

立法會
Legislative Council

LC Paper No. CB(1)414/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 8 November 2004, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Non-panel member present : Hon CHAN Yuen-han, JP

Public officers attending : Agenda Items IV - VI
Mr John C TSANG, JP
Secretary for Commerce, Industry and Technology

Agenda Item IV

Mrs Betty FUNG, JP
Deputy Government Chief Information Officer
(Planning and Strategy)

Ms Joyce TAM
Assistant Government Chief Information Officer

Agenda Item V & VI

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology
(Communications and Technology)

Mr M H AU, JP
Director-General of Telecommunications

Ms Gracie FOO
Deputy Director-General of Telecommunications

Agenda Item VII

Mr Alan WONG, JP
Government Chief Information Officer

Mr Stephen MAK, JP
Deputy Government Chief Information Officer
(Operation)

**Attendance by
Invitation** : Agenda Item VII

Hong Kong Internet Registration Corporation
Limited

Mr Christopher TO
Chairman

Mr Jonathan SHEA
Chief Executive Officer

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

Staff in attendance : Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

I Confirmation of minutes and matters arising

LC Paper No. CB(1)84/04-05 -- Minutes of meeting held on 12 October 2004

The minutes of the Panel meeting on 12 October 2004 were confirmed.

II Date and items for discussion for next meeting

LC Paper No. CB(1)145/04-05(01) -- List of outstanding items for discussion

LC Paper No. CB(1)145/04-05(02) -- List of follow-up actions

2. The Chairman informed members that he and the Deputy Chairman had held an informal meeting with the Secretary for Commerce, Industry and Technology (SCIT) on 3 November 2004 to discuss the workplan for 2004-05. The issues identified for discussion had been included in the Panel's "List of outstanding items for discussion".

3. Members agreed to consider the following items proposed by the Administration for discussion at the next meeting to be held on 13 December 2004:

- (a) Amendment of Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order; and
- (b) 2004 Public Survey on Film Classification.

4. In addition, members agreed to the Chairman's suggestion that the Panel would invite and meet with deputations in connection with the consultation paper on the regulation of Internet Protocol (IP) Telephony at the next meeting. The Chairman said that he would aim to deal with all the three items during the two-hour meeting.

III Papers issued since last meeting

LC Paper No. CB(1)67/04-05 -- Press release on the consultation paper on "Partial Commencement of Section 8(1)(aa) of the Telecommunications Ordinance and Creation of a Class Licence to Regulate Resale of Telecommunications Services on a Prepaid Basis"

5. Members noted the paper issued since last meeting.

Opening remark by SCIT

6. Addressing the Panel, SCIT expressed his appreciation for the support and advice provided by the Panel in the past years on various issues relating to information technology (IT) and broadcasting. He looked forward to future fruitful exchanges with Panel members on issues of concern. SCIT then gave an overview on the policy initiatives under the purview of the Communications and Technology Branch of his Bureau.

(post-meeting note: The speaking note (in Chinese) of SCIT was subsequently circulated to Panel members on 9 November 2004 vide LC Paper No CB(1)191/04-05(03))

IV Funding requirement for Capital Works Reserve Fund Head 710 Computerization Subhead A007GX (Block Allocation) in 2005-06

LC Paper No CB(1)145/04-05(03) -- Information paper provided by Administration

LC Paper No CB(1)145/04-05(04) -- Extract of minutes of meeting of the Panel on Information Technology and Broadcasting held on 5 December 2003

7. At the invitation of the Chairman, the Deputy Government Chief Information Officer (Planning and Strategy) (DGCIO(P&S)) briefed members on the funding requirement of HK\$540 million for the implementation of computerization projects under the Capital Works Reserve Fund Head 710 Computerization Subhead A007GX for 2005-06. She said that the new projects to be implemented comprised (a) projects to enable the delivery of better services to citizens and businesses; (b) projects to strive for greater efficiency and productivity; (c) projects to ensure the availability of a robust and secure e-government infrastructure in government departments; and (d) projects to improve accessibility of government employees to IT facilities and services and to cultivate an e-culture within Government. Members noted that the relevant funding request would be put to the Public Works Subcommittee (PWSC) for consideration in December 2004.

8. The Chairman was concerned whether the number of new computerization projects had been reduced due to the deficit problem. In response, DGCIO(P&S) pointed out that although the proposed allocation for 2005-06 was the same as the provision for the 2004-05 financial year, there were 113 new projects to be implemented under the proposed allocation in 2005-06, as compared to some 90 bids for 2004-05. DGCIO(P&S) said that the proposed requirement for 2005-06 was considered appropriate as it had balanced the need for fiscal prudence with the need to sustain the E-government programme. In reply to the Chairman's

further enquiry on the funding requirement for projects initiated in 2004-05 or earlier, DGCIO(P&S) explained that the implementation period of some computerization projects might straddle more than one financial year. As such, there were always projects commencing in the previous year or earlier and carrying forward funding requirement to subsequent years. For instance, the scope of the proposed amount of \$540 million for 2005-06 included the funding requirement of 193 approved projects initiated in 2004-05 or earlier.

9. Summing up, the Chairman concluded that the Panel supported the proposal. He urged the Administration to expedite the implementation of the computerization projects.

V Consultation exercise on the Regulation of Internet Protocol Telephony

- LC Paper No CB(1)145/04-05(05) -- Information paper provided by Administration
- LC Paper No CB(1)145/04-05(06) -- Executive summary of the consultation paper on regulation of Internet Protocol Telephony
- LC Paper No CB(1)145/04-05(07) -- General Conditions for Carrier Licence under Telecommunications Ordinance (Cap 106)
- LC Paper No CB(1)145/04-05(08) -- Information note on Internet Protocol Telephony prepared by the Research and Library Services Division of the Secretariat
- LC Paper No. CB(1)191/04-05 (01) -- Power-point presentation material on "Regulation on Internet Protocol Telephony"
(tabled and subsequently circulated to members on 9 November 2004)

10. With the aid of power-point presentation, the Deputy Director-General of Telecommunications (DDG/Tel) introduced the background and key issues of the public consultation concerning the regulation on Internet Protocol (IP) Telephony. She also highlighted the following four regulatory issues: (a) policy and licensing; (b) numbering issues; (c) interconnection and charge settlement; and (d) consumer and other issues.

11. Referring to the Chinese rendition of the term "IP Telephony" as "寬頻電話" in the powerpoint presentation material, the Chairman considered that the expression "寬頻電話" might be slightly misleading as IP Telephony could be

provided via narrowband or broadband networks. As broadband transmission was usually more efficient and reliable, the term "寬頻電話" might give consumers an impression that IP Telephony was of a higher performance when in fact, its performance might not necessarily be better than traditional telephony services.

12. In response, the Director-General of Telecommunications (DG/Tel) pointed out that as the expression "寬頻電話" was now commonly used to refer to IP Telephony, the Administration therefore used this more familiar term in its presentation. He advised that IP Telephony, which was usually transmitted over the public Internet, performed better over a broadband network than over a narrowband network. Notwithstanding that the user of IP Telephony would be able to establish communication by dial-up access to the Internet via narrowband connection, the user must make sure that he was connected to the Internet in order to receive incoming calls. However, IP Telephony calls made over broadband Internet connection could be put through at anytime because the connection was "always-on" as long as the users switched on the Internet connection. DG/Tel anticipated that IP Telephony using dial-up Internet access would not be common.

Policy and licensing

13. Given that IP Telephony was a new class of communication services based on new technology, Mr Howard YOUNG considered that the licensing and regulatory regime for the services should be conducive to encouraging development and investment. Therefore, the set of conditions applicable to IP Telephony services needed not be identical to those under the Fixed Telecommunications Network Services (FTNS) or Fixed Carrier (FC) licences. Noting that disputes had already arisen between IP Telephony service providers and FTNS licensees, Mr YOUNG sought information on the relationship between the two types of service providers.

14. In reply, DG/Tel informed members that recently, some local FTNS licensees had started offering IP Telephony services which allowed customers to make and receive telephone calls over broadband Internet connection. Nevertheless, the service of an IP Telephone operator might be accessed over the broadband network of another operator. He also pointed out that local FTNS licensees or FC licensees could use any technologies, including IP technology, to provide telephony services, provided that they complied with the conditions of their existing licences. He further confirmed that under their existing licences, Internet Services Providers (ISPs) were not allowed to provide real-time telephony service and that the current IP Telephony service providers were FC licensees.

15. Mr Jasper TSANG was concerned about the timetable for finalizing the regulatory framework for IP Telephony services. Given that some local fixed network operators had already started providing IP Telephony services, Mr TSANG said that any further delay in formulating proper regulatory measures

might constitute barriers for new operators to enter the market. Mr TSANG also cautioned that if the regulation of IP Telephony services turned out to be more stringent than conditions stipulated in existing FTNS or FC licences, early confirmation of the future regulatory framework would enable those operators which were currently providing IP Telephony services to decide whether and how to take forward their business and investment plans.

16. On the need to formulate a regulatory framework for IP Telephony, DG/Tel agreed that early finalization and implementation of the regulatory framework could enhance certainty, prevent unnecessary disputes and help new investors to make informed decisions on whether or not to enter the market. It was the Telecommunications Authority (TA)'s plan to draw up the regulatory framework in the first half of 2005 after examining the comments and views received during the consultation exercise.

17. On the concern about fairness or otherwise to existing IP Telephony service providers, DG/Tel did not consider that the new regulatory regime would result in unfairness to any parties concerned. He stressed that the present consultation exercise aimed at drawing up the future regulatory framework; whereas under the current arrangements, no prior approval was required for any telecommunications licensees to provide services which were within the scope of their licences as long as they complied with the licence conditions.

18. In response to the Chairman's concern about the policy on IP Telephony adopted by overseas jurisdictions, DG/Tel advised that the regulators of a number of liberalized telecommunications markets were still in the course of developing their respective regulatory framework for IP Telephony. In general, these advanced economies considered that applicable regulations should not impede the adoption of new technologies. DG/Tel further said that as there was a wide range of functionalities and quality of service for IP Telephony services, it might not be appropriate to adopt without modification the set of conditions applicable to FTNS or FC licensees for IP Telephony services in Hong Kong. However, if IP Telephony service was intended to serve as a substitute for the traditional telephony service, the public would expect that such service should meet a minimum standard of quality.

19. The Deputy Chairman enquired whether it was the Government's policy to encourage the replacement of traditional telephony services by IP Telephony services. In reply, DG/Tel said that the Government had always upheld the principle of "technology neutrality" in the regulation of public telecommunications services and it would be up to the market to decide which type of technology should be used in the provision of service. He further explained that many operators around the world saw the potential of IP Telephony and had already launched, or were planning to launch, IP Telephony services in the market. Some carriers had plans to replace circuit-switched networks with IP-based networks. One major carrier in the United States had announced that it would not invest in circuit-switched networks any more, but would change to IP-based routers and servers. Given the prevailing trend,

DG/Tel anticipated that there would also be increased use of IP Telephony services in Hong Kong. He nevertheless stressed that it would be for the telecommunications market itself to work out its own mode and pace of the transition to the IP-based operating environment.

Consumer issues

Quality of services

20. Given that IP Telephony was a newly emerged class of communications service, Mr Howard YOUNG pointed out that consumers would wish to be fully informed of the functions and quality of IP Telephony service before deciding whether or not to use the new service. As such, it would be useful if the Administration could conduct testing on the reliability and quality of service for the different implementation scenarios of IP Telephony introduced in the consultation paper for consumers' references.

21. In response, DG/Tel advised that as the performance of IP Telephony might vary according to the location and the timing of the calls made, as well as individual service operator's network capabilities, it might not be practicable for the Administration to conduct such testing to obtain useful references. Instead, it would be more effective for individual operators to conduct their own testings for consumers' information. Nevertheless, DG/Tel agreed that consumers should be given adequate information on any limitation on the capabilities of the IP Telephony services offered in the market so that they could make an informed choice. As such, TA would require the service providers to inform the consumers before signing the relevant contracts of the details of the service offered e.g. reliability of service, the service plan and voice quality etc.

22. Mr Jasper TSANG remarked that it was important for the service providers to inform consumers of the standards of service they had subscribed to. Before the regulatory measures were launched, he highlighted the importance for the Office of Telecommunications Authority (OFTA) to step up consumer education by publishing information on the different kinds of IP Telephony service available in the market.

23. In this regard, DDG/Tel referred to the "Report on promotional material relating to Hong Kong Broadband Network Limited's Broadband Phone Service" issued by TA in late September 2004. The report had highlighted issues relevant to the interest of ordinary consumers. The information and analysis provided therein should assist consumers to make informed purchasing decisions. In addition, OFTA was planning to launch more promotional activities on IP Telephony services, in particular through radio broadcasting, to increase public awareness of this subject.

Access to emergency call services

24. Noting that customers of traditional telephony service could access emergency call services even during power outage, the Chairman was concerned whether IP Telephony could also provide this important service. In response, DG/Tel pointed out that under the current licence conditions, a FTNS or FC licensee was required to provide public emergency call service by means of which any member of the public might, at any time and without incurring any charge, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the TA to report an emergency. As such, all existing FTNS operators or fixed carriers were obliged by their licences to provide emergency call service to their customers regardless of the technology they adopted in providing the telephony service.

25. On concern about accessing emergency call services during power outage, DG/Tel explained that backup power supply was needed to provide uninterrupted telephony service during the outage of primary power supply. According to the TA statement on "Backup power supply for fixed telephone line service during failure of public electricity supply" and the relevant code of practice issued on 26 September 2003, all network equipment involved in the provision of the telephony service should be supported by a backup power supply system. For traditional telephony service, the backup power supply to the customer premises equipment did not come from the premises itself but from the local exchanges linked to the premises via the local loops. This arrangement had enabled the customer to make telephone calls even during failure of public electricity supply. However, if the customer used a cordless analogue phone, he could not make or receive calls during a power outage because the power to the cordless equipment set was supplied from the customer premises. DG/Tel further advised that for some cases of IP Telephony service, such as those requiring the installation of equipment powered by electricity supplied from the customer premises, the existing requirement for backup power supply under FTNS or FC licences would not apply.

26. The Chairman was concerned about the public outcry arising from any inaccessibility to emergency call services during power outage and urged the OFTA to address the problem. He considered it highly crucial that consumers should be made fully aware of the limitations of the service they had subscribed to and the terms and conditions of service should be clearly and explicitly stipulated in the service agreement signed with the IP Telephony service provider.

27. The Deputy Chairman was also concerned about the range of services provided by IP Telephony. He pointed out that many members of the socially disadvantaged groups might be attracted to switch to use IP Telephony service which was marketed as much more economical. As not all of them had a mobile phone, a lot of problems would arise when they could not make emergency calls through IP Telephony during power outage. He urged the Administration to take into consideration the needs of the disadvantaged groups in society when formulating its policy related to the adoption of new technology.

28. In response, DDG/Tel assured members that OFTA would take measures to ensure that IP Telephony service providers would provide sufficient and accurate information, including the accessibility to emergency call service during power outage, for consumers to make informed choices on the service which best met their needs. OFTA would also liaise with the senior management of IP Telephony service providers and seek their cooperation in the provision of information for consumers.

29. Members noted that at present, apart from providing the caller with access to the emergency call services, the traditional telephony services were capable of providing the agencies operating the emergency services with information on the location of the caller. This would facilitate the Police or other emergency service agencies to attend to the emergency quickly in case the caller could not identify his location. On whether similar functions could be performed by IP Telephony, DG/Tel pointed out that as IP Telephony service might take place over any broadband connection located anywhere, it would not be feasible to provide reliable information on the location of the caller to the emergency call service unless the IP Telephony service provider had information on the current location of the customer. Nevertheless, DG/Tel said that the industry might be able to come up with certain technical or operational solutions to deal with this shortcoming in due course.

Numbering issues

30. Noting that an Internet user could open several email accounts for his own use, Mr Howard YOUNG was concerned that if each IP Telephony subscriber would be assigned more than one telephone number, the existing 8-digit telephone numbering plan would soon be exhausted. He asked the Administration to maintain the existing 8-digit numbering mode for telephony services in order not to cause inconvenience to the public.

31. On numbering issues, DG/Tel anticipated that IP Telephony services would inevitably generate additional demand and result in pressure on the limited numbering resources. If overseas customers or migrants from Hong Kong might also subscribe to the IP Telephony services in Hong Kong and be assigned Hong Kong telephone numbers, the resources would be further stretched. Nevertheless, OFTA would see to it that the scarce numbering resources would be put to efficient use. As regards the 8-digit numbering mode, DG/Tel said that OFTA would try to maintain the use of this numbering mode for as long as possible. Where necessary, OFTA might consider other numbering modes such as by adding a prefix to the 8-digit number for other applications such as fax and related services.

Interconnection between operators

32. The Chairman and the Deputy Chairman raised concern about the impact of the growing popularity of IP Telephony services on the telecommunications industry, in particular whether the investment incentives of FTNS operators

would be dampened.

33. In this connection, DG/Tel explained that in the operating environment of IP Telephony, it would be reasonable for the ISP/FTNS licensees to charge "access charge" (or interconnection charges) on the IP Telephony service providers which provided the service to customers over the "managed network". However, DG/Tel said that if it was necessary for ISPs/FTNS licensees and IP Telephony service providers to reach agreement before customers could access the IP Telephony services provided over the Internet, this would certainly compromise the convenience of this type of services. Moreover, network operators based in Hong Kong might not be able to collect the "access charge" from overseas providers of IP Telephony services accessible through the broadband connections in Hong Kong. On whether FTNS operators would continue its investment in network rollout, DG/Tel considered that this would be a commercial decision of individual operators having regard to their projected investment return on providing IP Telephony service after upgrading their networks to the "Next Generation Networks". DG/Tel supplemented that apart from the direct provision of telephony service, a network operator could derive its income from other sources, such as interconnection charges and additional charge for value-added applications etc.

34. Summing up, the Chairman recapped that the Panel would invite and meet with deputations on the subject at the next meeting to be held on 13 December 2004.

(*post-meeting note:* The Panel has posted a general notice on the web site of the Council to invite submissions. It has also written to 13 organizations and the 18 District Councils inviting them to provide written submissions and attend the meeting on 13 December 2004. Members have been informed of the arrangements and invited to propose other invitees vide LC Paper No. CB(1)200/04-05 issued on 10 November 2004.)

VI Consultation exercise on the Administration's proposal to lift prior approval requirement on PCCW-HKT Telephone Limited's prices

LC Paper No CB(1)145/04-05(09) -- Information paper provided by Administration

LC Paper No CB(1)145/04-05(10) -- Consultation paper on "Moving from *ex ante* to *ex post* regulation of the tariff of PCCW-HKT Telephone Limited and the proposed fixed carrier licence to be issued to PCCW-HKT Telephone Limited" (English version only)

LC Paper No CB(1)145/04-05(11) -- Sections 7K to 7N of the Telecommunications Ordinance (Cap 106)

Past papers and minutes of relevant committees

LC Paper No FCR(97-98)99 -- Head 106 – Miscellaneous Services
New Capital Account Subhead
"Cash compensation for early termination of exclusive telecommunications licence"

LC Paper No CB(1)145/04-05(12) -- Extract of minutes of meeting of the Finance Committee held on 27 February 1998

LC Paper No CB(1)447/98-99 -- Telephone charges of Hong Kong Telecom

LC Paper No CB(1)145/04-05(13) -- Extract of minutes of meeting of the Panel on Information Technology and Broadcasting on 9 November 1998

35. With the aid of power-point presentation, DDG/Tel briefed members on the consultation exercise launched by OFTA on the proposed change in the regulation of the tariffs of PCCW-HKT Telephone Limited (PCCW-HKT). She introduced the existing *ex ante* tariff regulation under PCCW-HKT's licence, its limitations and the proposal for replacing *ex ante* regulation by *ex post* regulation on tariffs of PCCW-HKT through the issuance of a new FC licence. She also outlined the proposed changes in the conditions of the draft FC licence.

Dominance and market share

36. Noting that the Administration's proposed changes to the regulation of the tariffs of PCCW-HKT as its market share had gradually declined to 69%, Mr Jasper TSANG sought clarification on the classification of dominant and super-dominant players in terms of market share. Mr TSANG also enquired whether TA, in drawing up the present proposal, still considered PCCW-HKT a dominant player which might abuse its market position. He further asked whether there was any formulation on what was the right distribution of market shares among operators in a competitive market.

37. On the classification of super-dominant and dominant players, DG/Tel pointed out that there were no definition for 'super-dominance' under the Telecommunications Ordinance (TO) (Cap 106). However, pursuant to section

7L of TO, a licensee was in a dominant position when, in the opinion of the TA, it was able to act without significant restraint from its competitors and customers. He also highlighted that regulatory intervention should be proportionate to the state of competition in the market. As PCCW-HKT had enormous market powers at the start of liberalization in 1995, it was presumed dominant for the purpose of tariff supervision under its licence. DG/Tel advised that if a licensee had a market share of, say, 80% or above, it could be presumed to have held a super-dominant position. Following years of market liberalization and as a result of competition from new entrants, PCCW-HKT's market share in the fixed telephony market had dropped to 69%. It was against this background that PCCW-HKT had filed in two applications for declaration of non-dominance in the markets for business and residential direct exchange line services. He further pointed out that under the proposed replacement of *ex ante* regulation by *ex post* regulation on PCCW-HKT's tariffs, there would no longer be any presumption of dominance or non-dominance, meaning that the burden of proof would be on TA to prove on a case by case basis that the licensee in question was dominant before establishing whether a specific conduct of the licensee would result in an abuse of its dominant position.

38. Miss CHAN Yuen-han asked whether the regulation on PCCW-HKT's tariff would revert to the *ex ante* approach if its market share rose to 80% or more again. In response, DG/Tel remarked that as competition in the FTNS market grew following the entry of new players, it was not likely that PCCW-HKT would be able to re-gain super-dominance in the fixed telephony market. On the development of the FTNS market in Hong Kong, he informed members that apart from providing about 30% of the total fixed telephony lines in the market, PCCW-HKT's competitors had also rolled out customer access networks to buildings accommodating up to 60% of all households. The figures were expected to rise further in the near future. In addition, new services such as mobile or IP Telephony services might also serve as effective substitutes for fixed line services.

Tariff

39. On the question of tariff, Miss CHAN Yuen-han asked whether consumers could expect reduction in PCCW-HKT's tariff if it was subject to *ex post* regulation. In reply, DG/Tel clarified that even under the existing regulatory regime, *ex ante* regulation could not prevent price increases by PCCW-HKT. In fact, the price cap on PCCW-HKT's residential telephony services had been lifted since 2001. Hence, PCCW-HKT could still apply to TA for tariff increase. Rather than seeking to curb price increases, TA might also need to take regulatory action to safeguard against anti-competitive conduct such as predatory pricing which could drive out competition. DG/Tel stressed that the criteria to assess price revisions under *ex post* regulation would be the same as those under *ex ante* regulation. Nevertheless, he pointed out that as there was keen competition in the telecommunications market, market forces could serve as an effective means to keep tariffs down. Referring to the mobile services market which was not subject to any tariff regulation, DG/Tel said that the tariffs for

mobile services had stayed low due to keen competition. As such, DG/Tel anticipated that in order to maintain its competitiveness, PCCW-HKT would be very cautious about any tariff increase even if under *ex post* regulation.

40. Miss CHAN Yuen-han was worried that telecommunications operators in Hong Kong might collude and engage in anti-competitive practices such as agreeing to fix the price for a particular telecommunications service. She asked whether such collusive practice had been found in other liberalized markets. In response, DG/Tel advised that there were provisions under the TO to safeguard against anti-competitive practices and abuse of dominant position. If licensees colluded in engaging in certain anti-competitive practice, they might be in breach of section 7K of TO.

Market share thresholds

41. The Deputy Chairman was gravely concerned about the lack of transparency as consumers were not in a position to know whether an operator was in a dominant position or not in the telecommunications market. To enhance transparency and facilitate monitoring, he considered it necessary to inform the public the threshold of market share by which an operator which used to be in a dominant market position would be classified as non-dominant.

42. In response, DG/Tel confirmed that there was no expressly stipulated market share threshold by which an operator's dominant market position would be automatically lifted. Referring to the "Guidelines to assist the interpretation and application of the competition provisions of the FTNS licence" (the Guidelines) issued in June 1995, DG/Tel pointed out that TA, before forming an opinion on whether or not an operator was in a dominant position, would need to consider all relevant matters including market concentration, market shares, the height of barrier to entry, the power to implement pricing decisions and product differentiation. He said that pursuant to the Guidelines, a licensee with a market share greater than 75% would be presumed to be dominant; whereas a market share of less than 25% would be presumed to be non-dominant. A licensee with a market share of between 25% to 75% would not be subject to any presumption of its market position. Notwithstanding, DG/Tel stressed that these quantitative percentages were only presumptions and were therefore rebuttable if there was evidence to the contrary. In assessing dominance or otherwise, other factors such as market entry barriers and control over essential facilities would need to be considered. He also informed members that OFTA had initiated a consultation on a proposal to replace the Guidelines by a new set of guidelines to deal with anti-competitive conduct in Hong Kong telecommunications markets. OFTA was currently studying the industry's views received on the subject. As regards overseas practice, DG/Tel advised that in some jurisdictions, an operator was considered dominant if it had a market share of 50% while in some cases decided by courts in Europe, a market share of over 40% was considered to be in a dominant position.

43. In this connection, the Chairman enquired whether TA would make reference to the market share thresholds adopted overseas to determine when the *ex post* regulation on PCCW-HKT could also be lifted. In response, DG/Tel said that TA proposed to impose on PCCW-HKT certain *ex post* regulation (such as notification of discounts) in excess of those imposed on non-dominant operators, which would serve the purpose of maintaining a minimal control on PCCW-HKT's tariff. Given the current competition landscape when PCCW-HKT still had considerable market powers, DG/Tel expressed doubt as to whether it was appropriate to lift the additional *ex post* regulation on PCCW-HKT and declare it non-dominant. Nevertheless, the TA would be prepared to consider the matter when such needs arose in future.

44. The Deputy Chairman recalled that some Members, when urging for the introduction of a general competition law to Hong Kong at Council meetings, had considered it highly crucial to make known to the industry and consumers at large the objective criteria, e.g. market share threshold, by which an operator would be declared as dominant in a certain market. He did not agree with the existing practice of relying solely on TA to determine the dominance or otherwise of an operator's position in the market. In this regard, DG/Tel said that under TO, there were sufficient checks and balances on TA's power. For example, any parties aggrieved by the decisions of TA relating to dominance could appeal to the Telecommunications (Competition Provisions) Appeal Board or apply for judicial review. DG/Tel remarked that the market share threshold for dominance was a trigger for regulatory action by TA. The consumer at large might be more concerned about the specific conduct of the operators in the market than their respective market share and position.

45. The Deputy Chairman did not fully agree with DG/Tel's remarks and stressed that consumers had the right to be informed. He remained concerned about the extensive powers vested with TA in dealing with telecommunications operators and the possibility of making decisions in favor of large consortia. The Deputy Chairman referred to past appointments of retired Commissioner for Transport, who also had extensive regulatory power over the transport sector, to the board of directors of a franchised bus company and said that he would not wish to see similar senior appointment to a telecommunications company happen on DG/Tel after his retirement.

VII Access problem affecting some Hong Kong-based websites on 1 November 2004

LC Paper No CB(1)164/04-05(01) -- Information paper provided by Administration

LC Paper No CB(1)180/04-05(01) -- Information paper provided by Hong Kong Internet Registration Corporation Ltd

LC Paper No CB(1)164/04-05(02) -- Newspaper cutting on 2 November 2004

The incident

46. At the invitation of the Chairman, the Government Chief Information Officer (GCIO) gave an account on the incident which involved an interruption to the Hong Kong domain name translation service on 1 November 2004 and briefed members on the respective roles of the Government and the Hong Kong Internet Registration Corporation Limited (HKIRC) in the operation of the domain name registration system in Hong Kong. Whilst expressing regret for the problem caused, GCIO informed members that HKIRC had a good track record in its past performance.

47. GCIO further informed members that the Hong Kong Domain Name Registration Company Limited (HKDNR), a wholly-owned subsidiary of the HKIRC, was responsible for administering the Domain Name System that translated Internet domain names ending with '.hk' to their corresponding IP addresses which computers could recognize. During the period between around 2:30 am and 9:30 am on 1 November 2004, a limited number of web sites and email addresses of certain '.com.hk' domain name customers were not accessible. HKIRC had subsequently submitted an investigation report on the cause of the incident, remedial measures taken, as well as measures to be taken to prevent the occurrence of such incidents in future. GCIO assured members that the Government would continue to work with the HKIRC to constantly improve the overall governance and administration of Internet domain names in Hong Kong and the quality of HKIRC's services.

48. Mr Jonathan SHEA, Chief Executive Officer (CEO) of HKIRC also expressed the company's regret on the incident. He reported that upon investigation, the incident was caused by an incomplete overnight job of updating '.hk' domain name master records. To prevent similar incidents from happening again, HKDNR had taken immediate steps, including monitoring the updating process manually every night, arranging additional end-to-end automatic checking and additional monitoring service by the Data Centre staff, and making available the contact numbers of the IT Manager, Operations Manager and CEO to all affected customers for timely assistance when needed. HKDNR had also undertaken other medium to long-term improvement measures to enhance its risk assessment and management capabilities. He assured members that HKDNR was committed to taking all reasonable and possible measures to prevent the recurrence of such incidents and it would strive to improve its service and technical infrastructure to meet the needs of the local Internet community.

Role of the Government

49. The Chairman recalled that on 14 August 2004, there was a disruption of service of Hong Kong Internet eXchange (HKIX) for more than two hours. As it had become common that more and more time-critical transactions were conducted over the Internet, the Chairman urged the Administration to devise policy measures such as conducting independent audit or security assessment for non-statutory organizations such as HKDNR and HKIX to ensure their smooth and reliable operation; and to consider establishing a mechanism to line up relevant bodies, including HKIRC, HKIX and Hong Kong Computer Emergency Response Team Coordination Centre (HKCERT/CC) to handle emergency incidents.

50. On the role of the Government, GCIO assured members that the Government was committed to maintaining the efficient operation of the Internet infrastructure and a business friendly environment to boost Hong Kong's position as a digitally connected city in a globally connected world. Since the implementation of the Digital 21 Strategy in 1998, the Government had monitored the development and performance of the Internet infrastructure closely. It had also facilitated the development of e-commerce through the e-government programme. In fact, Hong Kong was one of the top ten territories worldwide in terms of network development and performance. To ensure that the needs of the local Internet community could be addressed in a timely manner, GCIO said that the office of GCIO had established a good partnership network with relevant parties including Internet users, the commercial sector and the universities. The Administration had also maintained exchanges with professional bodies such as Hong Kong Computer Society and engineering associations. Separately, he advised that in case an Internet user encountered problems in accessing certain websites, he should first contact his ISP or the webmaster of the sites for assistance.

51. Regarding the Chairman's concern on the performance of non-statutory organizations, GCIO understood that organizations like HKIRC/HKDNR and HKIX conducted regular audits and assessment to ensure the security and reliability of their respective computer systems. Nevertheless, GCIO would examine ways to further enhance the reliability of and accessibility to the Internet infrastructure in Hong Kong in consultation with these organizations.

Admin

52. On the co-ordination among relevant bodies to handle emergency incidents, the Deputy Government Chief Information Officer (Operation) (DGCIO(O)) pointed out that the parties that should be lined up in response to emergency incidents would vary according to the nature and cause of each incident. For example, unlike the incident on 1 November 2004, the disruption of service of HKIX in August 2004 was due to failure of power supply. Thus, the parties to be involved in rectifying the problems of the two incidents were quite different. As regards the HKCERT/CC, DGCIO(O) said that HKCERT/CC was tasked to, inter alia, coordinate the handling of local information security incidents. Hence, it might not be appropriate to involve it

in the incident of HKIRC or HKIX. In this connection, DGCIO(O) said that although the Government had not set up a dedicated team on a standing basis to deal with IT-related incidents or emergencies, the Bureau had in the past taken up a high-level co-ordinating role in major events such as the Y2K exercise.

53. While agreeing that the reliability of the Internet infrastructure was increasingly important as e-commerce and the use of e-government service prevailed, GCIO did not consider that the reliability of the Internet infrastructure in Hong Kong was at stake. He pointed out that as the use of the Internet was highly spread, it was difficult for any single entity to monitor the operation of the entire infrastructure because there were many factors which might cause the disruption of Internet-related services. Nevertheless, GCIO agreed to enhance collaboration with relevant bodies to prevent the occurrence of emergency incidents and to take appropriate contingency measures when an incident broke out.

54. The Chairman pointed out that irrespective of the causes, the disruption of Internet-related services would bring about dire consequences. He nevertheless appreciated the Administration's commitment to minimizing the occurrence of these incidents.

Liability issues

55. Mr Jasper TSANG enquired whether a person who suffered economic loss as a result of the disruption on 1 November 2004 could lodge a claim against HKIRC for damages. In response, Mr Jonathan SHEA, CEO of HKIRC confirmed that so far, HKIRC had not received any written notice for claims from affected customers. He advised that the circumstances under which HKIRC would be liable were stipulated in the service contract between HKIRC and its clients. Generally speaking, HKIRC was not liable for losses/ damages arising from disruption of service due to domain name problem. Nevertheless, HKIRC would need to consider each claim, if any, on its own merits and seek legal advice on the question of liability and/or quantum.

56. In this connection, DGCIO(O) further advised that reference should also be made to the Electronic Transactions Ordinance (Cap 553) which contained provisions relating to the formation and validity of electronic contracts made between two transacting parties and the sending and attribution of electronic records.

VIII Any other business

57. There being no other business, the meeting ended at 4:40 pm.