basis of very clear principles and in a very systematic manner as outlined in the flow chart attached to the draft guidelines.

41. The Chairman opined that the Administration should conduct thorough consultation before finalizing its proposals. He also asked the Administration to confirm in due course the status of the aforesaid guidelines in relation to the proposed legislation and whether TA's decisions on acquisitions and mergers would be subject to judicial review. As the proposed legislation involved some controversial issues, Miss Emily LAU suggested and the Administration agreed to report to the Panel the results of the consultation before introducing the proposed legislation to the Legislative Council.

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42. There being no other business, the meeting ended at 4:30 pm.

Legislative Council Secretariat
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