

立法會

Legislative Council

LC Paper No. CB(1)2474/03-04

(These minutes have been seen by
the Administration and cleared by
the Chairman)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

**Minutes of special meeting
held on Tuesday, 6 July 2004, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Kenneth TING Woo-shou, SBS, JP (Chairman)
Hon NG Leung-sing, SBS, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Henry WU King-cheong, BBS, JP
Hon MA Fung-kwok, SBS, JP

Non-Panel Members : Hon Albert HO Chun-yan
attending Hon James TO Kun-sun

Members absent : Hon HUI Cheung-ching, SBS, JP (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon CHEUNG Man-kwong
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP

Public officers : **Item I**
attending
Mr Francis HO, JP
Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mrs Sarah KWOK, JP
Deputy Commissioner for Innovation and
Technology

Attendance by invitation : **Hong Kong Science and Technology Parks Corporation**

Mr Victor LO, GBS, JP
Chairman of the Board of Directors

Mr TAM Chung-ding, MBE, JP
Chief Executive Officer

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Advisor 2

Mr TSANG Siu-cheung
Senior Council Secretary (1)7

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Issues related to Television Broadcasts Limited's acquisition of a site in the Tseung Kwan O Industrial Estate

(LC Paper No. CB(1)2302/03-04(01) -- Information paper provided by the Administration

LC Paper No. CB(1)2165/03-04(01) -- Letter dated 10 June 2004 from Hon SIN Chung-kai addressed to the Panel Chairman)

The Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT) briefed members on the issues related to the acquisition of a site in the Tseung Kwan O Industrial Estate (TKOIE) by Television Broadcasts Limited (TVB). Details were set out in the information paper provided by the Administration.

Negotiations over land premium

2. Referring to paragraph 4(b) of the paper which stated that the Hong Kong Industrial Estates Corporation (HKIEC) started to negotiate land premium with TVB on a commercial basis in accordance with HKIEC's established procedures after receiving TVB's proposal on land premium in November 1998, Mr Albert HO queried how HKIEC had negotiated with TVB according to the "published

standard land premium" as stated in paragraph 8 of the paper while ensuring that its application would be fairly handled. Mr HO was particularly concerned how HKIEC could strike a balance between consideration of applications for land grant according to the standard premium and negotiation with individual applicants over the land premium.

Admin/
HKSTPC

3. As regards the approval given by HKIEC on 28 January 1999 to TVB's application for a site at the then prevailing standard land premium and HKIEC's agreement that TVB could adopt a revised land premium if the strategic review of the operation and future role of HKIEC led to a reduction in the standard land premium, Mr HO was concerned whether HKIEC had informed other applicants for land grant of the above arrangements. Mr HO further enquired whether contractual agreement had been entered into between HKIEC and TVB on the above arrangements and if so, whether the relevant documents could be provided for Members' reference.

4. PSCIT explained that generally speaking, the land premium for industrial estate (IE) sites was not negotiable. However, applicants could discuss with HKIEC about the terms of repayment, such as interest rate, in respect of the acquisition of a site. PSCIT stressed that in the course of negotiation, HKIEC would consider each application on its own merits in accordance with the principles of commercial operation, and take into account factors such as the type of industry involved, the financial status of the company concerned, etc before making a decision on the repayment terms. In general, HKIEC would exercise flexibility when considering the requests made by individual applicants for land grant.

5. The Chief Executive Officer of the Hong Kong Science and Technology Parks Corporation (CEO/HKSTPC) said that as far as he understood, it was HKIEC's policy in principle not to negotiate with individual applicants for land grant on the land premium for IE sites. However, due to the economic downturn in 1998, the demand for industrial land in IEs was far from satisfactory. For example, between January and October 1998, only one site had been granted while as many as seven companies had withdrawn their applications. As such, HKIEC had attached great importance to TVB's application for land grant. In fact, at that time, TVB's application was a major one in terms of land requirement and investment involved. CEO/HKSTPC pointed out that under the prevailing economic situation, HKIEC had decided on 7 December 1998 to reduce the land premium for the three IEs by 15% notwithstanding that HKIEC's strategic review was still underway. Nevertheless, HKIEC was also aware that such move might not be attractive enough for companies to develop their business in IEs. Against this background and after deliberation, the HKIEC Board approved TVB's application on 28 January 1999 and agreed that TVB could adopt a reduced land premium if HKIEC's strategic review led to a reduction in standard land premium. Regarding the terms of repayment, CEO/HKSTPC advised that the CEO of HKIEC was authorized to negotiate with the applicants for land grant over such matters. According to its agreement with HKIEC, TVB agreed that the interest

payable for the acquisition of the TKOIE site would be calculated at a rate of 6.75% per annum on the balance of the land premium less the deposit.

6. Mr Albert HO enquired whether HKIEC had concluded any formal agreement with TVB stipulating that the latter could adopt a revised land premium if HKIEC's strategic review led to a reduction in standard land premium. CEO/HKSTPC confirmed that HKIEC had issued an "offer to lease" document concerning the above arrangement to TVB and the offer was accepted by the latter. CEO/HKSTPC stressed that HKIEC had not adjusted the land premium at TVB's request after the land grant.

HKSTPC

7. Mr Albert HO requested HKSTPC to provide for Members' reference the "offer to lease" document issued by HKIEC to TVB concerning the land premium agreed with the latter in respect of the acquisition of a site in TKOIE. The Chairman of the Board of Directors of HKSTPC (the Chairman of HKSTPCB) advised that since the "offer to lease" document was a commercial contract, HKSTPC had to seek TVB's consent before the document could be provided for Members' reference.

Flexibility in processing applications for land grant and the principle of fairness

8. Mr Albert HO opined that allowing TVB to adopt a reduced standard land premium following HKIEC's strategic review was in fact no different from granting a reduction in land premium. Mr HO further said that as a statutory organization, HKIEC should uphold the principle of fairness. As such, he was concerned whether HKIEC had informed other companies which were interested in acquiring IE sites of the favourable terms granted to TVB. According to his understanding, some other companies had also made enquiries to HKIEC about the possibility of reducing the land premium for IE sites.

9. PSCIT pointed out that TVB's application had been approved purely in consideration of its investment scale as well as the macro economic and investment climate at that time. It was a commercial decision which did not involve consideration of any preferential treatment. As such, HKIEC would not take this special case as a precedent and grant the same terms to other applicants. Mr Albert HO opined that as HKIEC had exercised flexibility in accepting TVB's proposal on land premium and gave retrospective effect to the reduction in land premium following HKIEC's strategic review, it was inevitable for other companies to consider the arrangement unfair.

10. The Chairman of HKSTPCB pointed out that as far as he understood, even if HKIEC had not accepted TVB's proposal on land premium in respect of the acquisition of the TKOIE site, TVB would still proceed with its investment project for the purpose of business expansion. Hence, HKIEC considered it necessary to exercise flexibility in handling the applicant's request as far as practicable, having regard that companies which were unable to develop their business in IEs might re-locate their investment to places outside Hong Kong. The arrangement was also in line with HKIEC's policy at that time. In addition,

the Chairman of HKSTPCB advised that the current HKSTPC would also exercise discretion where necessary to adjust details of the terms for individual companies applying for admission to the Hong Kong Science and Technology Parks and IEs, having regard to the merits of individual cases and in accordance with the principles of commercial operation and the prescribed levels of rental and land premium.

11. On whether HKIEC had informed other companies which were interested in acquiring TKOIE sites of its agreed arrangement with TVB, the Chairman of HKSTPCB pointed out that HKIEC had made it clear to all applicants that they might consider submitting their applications after the land premium of IEs were finalized upon the completion of HKIEC's strategic review. CEO/HKSTPC supplemented that in the course of processing TVB's application for land grant, HKIEC had received applications from five companies. One of these companies also applied for a site in TKOIE of a relatively smaller area amounting to about 8% of that applied by TVB. Although the company concerned was aware that HKIEC's strategic review was in progress, it still decided to submit an application for land grant prior to the completion of the review. However, unlike TVB, the company had not taken the initiative to request HKIEC for a reduction in land premium .

12. Mr SIN Chung-kai opined that HKIEC would have abided by the principle of fairness if it had also informed other applicants of its arrangement with TVB on land premium and applied the same terms to other applicants. On the contrary, if HKIEC had treated TVB's request as a special case, it would inevitably be regarded as a favour to TVB. Given that the HKIEC Board could exercise discretion in considering applications for land grant in respect of major investment projects, Mr SIN found it necessary for HKIEC to formulate and promulgate the specific criteria for consideration, such as the minimum area of land to be acquired etc. In this connection, the Chairman of HKSTPCB stressed that HKIEC had not given any preferential treatment to TVB in processing its application for land grant.

13. Although HKIEC had notified all applicants that they could submit their applications for land grant upon the completion of HKIEC's strategic review and the release of its findings, Mr SIN Chung-kai considered it unfair that HKIEC had not taken the initiative to inform other applicants of its agreement with TVB for their reference. While appreciating Mr SIN's concern, PSCIT reiterated that HKIEC had handled the matter based on commercial considerations. As such, the concern currently being raised by Mr SIN had not been taken into account there and then.

14. In this connection, the Chairman and Mr Henry WU pointed out that as far as the principles of commercial operation were concerned, it was neither a common business practice nor an appropriate course of action for HKIEC to take the initiative to inform all applicants that HKIEC would consider their requests for land premium reduction as in the case of TVB.

15. Mr Albert HO said that he did not object to HKIEC's flexibility in handling applications for land grant and agreed that the Administration should take appropriate measures to attract inward investments. His main concern was how HKIEC had exercised its discretion when considering individual applications. Mr HO urged that a rule-based approach be adopted by drawing up explicit criteria for consideration of applications for land grant in order to achieve equity.

16. PSCIT responded that as far as the principles of commercial operation were concerned, it might not be desirable to circumscribe the scope of discretionary powers which could be exercised by HKIEC. In particular, other applicants for land grants would refer to the precedent case and expect that they could put up similar requests when the land premium was reduced at a later date. This would give rise to disputes. For large-scale investment projects, PSCIT opined that the exercise of discretionary powers was inevitable in the process of scrutinizing applications for land grant as it was not practicable to rely solely on quantitative criteria. Taking Singapore as an example, when consideration had to be made on whether any land should be granted for an investment project, the authorities would also explore whether tax incentives, cash subsidies, etc should be offered to the applicants. In the face of challenges from neighbouring territories such as Malaysia, Thailand and the Mainland, PSCIT opined that standardizing the criteria for land grant would to a certain extent affect the competitiveness of Hong Kong's IEs in attracting foreign investments.

17. Regarding the case of a foreign semi-conductor company which had ultimately located its production base in Shanghai instead of in Hong Kong several years ago, the Chairman of HKSTPCB pointed out that apart from the proposals on the area and land premium of the IE site to be acquired, the company had also requested for tax incentives and other concessionary terms in respect of the investment project. Some of these requests were beyond HKIEC's jurisdiction.

18. While agreeing that it was necessary for HKIEC to handle certain investment projects on an exceptional basis, Mr SIN Chung-kai reiterated that the principle of fairness should be upheld in processing the applications for land grant in IEs. The Chairman of HKSTPCB noted Mr SIN's view but pointed out that due to the diversity of requests put up by individual applicants, HKSTPCB would in future process the applications for land grant in IEs in a flexible and equitable manner having regard to the actual circumstances.

Strategic review

19. The Chairman asked the Administration to clarify whether the HKIEC's strategic review conducted by the consultant in 1998 had been commissioned in response to TVB's proposal on the land premium for the TKOIE site. The Chairman of HKSTPCB pointed out that the strategic review was conducted for the purpose of re-evaluating the land premium for IEs in a comprehensive manner given the then low take-up rate and examining whether IEs in Hong

Kong were still attractive to foreign investors as compared to those in neighbouring regions. The review was therefore not conducted in response to the request made by any individual company. Mr Henry WU enquired whether HKSTPC would conduct another strategic review similar to the previous one if the current demand for land in IEs was unsatisfactory.

20. The Chairman of HKSTPCB opined that the current economic and investment environment was very different from the past. As the demand for land in IEs and the land premium were stable at present, the Board of HKSTPC was not aware of any pressing need to conduct an extensive review on the land premium of IEs. The Chairman of HKSTPCB reiterated that upon receipt of an application for land grant in relation to major investment projects, HKSTPC would consider and try its best to accommodate the needs of the investors concerned in order to secure more investment opportunities for Hong Kong.

The Administration's handling of the case of TVB's acquisition of land

21. Expressing concern about how the Chief Executive (CE) had handled the two letters issued by TVB as mentioned in paragraph 4(c) of the paper, Mr James TO enquired whether CE himself had given any instructions to the relevant bureau and government department on how TVB's proposal on land premium should be followed up.

22. PSCIT responded that CE had not handled the two letters personally. The Private Secretary of CE's Office forwarded the letters to the then Trade and Industry Bureau (TIB), Industry Department (ID) and HKIEC for processing. He stressed that throughout the process, TVB's letters were handled in accordance with normal procedures. CE had not given any instructions to any relevant bureau or government department in the handling of TVB's proposal.

23. Mr James TO expressed grave concern about CE's role in TVB's acquisition of a site in TKOIE, in particular whether CE had discussed with the then Secretary for Trade and Industry (STI), ID and HKIEC about how the case should be handled.

24. PSCIT advised that the entire process had been very mechanical. According to his understanding, CE and the then STI had not handled TVB's request directly. Instead, the request was handled by a Principal Assistant Secretary for Trade and Industry. In accordance with normal procedures, ID had prepared a draft reply which was submitted to CE's Office for consideration via TIB. The reply was then issued to TVB by the Private Secretary to CE.

Follow-up actions

25. Mr James TO requested the Administration to provide the relevant parts of the government's files for Members' reference. Such information should include records of correspondences/communications between CE's Office, the then TIB, ID and HKIEC concerning the land premium for a site applied by TVB

in TKOIE during the period when CE's Office received TVB's letter dated 21 December 1998, up to the juncture when the HKIEC Board approved TVB's application.

Admin/
HKSTPC

26. Mr Albert HO requested the Administration/HKSTPC to take follow-up actions which he had summed up below:

- (a) if necessary, with the consent of TVB, to provide the "offer to lease" document issued by the HKIEC to TVB concerning the land premium payable by the latter for acquisition of a site in TKOIE;
- (b) to provide a copy of the consultant's report commissioned in 1998 on the strategic review of the role and operation of HKIEC for Members' inspection and if necessary, for making copies of parts of its contents; and
- (c) to consider conducting a review on the policy and procedures concerning the admission of industries into the IEs and the measures to ensure a level playing field and equitable treatment for interested parties seeking entry into the IEs; and to provide a paper on the outcome of the review to the Panel in due course.

27. PSCIT advised that the Administration/HKSTPC would consider Members' requests and whether practicable, provide the requested information. They noted members' suggestions for consideration. In addition, PSCIT said that he appreciated Members' concern that the Administration should have been more sensitive when handling TVB's application in order to avoid any doubt on the process of scrutinizing applications for land grant.

(Post-meeting note: The Administration's reply to the follow-up actions mentioned in paragraph 26 had been issued for Members' reference vide LC Paper No. CB(1)2407/03-04 on 19 July 2004.)

28. Mr James TO further suggested that the Panel should seek clarification from Mr Edward S T HO, the former Chairman of the HKIEC Board on whether he had discussed TVB's proposal on land premium with CE during the period from 11 November 1998 to 6 February 1999; and if he had done so, to provide Members with the details and outcome of the discussion. The Panel agreed to Mr TO's suggestion.

(Post-meeting note: Mr Edward S T HO's written reply addressed to the Clerk had been issued for Members' reference vide LC Paper No. CB(1)2385/03-04(01) on 12 July 2004.)

II Any other business

Issues relating to the AsiaWorld-Expo

(LC Paper No. CB(1)2312/03-04(01) -- Fax dated 30 June 2004 from Hon CHOY So-yuk (Chinese version only)

LC Paper No. CB(1)2312/03-04(02) -- Newspaper cutting on 28 June 2004

LC Paper No. CB(1)2310/03-04 -- Information note on the Asia World-Expo (AWE) prepared by the Secretariat)

29. The Chairman said that Miss CHOY So-yuk had recently written to the Secretariat requesting the Panel to discuss issues relating to the management of AWE at a special meeting. The Chairman stressed that subject to members' agreement to discuss the subject, the Panel should consider the principles and policy aspects, instead of individual cases.

30. While Mr SIN Chung-kai and Mr NG Leung-sing did not object to the discussion of the proposed subject, they suggested that the subject should be included on the agenda of the Panel meeting to be held on 12 July 2004.

31. The Chairman said that in addition to the Administration, representatives from the AsiaWorld-Expo Management Limited would be invited to attend the meeting. On Miss CHOY So-yuk's suggestion that representatives from the exhibition industry should also be invited to attend the Panel meeting, the Chairman sought members' views. In response to the Chairman's enquiry, the Clerk suggested that the Panel might consider inviting the Hong Kong Exhibition and Convention Industry Association (HKECIA) to represent the trade at the meeting on 12 July 2004.

32. Mr MA Fung-kwok opined that the Panel might, through HKECIA, invite interested member organizations to attend the meeting and give their views. Due to time constraint, Mr NG Leung-sing opined that it might not be possible to invite individual member organizations to express their views at the meeting. Mr SIN Chung-kai indicated that the Panel might consider inviting interested organizations to provide written submissions for consideration.

33. After considering members' views, the Chairman concluded that the Panel would include the item "Issues relating to the AsiaWorld-Expo" proposed by Miss CHOY So-yuk on the agenda of the meeting to be held on 12 July 2004. Regarding the exhibition industry, the Panel would invite HKECIA to attend the meeting and through HKECIA, to invite interested member organizations to attend the meeting and provide written submissions.

34. The meeting ended at 4:15 pm.

Council Business Division 1
Legislative Council Secretariat
13 August 2004