

立法會

Legislative Council

LC Paper No. CB(1)590/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of ninth meeting on Thursday, 30 November 2006, at 10:45 am in the Chamber of the Legislative Council Building

- Members present** :
- Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
 - Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - 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-yee, GBS, JP
 - Hon CHAN Kam-lam, SBS, 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 Albert CHAN Wai-yip
 - Hon WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon LI Kwok-ying, MH, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - 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 LEUNG Kwok-hung
 - Hon Ronny TONG Ka-wah, SC
 - Hon CHIM Pui-chung

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

Miss Ida LEE
Principal Assistant Secretary for the Environment,
Transport and Works

Mr Martin GLASS
Deputy Secretary for Financial Services and the Treasury

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

Mr Sunny CHAN Yuen-sun
Senior Government Counsel
Department of Justice

Mr Lewis LAW Chung-ming
Government Counsel
Department of Justice

Attendance by invitation

: MTR Corporation

Mr Lincoln LEONG
Finance Director

Mr Eddie SO
Senior Transport Planning Manager

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Kowloon-Canton Railway Corporation

Mr Raymond CHAN
General Manager – Financial Control

Mr Victor LEUNG
Marketing Manager – Service Planning

Mr Raymond WONG
Senior Corporate Affairs Manager

Clerk in attendance : Ms Sarah YUEN
Acting Chief Council Secretary (1)2

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie FUNG
Assistant Legal Adviser 3

Mr Anthony CHU
Council Secretary (1)2

Miss Winnie CHENG
Legislative Assistant (1)5

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I Confirmation of minutes and matters arising
(LC Paper No. CB(1)337/06-07 -- Minutes of the meeting held on
24 October 2006)

The minutes of the meeting held on 24 October 2006 were confirmed.

2. At the request of Mr LEE Wing-tat, the Bills Committee had reviewed the agreed meeting schedule circulated vide LC Paper No. CB(1)223/06-07. After discussion, members agreed that the original meeting schedule should be followed provided that the Administration could comply with the two-clear day rule in providing information papers for the relevant meetings.

II Proposal to seek the Council's authorization for the Bills Committee to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration and MTR Corporation Limited to disclose further information relating to the valuation of the property package and financial arrangements for the merger deal

(LC Paper No. CB(1)379/06-07(01) - Letter from Hon Andrew CHENG
Kar-foo

LC Paper No. CB(1)391/06-07(01) - Wording of the motion to be moved
by Hon Andrew CHENG Kar-foo)

3. The Chairman referred to the motion proposed by Mr Andrew CHENG proposing the Bills Committee (BC) to seek the Council's authorization for the BC to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration and MTR Corporation Limited

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(MTRCL) to disclose further information relating to the valuation of the property package and financial arrangements for the merger deal. After inviting Mr CHENG to brief members on his proposed motion, the Chairman invited the Administration and MTRCL to respond. Members then took turns to express views on the motion. After discussion, the motion was put to vote. Of the members present, seven voted for the motion and 15 voted against. The Chairman declared that the motion was negated.

(Post-meeting note: The speaking notes of the Deputy Secretary for Financial Services and the Treasury, and of Mr Lincoln LEONG, Finance Director of MTRCL, were tabled at the meeting and issued to members vide LC Paper No. CB(1)411/06-07 dated 1 December 2006.)

III Fare-related matters arising from the rail merger

- (LC Paper No. CB(1)383/06-07(01) - The Administration's response to issues raised at the meeting on 14 November 2006 on fare adjustment mechanism and fare reduction proposal
- LC Paper No. CB(1)258/06-07(01) - The Administration's response to issues raised at the meeting on 2 November 2006 on fare adjustment mechanism and fare reduction proposal
- LC Paper No. CB(1)195/06-07(01) - Information paper on fare adjustment mechanism and fare reduction proposal provided by the Administration
- LC Paper No. CB(1)258/06-07(02) - A list of written questions raised by Hon LAU Kong-wah on fare adjustment mechanism and fare reduction proposal
- LC Paper No. CB(1)258/06-07(03) - Letter dated 9 November 2006 from Hon LAU Kong-wah providing information on the hypothetical changes to railway fares based on the proposed fare adjustment mechanism
- LC Paper No. CB(1)258/06-07(04) - Administration's response to questions raised by Hon LAU Kong-wah as set out in LC Paper No. CB(1)258/06-07(02)
- LC Paper No. CB(1)258/06-07(05) - Administration's response to Hon LAU Kong-wah's letter dated 9 November 2006 circulated vide LC Paper No. CB(1)258/06-07(03)

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- LC Paper No. CB(1)289/06-07(01) - Speaking note of Mr Lincoln LEONG, Finance Director, MTR Corporation Limited, at the meeting on 14 November 2006
- LC Paper No. CB(1)289/06-07(02) - Illustration of the fare adjustments within $\pm 10\%$ points from the overall fare adjustment provided by MTR Corporation Limited
- LC Paper No. CB(1)222/06-07(01) - Speaking note of Mr Lincoln LEONG, Finance Director, MTR Corporation Limited, at the meeting on 2 November 2006)

4. The BC deliberated (index of proceedings attached at **Annex**).
5. The Administration was requested to provide –
 - (a) Further details on the synergies of the rail merger amounting to \$450 million per annum and the basis of calculation, in particular those synergies coming from the areas of procurement and support functions;
 - (b) Details on actual adjustments of individual fares of Mass Transit Railway Corporation (MTRCL) in 1996, which featured an overall fare increase rate of 6.9% with deviation from the overall rate from +13.1% to -6.9%;
 - (c) Given the Administration's explanation that if it was to adopt the same approach used for calculating the productivity gain of the franchised bus industry in Hong Kong to measure the productivity performance of the railway industry, it would yield a negative result of -2.6% per annum, the Administration was requested to provide further details to explain the actual working of the calculations, bearing in mind the effect of the conclusion was that the rate of increase in revenue in the past was much lower than the rate of increase in cost whereas the actual situation was that MTRCL was making huge profit each year; and
 - (d) A paper to explain how property profits had been taken into account when the railway corporations set the initial fares of the relevant new railways, and to account for such a significant policy change. The paper should preferably include extracts of statements, if any, made by the Administration and MTRCL in this regard in the past; any supplementation in the light of the above policy change to the Administration's replies to Mr LAU Kong-wah's questions 4 and 5 in LC Paper No. CB(1)258/06-07(04); and how property profits could be incorporated in the fares if, as claimed by the Administration, there was difficulty in estimating the profits. Where appropriate, a table covering the past 22 years should also be provided showing the years in which fares had taken into account property profits.

Action

IV Any other business

6. In consideration of the number of questions and concerns expressed on fare-related matters arising from the merger at this meeting, the Chairman decided that the discussion on the matters should be continued at the tenth BC meeting scheduled for Tuesday, 12 December 2006, from 10:45 am to 12:45 pm.

7. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 1
Legislative Council Secretariat
28 December 2006

**Proceedings of the ninth meeting of
the Bills Committee on Rail Merger Bill
on Thursday, 30 November 2006, at 10:45 am
in the Chamber of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Agenda Item I – Confirmation of minutes and matters arising</i> | | | |
| 000000 - 000040 | Chairman | - Confirmation of minutes of the meeting held on 24 October 2006 (LC Paper No. CB(1)337/06-07) | |
| 000041 - 000917 | Chairman Mr LEE Wing-tat Mr TAM Yiu-chung Mrs Selina CHOW Mr Abraham SHEK Ms Emily LAU | - Re-examination and endorsement of the meeting schedule up to March 2007 | |
| <i>Agenda Item II – Proposal to seek the Council's authorization for the Bills Committee to exercise the powers conferred under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Administration and MTR Corporation Limited to disclose further information relating to the valuation of the property package and financial arrangements for the merger deal</i> | | | |
| 000918 - 002111 | Chairman Mr Andrew CHENG Administration MTR Corporation Limited (MTRCL) | - Opening remarks - Briefing by Mr Andrew CHENG on his proposed motion - Response by the Administration and MTRCL | |
| 002112 - 010737 | Chairman Mr LEE Wing-tat Mr Albert HO Ms Emily LAU Mr Abraham SHEK Mrs Selina CHOW Mr CHEUNG Hok-ming Ir Dr Raymond HO Mr Jeffrey LAM Mr CHAN Kam-lam Administration MTRCL Mr Andrew CHENG | - Discussion and voting on the proposed motion | |
| <i>Agenda Item III – Fare-related matters arising from the rail merger</i> | | | |
| 010738 - 011533 | Administration MTRCL | - Briefing by the Administration and MTRCL | |
| 011534 - 012043 | Mr LAU Kong-wah Administration MTRCL | - Mr LAU Kong-wah's views that i) the flexibility proposed to be granted to the post-merger Corporation (MergeCo) to adjust railway fares within ± 10 percentage points (the permitted range) from | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>the overall fare adjustment rate (the proposed flexibility), which could mean that the differential between adjustment rates for individual fares could be as great as 20% in the extreme case, was too wide to be fair and acceptable unless subject to approval by certain authority</p> <p>ii) previous cases quoted in the Administration's paper (LC Paper No. CB(1)383/06-07(01)) whereby railway corporations and bus companies set their individual fares at rates different from the overall fare adjustment rates could not be used to justify the proposed flexibility because the relevant District Councils (DCs) or the Legislative Council (LegCo) were either not informed of such adjustments or had opposed to them to no avail. Moreover, fare adjustments of local franchised bus companies were subject to compliance with the approved fare tables for the relevant bus companies and agreement with the Government</p> <ul style="list-style-type: none"> - Administration's explanation that the individual fares which were adjusted at rates considerably higher or lower than the then overall adjustment rates of the two railway corporations quoted in Table B of LC Paper No. CB(1)383/06-07(01) were mainly concessionary fares due to rounding problem, and that the present proposal already represented a tight restriction over MergeCo's flexibility when compared with full discretion currently enjoyed by the two corporations - MTRCL's explanation that at present the differential between Octopus fares for individual stations at different fare zones was already more than 20% as in the case of the lowest sectional fare of \$3.8 and the next lowest sectional fare of \$4.6 | |

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| 012044 - 012552 | Chairman Mr WONG Kwok-hing Administration | <ul style="list-style-type: none"> - Administration's explanation in response to Mr WONG Kwok-hing's concerns about the proposed flexibility that <ul style="list-style-type: none"> i) fare adjustments before 1993 and after 1997 were not given in LC Paper No. CB(1)383/06-07(01) because the two railway corporations and most of the franchised bus companies last increased their fares in 1997 and hence the adjustments of the five-year period between 1993-1997 (inclusive) were given ii) application of different adjustment rates to different individual fares under the fare adjustment mechanism (FAM) must be revenue neutral iii) the permitted range had already greatly limited MergeCo's ability to adjust individual fares as compared to fare autonomy the two railway corporations presently had iv) the merger discussions with the railway corporations had already resulted in their agreement to adopt a more objective and transparent FAM as part of the overall merger deal to replace fare autonomy. Future fares would go down or go up according to a fare adjustment formula | |
| 012553 - 013232 | Chairman Mr LEE Cheuk-yan Administration MTRCL | <ul style="list-style-type: none"> - Mr LEE Cheuk-yan's reiteration of his proposal that railway fares should be subject to the approval by LegCo, having regard to public affordability and the prevailing economic conditions - Mr LEE's request for details on actual adjustments of individual fares of MTRCL in 1996, which featured an overall fare increase rate of 6.9% with deviation from the overall rate from +13.1% to -6.9% - Administration's explanation that since consideration would be given to changes in consumer price index and wage index of the preceding year which would be the most up-to-date indices reflecting changes in Hong Kong's economy at the time of the annual fare reviews in calculating the overall fare | Administration to take necessary follow-up action |

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| | | <p>adjustment under the FAM, the adjustment rate would broadly reflect the current economic conditions</p> <ul style="list-style-type: none"> - Administration's response to Mr LEE's question on whether the Government could direct MTRCL not to adjust fares that under the existing law, where necessary, the Chief Executive in Council (CE in ExCo) might, if he considered the public interest so required, give directions in writing to MTRCL in relation to any matter concerning the franchise - MTRCL's explanation that continuation of any prevailing concessionary schemes after the rail merger would be a commercial decision of MergeCo | |
| 013233 - 013807 | Chairman Mr LEE Wing-tat Administration | <ul style="list-style-type: none"> - Mr LEE Wing-tat's views that <ol style="list-style-type: none"> i) the scope of the proposed flexibility should be reduced to prevent MergeCo from competing with other public transport services through predatory marketing practices ii) CE in ExCo's direction could not be easily given because this could entail compensation to MergeCo in certain circumstances. To safeguard public interest, the permitted range should be narrowed to ensure railway fares were affordable | |
| 013808 - 014410 | Mr Andrew CHENG MTRCL Administration | <ul style="list-style-type: none"> - Mr Andrew CHENG's view that the cases quoted in LC Paper No. CB(1)383/06-07(01) could not convince members of the reasonableness of the proposed flexibility. Amendments should be introduced to the Bill to narrow the permitted range and to subject fare adjustments to the approval of ExCo - Mr CHENG's request for further details on the synergies of the rail merger amounting to \$450 million per annum and the basis of calculation, in particular those synergies coming from the areas of procurement and support functions - MTRCL's explanation that increase in the scale of the procurement activities | Administration to take necessary follow-up action |

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| | | <p>as a result of the rail merger would enable MergeCo to bargain for better terms and hence give rise to synergies. The production of one annual report instead of two after the merger would also result in synergies</p> <ul style="list-style-type: none"> - Administration's explanation that according to the two corporations, there was difficulty in providing further breakdown of synergies amount because synergies might come from overlapping activities and it was not appropriate to artificially apportion the estimated amount into each and every different activity | |
| 014411 - 015218 | <p>Chairman Mr TAM Yiu-chung Ms LI Fung-ying Mr LEE Wing-tat Mr LAU Kong-wah MTRCL Administration</p> | <ul style="list-style-type: none"> - Mr TAM Yiu-chung's view that to address concerns that the permitted range was too wide to be acceptable, consideration might be given to allowing MergeCo to reduce certain individual fares to compete with other public transport services where necessary without correspondingly increasing other individual fares - Mr TAM and Ms LI Fung-ying's view that to justify the granting of property development rights to the two railway corporations, consideration should be given to using part of the profits therefrom to set up a fare stabilization fund in due course - MTRCL's advice that since property development profits had already been reflected in the initial railway fares, and there would already be significant fare reduction amounting to \$600 million per annum immediately upon the rail merger, there was no plan to set up a fare stabilization fund. - Administration's emphasis that due to heavy capital investment for the railway industry, the option of granting property development rights to the railway corporations for construction of new railways would help ensure the sustainability of rail development. Moreover, property profits had already been taken into account when the railway corporations set the initial fares of the relevant new railways | |

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| | | <ul style="list-style-type: none"> - Messrs LEE Wing-tat and LAU Kong-wah's comment that the above claim that railway fares had already incorporated property profits represented a significant policy change and hence a paper should be provided to explain and account for the change - Ms LI's view that LC Paper No CB(1)383/06-07(01) failed to assure members of the appropriateness of the proposed flexibility, and her call upon the Administration and MTRCL to give due consideration to members' views expressed at meetings - Administration's explanation that as shown in LC Paper No. CB(1)383/06-07(01), in the past, some individual fare adjustment rates of the two corporations actually deviated from the overall fare adjustment rate by more than 10 percentage points. In future, MergeCo would be subject to more stringent restriction as the proposed FAM would limit its flexibility to deviation of no more than 10 percentage points from the overall rate - MTRCL's explanation that the overall fare adjustment rate by MergeCo would be capped at the overall fare adjustment rate derived from the FAM formula, i.e. the adjustment rate of weighted average fare of all individual fares must be equal to the overall fare adjustment rate derived from the FAM formula | Administration to take necessary follow-up action |
| 015219 - 015720 | Chairman Miss TAM Heung-man MTRCL Mrs Selina CHOW | <ul style="list-style-type: none"> - Discussion on the permitted range and how profits from property development could be reflected in railway fares | |
| 015721 - 020714 | Chairman Dr Fernando CHEUNG Administration MTRCL | <ul style="list-style-type: none"> - Dr Fernando CHEUNG's concerns about MergeCo's monopoly in the property development sector and the public transport sector upon the merger, and hence regret over the Administration and MTRCL's refusal to provide further information on the property package of the rail merger proposal to enable members to assess the loss in Government revenue so resulting as well as whether there was | |

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| | | <p>transfer of benefits</p> <ul style="list-style-type: none"> - Dr CHEUNG's request for details on <ul style="list-style-type: none"> i) the reasons for allowing MergeCo the proposed flexibility while the franchised bus companies were not given similar flexibility ii) whether the fare reduction package could really benefit the travelling public given that railway fares should have long been reduced taking into account the past deflation iii) how the pre-determined productivity factor in the FAM had been worked out - Administration's reference to paragraph (j) of LC Paper No. CB(1)258/06-07(01), and explanation that subject to the compliance with the approved fare tables for the relevant bus companies and agreement with the Government, local franchised bus companies also enjoyed flexibility in setting and adjusting their individual fares. On the other hand, the existing fare autonomy of the two railway corporations would be replaced with the FAM upon implementation of the rail merger which would represent an improvement in respect of protection of passengers' interests - MTRCL's explanation that the fare reduction package had been made possible by synergies to be achieved as a result of the rail merger. The package should be viewed separately from the FAM, which was a forward-looking mechanism | |
| <i>Agenda Item IV – Any other business</i> | | | |
| 020715 - 021221 | Chairman Mr LEE Wing-tat Mr LAU Kong-wah Dr Fernando CHEUNG MTRCL | <ul style="list-style-type: none"> - Messrs LEE Wing-tat and LAU Kong-wah's reiteration of request for a paper to explain how property profits had been taken into account when the railway corporations set railway fares - Dr Fernando CHEUNG's request for details to explain the formula used in working out the productivity factor in the FAM - MTRCL's clarification that the railway | <p>Administration to take necessary follow-up action</p> <p>Administration to take necessary follow-up action</p> |

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| | | fares and not the annual adjustments had incorporated property profits - Meeting arrangements | |

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