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Panel on Information Technology and Broadcasting

Special meeting on 2 February 2005

**Brief on the Government's consultation with the Legislative Council
on the Cyberport project**

Introduction

On 26 and 27 January 2005, a series of two articles authored by the Secretary for Commerce, Industry and Technology (SCIT) were published in local Chinese and English newspapers. In the articles, SCIT gave an account of how the Cyberport project was conceived and taken forward in 1999, including the special grounds for awarding the project development right to Pacific Century Group (PCG) (now PCCW) and discussion of the Cyberport project at various committees of the Legislative Council (LegCo). SCIT also outlined the respective role of the Government and PCCW in this public-private partnership project, as well as the preliminary assessment on its financial return. As indicated in the articles, SCIT provided the information to enable the people of Hong Kong to make a judgment amidst criticisms as to whether the Administration had bypassed the legislature and colluded with the business sector in the development of the Cyberport.

2. Having regard to the issues raised in SCIT's articles, Hon SIN Chung-kai, Chairman of the Panel on Information Technology and Broadcasting (ITB Panel) has found it necessary to make available relevant background information on the following issues to facilitate Members' consideration:

- (a) the funding proposal related to the Cyberport;
- (b) some property developers' alternative suggestion on how the project should be taken forward; and
- (c) the decision to award the project development right to PCG.

Issues of concern

Funding proposal related to the Cyberport

3. The Administration's proposal to develop a Cyberport in Hong Kong was first announced by the Financial Secretary (FS) in his 1999-2000 Budget presented to LegCo on 3 March 1999. On 8 March 1999, the Administration briefed the ITB Panel on the proposed Cyberport project and informed members of the Government's commitments in the project, namely the contribution of 26 hectares of land, provision of essential infrastructure and grant of the development right of the land for the residential portion. Members were aware at that time that the Administration had already decided on undertaking the project in conjunction with PCG, instead of putting up the project for tender despite queries by members.

4. As the Administration required funding approval from LegCo for the provision of infrastructural facilities to support the Cyberport development, it consulted the ITB Panel again. In view of Members' grave concern about the project, the ITB Panel held a joint meeting with the Panel on Planning, Lands and Works (PLW Panel) on 29 April 1999. In its paper to the Panels (re-circulated at LC Paper No. CB(1)814/04-05(04)), the Administration reported that it had reached agreement with PCG on the broad framework for the development of the Cyberport in February 1999. It had also obtained agreement in principle from the Chief Executive in Council to proceed with the drawing up of the legal documentation with PCG. As at 21 April 1999, 34 companies had already registered interest in becoming tenants in addition to eight anchor tenants. In addition to seeking funds for essential infrastructural works, it would also seek the Finance Committee (FC)'s approval for the establishment of a dedicated team to oversee the implementation of the project. To follow up a number of issues which could not be fully deliberated at the meeting, the ITB Panel held another special meeting on 5 May 1999 to examine the implementation arrangements of the Cyberport project.

5. The funding proposal for the infrastructural works was submitted to the Public Works Subcommittee (PWSC) on 12 May 1999. The funding proposal (PWSC(1999-2000)13) was related to the provision of roads, drains and essential infrastructure at Telegraph Bay at an estimated cost of \$964 million¹. Members expressed grave concern about the process through which the Administration had arrived at the decision to award the development right for both the IT and the residential development of the Cyberport project to PCG. Some members requested the Administration to defer the funding proposal and put the project to open tender, but the request was rejected on grounds that delay of the project

¹ In addition to PWSC(1999-2000)13, two more items, namely PWSC(2000-01)19 and PWSC(2000-01)67 were endorsed by PWSC on 17 May 2000 and 22 November 2000 respectively. The two items were approved by FC on 9 June 2000 and 15 December 2000 respectively. Funding totalling some \$1.1 billion has been approved for the provision of infrastructural facilities for the Cyberport development.

might jeopardize the success of the project. The public works proposal was endorsed by PWSC by a vote of 14 to 10, and approved by FC on 21 May 1999 by a vote of 30 to 14. The approval given by Members was for infrastructural works at Telegraph Bay but not on whether and how the Cyberport project should be taken forward. In fact, some Members who had voted for the funding proposal had also raised concern about the decision-making process of the Administration in this case.

Alternative suggestion on how the project should be taken forward

6. In one of his articles, SCIT stated that LegCo considered and rejected an alternative suggestion made by the real estate sector to excise the residential portion from the project and, through open tendering the land, provide the Government with the necessary funds to construct the Cyberport portion.

7. The chronology of events and exchanges of views during this period will shed light on the issue. At the joint meeting of the ITB Panel and PLW Panel on 29 April 1999, members noted from the 50-page paper, which was only made available to members on the day of the meeting, that there was an alternative proposal put forward by a group of property developers. Under this alternative proposal, the Government would receive an upfront land premium, at a reserve price of \$8 billion, from property developers by auctioning off the ancillary residential property. The Government would then use \$5 billion for the construction of the Cyberport Portion. The net proceeds to the Treasury would be \$3 billion of upfront cash.

8. Due to the late availability of the Administration's paper and the need for further discussion, another special meeting was convened by the ITB Panel on 5 May 1999 during which members noted copy of a letter dated 21 April 1999 from Vincent T.K. Cheung, Yap & Co. acting on behalf of a group of property developers addressed to FS (re-circulated at CB(1)814/04-05(05)). The letter set out the developers' proposal of putting up for sale by auction or tender the land earmarked for residential development and using the proceeds to fund the Cyberport construction. At the special meeting and in its written reply to the developers dated 29 April 1999 (re-circulated at LC Paper No. CB(1)814/04-05(05)), the Administration made it very clear that it could not allow developers to purchase the site for ancillary residential development only and that this would be a fundamental departure from the whole concept behind the Cyberport project which was to develop the entire Cyberport project as an integrated development. While the developers' alternative proposal was not discussed at length at the meeting, it should be noted that the Administration had already taken a position against the proposed excision of the residential part from the Cyberport project before the ITB Panel had a chance to study the alternative proposal.

9. A similar question was raised at the PWSC meeting on 12 May 1999. In response to a member's question on whether it was necessary to award the

development rights for both the IT and residential portions to the same company, the Administration reiterated that the intention was to generate revenue from the residential portion to finance the IT portion and that interface problems might arise if the two parts were undertaken by different developers. Members of PWSC were aware of two press releases issued on 10 and 11 May 1999 by Sirius Pacific Consultants Ltd representing 10 property developers which expressed grave concerns about the way the Cyberport project had been taken forward. They also noted a press release issued by the Government on 10 May 1999 re-affirming its position (The three press releases are re-circulated at LC Paper No. CB(1)814/04-05(06)). There was also a suggestion that the ITB Panel should meet with the developers before the funding proposal on infrastructural works was further considered by FC. Nevertheless, as the developers did not further indicate to the Panel that they would wish to attend a meeting with members at that time, the Panel Chairman decided not to convene another special meeting. The funding proposal was then submitted to FC on 21 May 1999 as scheduled and approved.

10. As seen from the above, the Administration's stance on the alternative suggestion by the property developers was made known to Members at the meetings of the ITB Panel, PWSC and FC. None of these committees had taken any vote or expressed any position on the alternative suggestion. In fact, when reporting to the PWSC on 12 May 1999, Hon SIN Chung-kai, ITB Panel Chairman, had confirmed that at the two Panel meetings previously held, members had not reached any consensus or had any collective views on the subject of the Cyberport project.

Award of the development right to Pacific Century Group

11. When the proposed Cyberport project was considered in 1999, Members in principle had no objection to the building of a Cyberport in Hong Kong. The thrust of the objection was on the Government's decision to award the project to PCG without going through the usual competitive tendering process. While some Members agreed with the Administration's efficiency in concluding the project expeditiously, some other Members stated their objection as the arrangement had deviated from the established procedures of disposing land and granting development right in an open and competitive manner.

12. As mentioned in paragraph 5 above, the Administration rejected the request to defer the project and conduct a tendering exercise to select the best bid. On whether the Administration would consider awarding the project to other companies if they could demonstrate the same commitment and ability to undertake the IT and residential parts of the project, the Administration informed members at the FC meeting on 21 May 1999 that it had not received any proposal from other developers to undertake the Cyberport project. Some members consider that the Administration has set a bad precedent of using expediency as an excuse for circumventing the necessary procedures. They remain deeply concerned about the lack of transparency in the Administration's decision to

award the project to PCG.

Consultation with LegCo Panel(s)

13. It may be worth-noting that although the Cyberport project has been taken forward amidst much controversy, the ITB Panel has monitored its progress periodically since project implementation. From June 1999 to January 2005, the Panel has reviewed the progress of the project at 14 meetings and visited the Cyberport on three occasions. The Panel on Financial Affairs also discussed the broad policy guidelines for implementing major development projects involving the private sector and the ground rules to justify deviation from the normal practice of following an open, fair and competitive bidding process.

14. In examining the implementation of the Cyberport project over the years, ITB Panel members are keen to ascertain whether the Cyberport can achieve its intended objective of creating a strategic cluster of leading IT companies, instead of becoming another property development project competing with other developers in offering quality office and residential accommodation. Although the ITB Panel is not consulted on major decisions on project development, it has from time to time sought clarification and information from the Administration on matters such as tenancy position, job opportunities and related facilities of the Cyberport. At its last meeting on 10 January 2005, the ITB Panel examined with the Administration the cost-effectiveness of the Cyberport project, the anticipated benefits and the return on the Government's investment. The Administration was requested to revert to the Panel in about a year's time on further progress.