

立法會
Legislative Council

LC Paper No. CB(1)2126/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

**Minutes of twenty-first meeting on
Friday, 16 March 2007, at 3:00 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH, JP
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public Officers attending : Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works

Mrs CHU POON Kit-man, Hedy
Principal Assistant Secretary for the Environment,
Transport and Works

Mr Kady LO Kin-hung
Chief Inspecting Officer (Railways)
Environment, Transport and Works Bureau

Mr David LAU
Principal Assistant Secretary for Financial Services and the
Treasury

Mr Sunny CHAN Yuen-sun
Senior Assistant Law Draftsman
Department of Justice

Miss Clara LEUNG
Government Counsel
Department of Justice

Mr Albert YUEN Lap-pun
Assistant Commissioner for Transport/Bus & Railway

Miss Alice AU YEUNG
Principal Transport Officer (Bus and Railway)
Transport Department

Attendance by invitation : MTR Corporation

Mr Wilfred LAU
Head of Operations

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Kowloon-Canton Railway Corporation

Mr Y T LI
Senior Director, Transport

Mr Raymond WONG
Senior Corporate Affairs Manager

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Sarah YUEN
Senior Council Secretary (1)6

Mr Anthony CHU
Council Secretary (1)2

Action

I Meeting with the Administration and the two railway corporations

- (LC Paper No. CB(1)627/06-07(01) - The Administration's response to issues raised at the meeting on 19 December 2006 on the integrated Operating Agreement
- LC Paper No. CB(1)1071/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 1 March 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)1006/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 23 February 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)755/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 15 January 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)520/06-07(01) - Information paper on the integrated Operating Agreement provided by the Administration
- LC Paper No. IN03/06-07 - Information note on major changes proposed in the draft integrated Operating Agreement between the MTR Corporation Limited and the Government prepared by Research and Library Services Division of the LegCo Secretariat

Action

LC Paper No. CB(1)1071/06-07(03) - The Administration's response to issues raised at previous meetings (First batch)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Integrated Operating Agreement

2. The Bills Committee continued to examine the integrated Operating Agreement clause by clause.

Clause 18 – Miscellaneous

3. Noting that according to clause 18.3.1, Government should not disclose any Restricted Information unless it had first consulted the post-merger corporation (MergeCo) regarding its intention to do so, Messrs WONG Kwok-hing, LEE Wing-tat and Andrew CHENG expressed concern that the Administration might not be able to ensure the transparency of MergeCo's operation, and that the pretext of commercial sensitivity could be used to withhold the disclosure of information that involved public interests, such as details of rail incidents, figures on the basis of which MergeCo would adjust individual fares from the fare adjustment rate calculated in accordance with the fare adjustment mechanism, information on the valuation of property development rights, etc.

4. In response, the Administration and MTR Corporation Limited (MTRCL) explained that the above consultation requirement had stemmed from the need to ensure compliance with relevant listing rules, which imposed restrictions on the disclosure of commercially sensitive information by listed companies. Consultation with MTRCL would help avoid inadvertent disclosure of information that might affect its share prices. The Administration further assured members that although procedurally it had to consult MergeCo before the disclosure of Restricted Information, clause 18.5 had made it clear that the requirement for the Administration to consult MergeCo did not oblige the Administration to obtain MergeCo's agreement. In fact, there had been no difficulty in reaching common understanding with MTRCL on disclosing information which the Administration saw a need to disclose to the Legislative Council (LegCo) and the public. As to the concern about the failure to report on rail incidents, there was already an established notification regime for railway incidents and matters to ensure the safety of the railway.

Matters arising from previous meetings

5. Messrs Andrew CHENG and LEE Wing-tat were concerned about the stuffy and hot environment inside railway stations, particularly the non-enclosed ones such as Hung Hom Station and Mongkok Station of the Kowloon-Canton Railway Corporation (KCRC) East Rail, and Kwai Fong and Kwai Hing MTR stations. Mr CHENG and Mr LEE urged the two railway corporations to explore more innovative measures to

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solve the above long-standing problem, such as the installation of air curtains and automatic doors, provision of air-conditioned waiting kiosks at the platforms of these stations, etc. To facilitate monitoring, Mr CHENG also suggested that thermometers should be installed at platforms.

6. In response, MTRCL and KCRC explained that because the platforms of the above stations were not enclosed areas, their environmental conditions were affected by external factors such as outdoor temperature, wind direction, wind speed, humidity, etc. They also elaborated the various technical difficulties in installing air curtains and providing air-conditioned waiting kiosks at these platforms as proposed, particularly the need to carefully examine the impact of the latter on passenger flow during peak hours. KCRC, however, assured members that it had already installed large electric fans and spot cooling facilities at non-enclosed platforms which were under podiums with a view to providing a better environment for passengers. MTRCL also said that the Corporation had installed large ventilation fans at non-enclosed station platforms like Kowloon Bay and had been experimenting with the installation of automatic doors to minimize the effect of external factors at non-enclosed stations along the Tseung Kwan O Line. The Administration further assured members that where necessary, the two railway corporations would be requested to make improvements in response to the results of customer surveys. Notwithstanding the above explanation, Messrs LEE Wing-tat and Andrew CHENG maintained that the two railway corporations should be more ready to exhaust all possible measures, including the above proposed ones, to improve the environmental conditions of non-enclosed platforms.

7. Highlighting the inadequacy of the relevant questionnaire, Messrs LEE Wing-tat and Andrew CHENG cast doubt on the findings of the passenger interview surveys which KCRC conducted in December 2005 and July 2006 to gauge passengers' views on the provision of on-board broadcasts of programmes in train compartments, and questioned whether the provision of Quiet Zone/Quiet Car was really adequate as reflected in the surveys. In Mr LEE's view, the percentage of Quiet Cars should be at least 25% on all KCRC lines. In response, the Administration assured Mr LEE that it was already drafting the guidelines on the regulation over the broadcasting of audio or audio-visual programmes in train compartments, having regard to members' views expressed at previous meetings. Relevant information would also be provided to the Bills Committee in due course.

8. Mr LEE Wing-tat opined that to justify the granting of property development rights to MTRCL at negotiated rather than market land premiums, consideration should be given to using part of the profits therefrom to set up a fare stabilization fund. In response, the Administration explained that since property development profits had already been reflected in the initial railway fares, there was no plan to set up a fare stabilization fund.

Action

Follow-up actions

Admin/
MTRCL/
KCRC

9. To address the various concerns expressed at the meeting, the Administration and the two railway corporations were requested to take the following actions –

- (a) The Administration to review the drafting of clauses 18.3.1 and 18.5 to ensure that the Government could disclose Restricted Information where necessary without obtaining the agreement of MergeCo;
- (b) The two railway corporations to examine all possible means to improve the air flow at platforms of non-enclosed railway stations with reference to the cooling devices used by the rail operators of hot places such as Kuala Lumpur and Singapore; and
- (c) The Administration to give a consolidated response to issues raised by Dr Fernando CHEUNG vide LC Paper Nos. CB(1)755/06-07(01), CB(1)1071/06-07(01), and CB(1)1006/06-07(01).

II Any other business

10. The Bills Committee agreed to discuss with the Administration and the two railway corporations on matters arising from previous meetings at the next meeting scheduled for Friday, 30 March 2007, from 2:30 pm to 6:30 pm. In consideration of the good progress made at this meeting, the Chairman proposed and members agreed to cancel the next following meeting scheduled for Tuesday, 3 April 2007, at 8:30 am.

11. In this connection, Mr LEE Wing-tat emphasized that the Bills Committee should, as far as possible, refrain from holding two meetings a week and holding meetings that spanned four hours as presently scheduled. The Chairman noted his views and said that the frequency and duration of meetings would be flexibly adjusted as necessary in keeping with the progress of the Bills Committee's work.

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

**Proceedings of the twenty-first meeting of
the Bills Committee on Rail Merger Bill
on Friday, 16 March 2007, at 3:00 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration and the two railway corporations			
000000 - 000254	Chairman	- Opening remarks	
<i>Clause-by-clause examination of the integrated Operating Agreement (LC Paper No. CB(1)520/06-07(01))</i>			
000255 - 000629	Administration	- Briefing by the Administration on clause 18	
000630 - 001324	Chairman Mr WONG Kwok-hing Administration	- Discussion on whether clauses 18.3.1 and 18.5 as presently drafted were contradictory, and whether Government could disclose Restricted Information without the agreement of the post-merger corporation (MergeCo)	Administration to take necessary follow-up actions
001325 - 002933	Chairman Mr LEE Wing-tat Administration Mr Andrew CHENG MTR Corporation Limited (MTRCL)	- Discussion on the Administration's stance and powers regarding the disclosure of Restricted Information (clause 18.3.1) - Enquiry and explanation of the definition of "Restricted Information" (clause 18.3.6), and the need to first consult MergeCo regarding the intention to disclose any Restricted Information - Discussion on the measures which the Administration could take should there be disagreement between it and MergeCo on whether to disclose certain Restricted Information (clauses 18.3.1 and 18.5)	
<i>Discussion on the Administration's response to issues raised at previous meetings (LC Paper No. CB(1)1071/06-07(03))</i>			
002934 - 003546	Chairman Administration Mr LEE Wing-tat MTRCL	- Briefing by the Administration on issue 1 of LC Paper No. CB(1)1071/06-07(03) - Discussion on the need to measure factors other than the levels of carbon dioxide for managing air quality in the station concourses, train compartments and platforms	

Time marker	Speaker	Subject(s)	Action required
003547 - 003907	Chairman Administration Mr Andrew CHENG	- Briefing by the Administration on issues 2 to 4 of LC Paper No. CB(1)1071/06-07(03)	
003908 - 010116	Chairman Mr Andrew CHENG Administration Kowloon-Canton Railway Corporation (KCRC) Mr LEE Wing-tat MTRCL	- Discussion on measures to improve the environmental conditions, especially the temperature and ventilation, at the platforms of the Hung Hom Station and Mongkok Station of the KCRC East Rail, and of Kwai Fong and Kwai Hing MTR stations (clause 4.4.1)	Administration and the two railway corporations to take necessary follow-up actions
010117 - 010819	Chairman Administration Mr LEE Wing-tat KCRC Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on issues 5 to 7 of LC Paper No. CB(1)1071/06-07(03) - Discussion of the adequacy of the questionnaire used to gauge passengers' views on the provision of on-board broadcasts of programmes in train compartments - Discussion on the adequacy of the provision of Quiet Zone/Quiet Car 	
010820 - 010921	Mr LEUNG Yiu-chung Administration	- Enquiry and explanation of the scope of the guidelines being drafted on the regulation over the broadcasting of audio or audio-visual programmes in train compartments	
010922 - 011400	MTRCL	- Briefing by MTRCL on issues 8 and 9 (Annex 3) of LC Paper No. CB(1)1071/06-07(03)	
011401 - 012227	Chairman Mr LEE Wing-tat MTRCL Administration Mr Andrew CHENG	<ul style="list-style-type: none"> - Discussion on the feasibility of making an assessment at the present stage of the variation between the actual results and the project estimates of a railway project during its operating period (item (i) of Annex 3 to LC Paper No. CB(1)1071/06-07(03)) - Discussion on the feasibility of making an interim assessment instead 	
012228 - 012305	Chairman Dr Fernando CHEUNG Administration	- Enquiry and explanation of the status of Dr Fernando CHEUNG's proposal to add clauses 19 to 21 to the integrated Operating Agreement as put forward in his submission dated 15 January 2007 (LC Paper No. CB(1)755/06-07(01))	

Time marker	Speaker	Subject(s)	Action required
012306 - 013021	Chairman Mr LEE Wing-tat Administration	<ul style="list-style-type: none">- Mr Lee Wing-tat opined that MTRCL's revenues mainly came from property development profits - Discussion on the need to justify the granting of property development rights to the two railway corporations by using part of the profits therefrom to set up a fare stabilization fund	
Agenda Item II – Any other business			
013022 – 013709	Chairman Mr LEE Wing-tat Administration Mr TAM Yiu-chung	<ul style="list-style-type: none">- Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
18 July 2007