

立法會

Legislative Council

LC Paper No. CB(1)2242/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of twenty-third meeting on Monday, 16 April 2007, at 8:30 am 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
 - Dr Hon LUI Ming-wah, SBS, JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon LEUNG Yiu-chung
 - Hon SIN Chung-kai, JP
 - Hon LAU Kong-wah, JP
 - Hon Emily LAU Wai-hing, 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 WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon LI Kwok-ying, MH, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
 - Hon TAM Heung-man
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon CHAN Kam-lam, SBS, JP
 - Hon Albert CHAN Wai-yip
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon CHIM Pui-chung

- Public Officers attending** :
- Dr Sarah LIAO
Secretary for the Environment, Transport and Works
 - Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works
 - Miss Ida LEE
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 Leonard TURK
Legal Director & Secretary
 - Mr Wilfred LAU
Head of Operations
 - Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Mr Jason WEBBER
Partner, Slaughter & May
(Legal Adviser of MTR Corporation)

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

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- I Confirmation of minutes**
(LC Paper No. CB(1)1343/06-07 -- Minutes of meeting on 27 February 2007)

The minutes of the meeting held on 27 February 2007 were confirmed.

- II Meeting with the Administration/the two railway corporations**
(LC Paper No. CB(1)1293/06-07(02) - The Aide Memoire provided by the Administration for phased discussion of its response to issues raised at previous meetings
LC Paper No. CB(1)1247/06-07(01) - The Administration's response to issues raised at previous meetings (Items 13, 20, 25, 27, 34, 42, 48-49)

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- and 51-59 of LC Paper No. CB(1) 1247/06-07(01))
- LC Paper No. CB(1)1293/06-07(01) - The Administration's consolidated response to Dr Hon Fernando CHEUNG Chiu-hung's submissions on the integrated Operating Agreement
- LC Paper No. CB(1)1345/06-07(01) - Information paper provided by the Administration
- LC Paper No. CB(3)700/05-06 - the Bill
- LC Paper No. CB(1)1330/06-07(01) - Marked-up copy of the Bill
- LC Paper No. CB(1)1330/06-07(02) - Letter from Assistant Legal Adviser (ALA) to the Administration dated 10 August 2006
- LC Paper No. CB(1)1330/06-07(03) - The Administration's reply dated 19 September 2006 to ALA's letter dated 10 August 2006
- LC Paper No. CB(1)1330/06-07(04) - Letter from ALA to the Administration dated 26 October 2006
- LC Paper No. CB(1)1330/06-07(05) - The Administration's reply dated 8 November 2006 to ALA's letter dated 26 October 2006
- LC Paper No. CB(1)1345/06-07(02) - Relevant extract of Kowloon-Canton Railway Corporation Ordinance (Cap. 372))

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

Progress of the Bills Committee's work

3. Most members expressed dissatisfaction at the recent publicity exercise (the publicity exercise) conducted by the MTR Corporation Limited (MTRCL) on the rail merger covering an advertising campaign to remind the travelling public of the benefits of the proposed merger, and the issue of a press release on the findings of the public opinion survey to track Hong Kong people's views on the proposed merger (the Survey) conducted by the Public Opinion Programme at the University of Hong Kong, as a result of which the public's support for the rail merger and their dissatisfaction towards its progress were highlighted. In these members' view, the publicity exercise aimed at pressurizing the Bills Committee (BC) to rush through the Bill by hinting that the BC was not making sufficient efforts to take forward the Bill as it should have. Such allegation was unfair because the BC had already been scrutinizing the Bill at full speed, with twenty-two meetings held already and the frequency of meetings much higher than that of other BCs. Moreover, scrutiny of bills normally took time. In particular, given the far-reaching implications of the proposed merger and hence the need to clear all concerns about it, it was only prudent that the BC should take longer time to examine the Bill. These members further pointed out that delay, if any, in

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scrutinizing the Bill had been caused by the Administration and MTRCL, which had not been responding in a positive and timely manner to the BC's concerns and requests relating to the Bill, in particular its request to refine the fare adjustment mechanism (FAM) to safeguard public interest.

4. In response, the Secretary for the Environment, Transport and Works (SETW) emphasized that the proposed merger would bring overall benefits to the community at large because fare reduction and service improvement would be made possible as a result of synergies arising therefrom. It was therefore hoped that to bring early benefits to the public, the BC could expedite scrutiny of the Bill to effect the merger early. As for the progress on outstanding matters, namely, the scope of flexibility granted to the post-merger corporation to adjust individual fares within the permitted range, and way forward for the Shatin to Central Link project, time was required to discuss with the two railway corporations because of their likely impacts on the merger package as a whole. The BC however might go on to scrutinize the Bill pending decisions on these matters so as not to affect the progress of its work. The General Manager – Corporate Relations of MTRCL then clarified that the publicity exercise only aimed at factual reporting on findings of the Survey. There was no intention whatsoever to exert pressure on the BC. In fact, when announcing the findings, MTRCL had expressed thanks to the BC for its great efforts in taking forward the merger. It was believed that both MTRCL and the BC had the common objective to expedite the merger to benefit the public early. She also apologized to the BC for any misunderstanding that might be caused by the publicity exercise.

Two-year commitment not to increase fares

5. Many members also expressed concern about the recent comment made by MTRCL's Chairman Mr Raymond CHIEN that MTRCL was under pressure to raise fares, which as they perceived was implying that railway fares might go up very quickly after the proposed merger if it was effected only shortly before the expiry of MTRCL's agreement with the Government to freeze fares for 24 months (the two-year commitment) from the signing of the Memorandum of Understanding (MoU) in April 2006. In this regard, they considered it undesirable that the two-year commitment should be counted from the signing of the MoU and not from passage of the Bill. In their view, the above arrangement had been deliberately made to pressurize the BC to pass the Bill quickly so as to ensure that the travelling public could enjoy longer fare freeze. The arrangement was however unreasonable because first, there was a need to allow reasonable time for the BC to carefully scrutinize the Bill. Second, given the possibility of rising inflation in the years ahead, the time required to complete the legislative process and for MTRCL's minority shareholders to scrutinize and approve the merger proposal, which according to MTRCL would take around another 14 weeks, in all likelihood MergeCo could increase fares according to the fare adjustment formula not long after the rail merger. In the extreme case if it had taken two years to complete the necessary steps for merger implementation, this would mean the public having to pay a higher railway fare soon after the rail merger. These members therefore suggested that the two-year commitment should start from Day One of the rail merger instead.

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6. In response, SETW stressed the need to respect the fact that MTRCL was a listed company that had to operate according to prudent commercial principles and as such, all of its decisions regarding fares including the two-year commitment were made only after detailed and careful consideration and hence could not be changed lightly. Moreover, apart from the two-year commitment, the two railway corporations had also agreed not to increase railway fares notwithstanding indications of an inflationary trend after 2004 when talks on the proposed merger started. In consideration of the need to minimize uncertainty and risk in the operation of a listed company like MTRCL, SETW also saw a need to allow MTRCL to adjust railway fares after a clearly specified period instead of extending the fare-freeze period indefinitely. She further pointed out that at present, because of the fare autonomy enjoyed by the two railway corporations, there was no mechanism to ensure that they would reduce fares even when there was deflation. However, after the FAM, which comprised an objective and transparent formula, was introduced to replace fare autonomy as a result of the proposed merger, railway fares could be adjusted both upwards and downwards. Moreover, as a part of the merger deal, fare reductions would also be implemented on the first day of the merger, before benefits of the merger synergies were fully realized. Most important of all, even though there could be fare increases in future, any such increases would have to be calculated on a lower fare level than now as a result of the fare reductions on day-one of the merger.

7. Notwithstanding SETW's explanation above, Messrs LEE Cheuk-yan and Andrew CHENG called upon the Administration to negotiate with MTRCL for an extension of the fare-freeze period in recognition of the need to allow ample time for the BC to scrutinize the merger proposal. In response, SETW reiterated that the two-year commitment had been secured after extensive consultation with the two railway corporations. Any proposal to extend it would entail re-examination of the relevant financial implications and could lead MTRCL to reopen discussion of the merger package with the Government which would further delay the merger process.

8. Mrs Selina CHOW and Mr Jeffrey LAM acknowledged the difficulties highlighted by SETW in pursuing the two members' call above. Messrs LEE Wing-tat and LEE Cheuk-yan were however unconvinced, claiming that as the majority shareholder of MTRCL, Government could urge MTRCL to extend the fare-freeze period where necessary without prolonged negotiation. As to the financial implications, the synergies arising from the merger should be able to support fare freeze for two years as committed unless there was no intention to honour the two-year commitment in the first place. Moreover, it was unfair that while it would take a long process to effect the fare reduction in the merger package, once the FAM was in operation fares could be adjusted quickly within two months.

9. In response, SETW pointed out that in line with good corporate governance, any decision of a company should be the collective decision of its board rather than dictated by its majority shareholder. Moreover, if not for the gentlemen's agreement in 2004 that MTRCL had maintained its fares at the same level during the full period of merger discussions, railway fares would have gone up during the past two years.

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Mr LEE Cheuk-yan did not agree, pointing out that on the contrary, given the deflation in the few years before 2004, railway fares should have long been reduced.

The Motion

10. As a result of the above discussions on the fare-freeze period, Mr Andrew CHENG moved the following motion –

"本會強烈要求政府與兩鐵協議，立即減價，在法例通過後兩年才正式啟動可加可減機制。"

(Translation)

"That this Committee strongly urges the Government to seek an agreement with the two railway corporations to reduce railway fares immediately, and to formally activate the fare adjustment mechanism, which allows for increase and reduction in railway fares, two years after the passage of the Bill."

11. While recognizing the public's wish to enjoy a longer period of fare freeze, Mrs Selina CHOW also reckoned that the two-year commitment was the result of extensive discussion between Government and the two railway corporations. The Liberal Party therefore had reservation about the proposed motion on grounds that the motion might procrastinate scrutiny of the Bill and hence the merger owing to the need to examine with the corporations the financial implications of immediate fare reduction and of counting the two-year commitment from Day One of the rail merger instead of from the signing of the MoU, and to reopen negotiation to secure agreement to the above changes from MTRCL, which in turn had to balance again the interests of its shareholders and the travelling public. In her view, to enable the public to benefit early from the merger and hence fare reduction, it might be more advisable for the BC to follow up the concern about the fare-freeze period separately from the Bill instead of bundling the two. Mr Jeffrey LAM shared her views, pointing out that the relevant financial implications were indeed complicated and would require time to work out. Notwithstanding this, he urged the Administration to provide the figures concerned as soon as practicable.

12. Mr Andrew CHENG did not agree that the proposed motion would affect the progress of the BC's work, and highlighted the importance of addressing all concerns about the FAM having regard that the Legislative Council would have no say in fare adjustment after the FAM had come into operation. Mr Ronny TONG shared his view, and said that the BC's work progress should not be subject to pressure from the two-year commitment. Instead, to expedite the work of the BC, the Administration and the two railway corporations should positively respond to the proposed motion without further ado to secure the BC's support for the Bill. He and Mr LEE Wing-tat also did not agree that it would take a long time to work out the financial implications of the proposed motion, claiming that the relevant figures should be readily available or else the fare reduction proposal in the merger package could not have been worked out. Mr LEUNG Yiu-chung and Mr LEE Cheuk-yan agreed with them. Stating

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support for the proposed motion, Mr LEUNG further added that because of the availability of such financial figures, the proposed motion would not delay progress of the Bill. On the contrary, the publicity exercise, which according to him aimed at pressurizing the BC and had created confusion in the community, would affect the BC's work. Mr LEE Cheuk-yan also supplemented that by counting the fare-freeze period from the signing of the MoU, so that railway fares could be adjusted upwards shortly after the rail merger, MTRCL and the Administration had not paid regard to public interests.

13. Mr Abraham SHEK declared interests as a member of the Managing Board of Kowloon-Canton Railway Corporation (KCRC). He then stated opposition to the proposed motion on grounds that the two-year commitment had been secured after extensive discussion with the two railway corporations and as such, it was undesirable to seek to introduce changes to it at this juncture lest the merger could not be effected early to benefit the public. He considered that the Administration had already made great efforts to address the BC's concerns. As to issues on which agreement had yet to be reached with the two railway corporations, there was a need to note that the corporations had fare autonomy and it would not be appropriate to force them to give in to the BC's requests. Instead, the BC should focus on the Bill. He however also criticized MTRCL for conducting the publicity exercise to pressurize the BC to expedite its work, and pointed out that the BC had a duty to carefully scrutinize the Bill.

14. Stating MTRCL's position regarding the proposed motion, the Legal Director & Secretary of MTRCL explained that the two-year commitment had been worked out after careful consideration of the interests of all stakeholders and had been written into the MoU. Despite rising operational costs, MTRCL would honour the commitment. He further pointed out that fare reduction would only be made possible by the synergies arising from the rail merger and hence was dependent on it. However, while it would take time for the synergies to materialize, fare reduction would be implemented on the first day of the merger, before the benefits of the synergies could fully be realized.

15. The motion was seconded by Mr LEE Wing-tat. Members agreed to proceed with the motion and put it to vote. Except for the Chairman who did not exercise her voting right, of the members present, 14 voted for the motion, one voted against and two abstained. The Chairman declared that the motion was carried.

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(1) 1380/06-07 on 17 April 2007.)

16. At members' request, SETW agreed to examine how to follow up the motion, which in her view would greatly affect how the Bill should further proceed by seeking to change a fundamental element of the MoU. She would advise the BC in due course on when she could revert.

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Matters arising from previous meetings

MTRCL 17. The Bills Committee continued to examine the Administration's response to issues raised at previous meetings. When considering item 13 thereof, Messrs Andrew CHENG and LEE Wing-tat stressed the need to provide radio reception on board trains as in road tunnels to enable passengers to obtain information on news through radio service. They requested MTRCL to provide a paper on the technical difficulties and financial implications of providing the required facilities and system.

MTRCL 18. When going through item 20 of the response, Mr LEE Wing-tat was keen to ensure that Automatic Platform Gates (APGs) would be installed at above ground railway stations where feasible and, where such was infeasible, spot cooling devices would be installed to provide a better environment for passengers. More concerned about passenger safety, Prof Patrick LAU opined that APGs like those along the Disney Resort Line, the installation of which was technically feasible according to him, should be provided as far as possible. Dr Fernando CHEUNG also stressed the need to install without further delay APGs to ensure passenger safety, especially the safety of those visually impaired who had to use rail service. In this connection, Mr Andrew CHENG opined that cost consideration should not be a major factor in deciding whether to provide APGs given the more important consideration of passenger safety. At members' request, MTRCL agreed to provide a preliminary response in this regard at the meeting of the Subcommittee on Matters Relating to Railways on 4 May 2007, at which retrofitting of APGs and platform screen doors at railway stations would be discussed.

III Any other business

19. The Bills Committee agreed to continue to discuss with the Administration and the two railway corporations on the Administration's response to issues raised at previous meetings at the next meeting scheduled for Tuesday, 17 April 2007, from 2:30 pm to 4:30 pm. Subject to the completion of the discussion on the outstanding issues, the Bills Committee would commence clause-by-clause examination of the Bill.

20. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the twenty-third meeting of
the Bills Committee on Rail Merger Bill
on Monday, 16 April 2007, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Confirmation of minutes			
000000 - 000015	Chairman	- Confirmation of minutes of the meeting held on 27 February 2007 (LC Paper No. CB(1)1343/06-07)	
Agenda Item II – Meeting with the Administration/the two railway corporations			
000016 – 000428	Chairman	- Opening remarks	
000429 - 010406	Chairman Mr LEE Wing-tat Mr WONG Kwok-hing Mr TAM Yiu-chung Mr Andrew CHENG Ir Dr Raymond HO Mr LAU Kong-wah Mr LEE Cheuk-yan Mrs Selina CHOW Administration Ms Emily LAU MTR Corporation Limited (MTRCL) Dr Fernando CHEUNG Miss TAM Heung-man	<ul style="list-style-type: none"> - Mr LEE Wing-tat, Mr WONG Kwok-hing, Mr LAU Kong-wah, Mr LEE Cheuk-yan, Ms Emily LAU, Miss TAM Heung-man and Mr Andrew CHENG's expression of dissatisfaction with the recent publicity exercise conducted by MTRCL on the rail merger (the publicity exercise), which in their view aimed at pressurizing the Bills Committee (BC) to pass the Bill early by hinting that it was not making sufficient efforts to take forward the Bill as it should - Mr TAM Yiu-chung's view that the BC's work might be expedited if members' wish to take the opportunity of the proposed merger to introduce improvements to rail service could be addressed by MTRCL - Mr Andrew CHENG, Ir Dr Raymond HO, Mr LAU Kong-wah and Mr LEE Cheuk-yan's expression of views on the need to pursue improvements to rail service in the context of the proposed merger, and the undesirability of the Administration's failure to respond to members' requests in this regard in a positive and timely manner - Messrs Andrew CHENG and LEE Cheuk-yan's expression of dissatisfaction at the recent comment made by MTRCL's Chairman on pressure to raise fares, and hence concern about MTRCL's agreement with the Government to freeze fares for 24 months from the signing of the Memorandum of Understanding (MoU), and their view on the need to clarify many aspects of the proposed merger given its far-reaching implications 	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Discussion on some members' proposal to calculate the 24-month fare-freeze period from Day One of the rail merger instead of from the signing of the MoU, in particular the relationship between the synergies arising from the rail merger and the length of the fare-freeze period, and whether the period could be extended - Mrs Selina CHOW's view that since there was agreement that the proposed merger could benefit the public, all parties concerned should work together to enable it to take effect early - Administration's response to members' views and comments above - MTRCL's emphasis that the merger proposal should be considered as a whole package and as such it would benefit all stakeholders including passengers, clarification that MTRCL had no intention to exert pressure on the BC, and apology for any such misunderstanding created - Dr Fernando CHEUNG's enquiry and MTRCL's response about the cost of the publicity exercise 	
010407-011716	Chairman Mr LAU Kong-wah Mr LEE Wing-tat MTRCL Mr LEE Cheuk-yan Administration	<ul style="list-style-type: none"> - Mr LAU Kong-wah's enquiry about the reason for not consulting the Legislative Council before introducing fare adjustments under the new fare adjustment mechanism (FAM), and the Administration's explanation of the rationale for a "direct drive" fare adjustment mechanism - Mr LEE Wing-tat's enquiry and MTRCL's explanation about the procedures to be taken after passage of the Bill to effect the proposed merger and hence the fare reduction on day one of the rail merger - Administration's explanation in response to Messrs LAU Kong-wah and LEE Cheuk-yan on the timeframes of fare adjustments before and after the FAM went into operation 	
011717 - 011842	Mrs Selina CHOW	<ul style="list-style-type: none"> - Mrs Selina CHOW's statement of the Liberal Party's stance towards the motion proposed by Mr Andrew CHENG 	

Time marker	Speaker	Subject(s)	Action required
011843 – 011946	Mr WONG Kwok-hing	- Mr WONG Kwok-hing's view that MTRCL could deliberately hold up discussion on the scope of flexibility to adjust individual fares until expiry of the 24-month fare-freeze period, and hence his call for early decision on the matter	
011947 - 014519	Chairman Mr Andrew CHENG Mrs Selina CHOW Mr Ronny TONG MTRCL Mr LEUNG Yiu-chung Mr Abraham SHEK Mr Jeffrey LAM Mr LEE Wing-tat Mr LEE Cheuk-yan Administration	- Discussion and voting on the motion proposed by Mr Andrew CHENG	Administration to take necessary follow-up actions
<i>Matters arising from previous meetings (LC Paper No. CB(1)1247/06-07(01))</i>			
014520 - 015317	Chairman Administration Mr LEE Wing-tat MTRCL Mr Andrew CHENG	- Briefing by the Administration on item 13 of LC Paper No. CB(1)1247/06-07(01) - Discussion on the need and feasibility of adopting for road tunnel operators' practice regarding radio reception as described under the item	MTRCL to take necessary follow-up actions
015318 - 020425	Chairman Administration Mr LEE Wing-tat MTRCL Prof Patrick LAU Dr Fernando CHEUNG Mr Andrew CHENG	- Briefing by the Administration on item 20 of LC Paper No. CB(1)1247/06-07(01) - Discussion on whether Automatic Platform Gates could be installed at above ground railway stations	MTRCL to take necessary follow-up actions and provide response to the Subcommittee on Matters relating to Railways
Agenda Item III – Any other business			
020426 - 020440	Chairman	- Meeting arrangements	