

立法會
Legislative Council

LC Paper No. CB(1)1928/05-06
(These minutes have been seen
by the Administration)

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Panel on Transport

**Minutes of meeting held on
Friday, 26 May 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon Andrew CHENG Kar-foo (Deputy Chairman)
Hon LAU Chin-shek, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
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 Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
- Members attending** : Hon LEE Cheuk-yan
Hon KWONG Chi-kin
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon Albert Jinghan CHENG

- Public Officers attending** : **Agenda item IV**
- Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works
- Miss Ida LEE
Principal Assistant Secretary for the Environment, Transport and Works
- Mr David LAU
Principal Assistant Secretary for Financial Services and the Treasury
- 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
- Miss Winnie CHENG
Legislative Assistant (1)5

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- I Confirmation of minutes and matters arising**
- (LC Paper No. CB(1)1549/05-06 - Minutes of the special meeting held on 21 March 2006
- LC Paper No. CB(1)1558/05-06 - Minutes of the meeting held on 24 March 2006)
- The minutes of the meetings held on 21 and 24 March 2006 were confirmed.
- II Information papers issued since last meeting**
- (LC Paper No. CB(1)1412/05-06(01) - Information paper on "Limitation on the number of public light buses" provided by the Administration
- LC Paper No. CB(1)1495/05-06(01) - Submission from Taxi & P.L.B. Concern Group on railway policy
- LC Paper No. CB(1)1516/05-06(01) - Administration's response to the

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submission from The Experience Group, Limited on development of rail based transport in the Central and Wanchai harbour-front)

2. Members noted the information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 23 June 2006

(LC Paper No. CB(1)1557/05-06(01) - List of outstanding items for discussion

LC Paper No. CB(1)1557/05-06(02) - List of follow-up actions)

3. Members agreed that the following items would be discussed at the next regular meeting scheduled for 23 June 2006 –

(a) Measures to enhance safety of public light bus and taxi operations;

(b) Measures to combat drink driving; and

(c) Location of bus, taxi and public light bus pick up/drop-off points.

4. Mr Albert CHAN proposed to ask the Administration to update the Panel on the progress of measures for improving regulation of non-franchised bus operations. As suggested by the Chairman, members agreed that the Administration should be asked to provide a progress update on the subject to facilitate their consideration of whether it was necessary to follow up on the related issues at a separate meeting.

IV Rail Merger – Proposed steps for the legislative exercise

(LC Paper No. CB(1)1557/05-06(03) - Information paper entitled "Rail Merger - Proposed Steps for the Legislative Exercise" provided by the Administration

LC Paper No. CB(1)1291/05-06(01) - Information paper entitled "Merger of MTR and Kowloon-Canton Railway Systems - Proposed Way Forward" provided by the Administration for the joint Panel meeting on 12 April 2006

LC Paper No. CB(1)1541/05-06(01) - Administration's response to members' questions on the rail merger proposal raised at the joint Panel meeting on 12 April 2006

LC Paper No. CB(1)1347/05-06(03) - Administration's response to members' questions on staff-related

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- issues raised at the joint meeting on 12 April 2006
- LC Paper No. CB(1)1541/05-06(02) - Administration's response to members' questions on staff-related issues raised at the Transport Panel meeting on 28 April 2006
- LC Paper No. CB(1)1301/05-06(01) - Letter dated 11 April from Hon WONG Kwok-hing to the Chairman of the Panel on Transport putting forward views on the merger of MTR and Kowloon-Canton Railway systems
- LC Paper No. CB(1)1564/05-06(01) - Letter dated 20 May 2006 from the Islands Branch of the Democratic Alliance for the Betterment and Progress of Hong Kong on "Merger of MTR and Kowloon-Canton Railway Systems — Fare-related issues"
- LC Paper No. CB(1)1378/05-06(01) - Submission from Alliance of Five Unions in Two Rails
- LC Paper No. CB(1)1367/05-06(01) - Submission from Hong Kong Mass Transit Railway Staff General Association
- LC Paper No. CB(1)1367/05-06(02) - Submission from Staff Consultative Council, MTR Corporation
- LC Paper No. CB(1)1399/05-06(01) - Submission from Kowloon-Canton Railway Workers Union
- LC Paper No. CB(1)1399/05-06(02) - Submission from Kowloon-Canton Railway Employees Association
- LC Paper No. CB(1)1595/05-06(01) - List of follow-up actions for the joint meeting on 22 May 2006
- LC Paper No. CB(1)1595/05-06(02) - List of follow-up actions for the joint meeting on 23 May 2006)

Provision of information and attendance

5. The Chairman enquired when the Administration was ready to provide the information on the property package of the rail merger as requested by members at the meeting on 23 May 2006. The Deputy Secretary for the Environment, Transport and Works (DS/ETW) reported that the Administration was preparing a reply in collaboration with the MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC). The Administration would endeavour to provide the Panel with a substantive reply before the end of the following week. He then briefed members on the broad legislative proposals for implementing the rail merger and the proposed steps for the legislative exercise.

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6. Mr Andrew CHENG cautioned that if the two corporations refused to provide the information as requested by members, he would consider seeking authorization from the Legislative Council (LegCo) to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the concerned parties to produce such information. Ms Miriam LAU also said that, to expedite the legislative scrutiny process, the Administration should positively consider providing members with all the requested information.

7. Mr WONG Kwok-hing expressed great dissatisfaction that representatives from the two railway corporations did not turn up at the meeting to answer members' questions. In response, DS/ETW explained that as the purpose of this meeting was to consult members on the broad legislative proposals for implementing the proposed merger of the Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) systems (the Bill), the Administration had not invited representatives of the two railway corporations to attend the meeting. Should members wish to follow up any issues arising from the rail merger, arrangements could be made for the two railway corporations to appear before the Panel to answer members' questions.

Staff-related issues

8. Mr WONG Kwok-hing referred to the requests of the staff unions of the two railway corporations for expanding the definition of frontline staff to include some 2 000 frontline contract staff and for offering permanent posts to them for ensuring their job security. Mr WONG urged the Administration to positively consider the requests made by the trade unions so as to maintain staff morale and hence the reliability of rail service. DS/ETW pointed out that the definition had already covered frontline staff who were employed on contract terms for a duration of two years or more. He understood from the two railway corporations that most of the contract staff except for individual projects were employed on terms for a duration of two years or more, and hence the job security of contract frontline staff would be protected. He further reported that the two corporations would consult staff on the detailed arrangements, including the interpretation of the definition of frontline staff and the arrangement for contract staff. He would relay Mr WONG's views to the corporations for consideration.

9. Mr WONG Kwok-hing sought details concerning the estimated overall staff synergy of 650 – 700 full-time equivalents which was expected to be achieved over a number of years as a result of the rail merger. Noting that the post-merger corporation would align the terms and conditions of employment and grading structure of MTRCL and KCRC, he remarked that the new employment terms and conditions should be no worse off than the existing ones. In response, DS/ETW referred members to the Administration's response to members' questions on staff-related issues raised at the Panel's joint meeting with the Financial Affairs Panel on 12 April 2006 (LC Paper No. CB(1)1347/05-06(03)), and confirmed that the estimated overall staff synergy was about 650 – 700, of which some 580 to 620 were non-managerial posts. Regarding the alignment of employment terms and conditions after the merger, he said that these

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would not be covered by the proposed legislation but staff would be consulted on the package proposal before a final decision was made by the two railway corporations.

10. Referring to the Administration's response to members' questions on staff-related issues raised at the Panel meeting on 28 April 2006 (LC Paper No. CB(1)1541/05-06(02), Ms LI Fung-ying pointed out that despite the holding of a few meetings to discuss the rail merger, little progress had been made in addressing the concerns and requests of the staff of the two railway corporations, in particular the request to set up an appeal mechanism that involved participation of representatives of staff unions, the request to provide to the staff unions of the two railway corporations the consultancy report on the assessment of the area and magnitude of synergy which could be brought about by the rail merger, the concern over the lack of a time period specified for the assurance of job security for frontline staff, etc. She was also gravely concerned about the need for conducting a separate staff selection process after the rail merger and queried whether it could be carried out in an objective manner to safeguard the interest of staff. In the absence of concrete information to allay members' concerns on staff-related matters, it would be difficult for members to indicate their support to the proposed rail merger. If the Administration wanted to expedite the legislative process, they should proactively discuss with the trade unions and solicit their support for the proposed staff package before introducing the Bill into the Council for consideration.

11. In response, DS/ETW said that while the Administration aimed to introduce the Bill into the Council before the summer recess, it was prepared to discuss various issues arising from the rail merger with members during the scrutiny process. He assured members that the Administration was equally concerned about the welfare of staff and the two railway corporations were in active discussion with their staff representatives and the trade unions. The Administration would monitor the situation.

12. Mr KWONG Chi-kin declared interests as the legal adviser to the Alliance of Five Unions in Two Rails (the Five Unions). Pointing out that LegCo Members could not ignore the concerns of the affected staff, he urged the Administration to play a more active role in the negotiation process between the management and staff so as to ensure job security for all staff of the two railway corporations both before and after the rail merger rather than leaving this important matter to the management of the railway corporations. He also cautioned that the scrutiny process might be delayed if staff arrangements were not satisfactorily resolved beforehand. To speed up the process, he remarked that the Administration and the management of the railway corporations should solicit the support of the Five Unions over various staff issues arising from the rail merger.

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13. In response, DS/ETW emphasized that the Administration had already been making efforts to ensure that staff side and the management of the two railway corporations could resolve matters of common concern to both sides. The Administration would listen to views of Members and monitor closely. Whilst arrangements would be made to introduce the Bill into Council, he assured members that this would not jeopardize the on-going discussions between the management and staff. It was the wish of all parties concerned that the merger would receive the support from the staff side.

14. Ms LI Fung-ying and Mr LEE Cheuk-yan highlighted the need to provide for a mechanism for recognizing the Five Unions in conducting collective bargaining and handling appeals arising from the rail merger. Mr LEUNG Kwok-hung shared their view, and pointed out that as members of the Staff Consultative Committees/Consultative Committees of the two railway corporations were appointed by the corporations, they could not represent the interest of all staff. Recalling the dismissal by the management of Mass Transit Railway Corporation in 1984 of all staff union office bearers for staging a strike, he also cast doubt on whether MTRCL would genuinely give regard to staff's requests during the merger exercise. The Administration was therefore urged to consider introducing legislative provisions to provide for the above mechanism.

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Fare-related issues

15. Concerned about the monitoring of fare adjustments, Ms Miriam LAU pointed out that in the past, when either MTRCL or KCRC had to adjust fares, they would consider public views and consult the Transport Advisory Committee and the Panel. Upon the rail merger however, a fare adjustment mechanism that would allow both downward and upward adjustment of fares according to a formula (the FAM) would be implemented. In this regard, she enquired how LegCo could continue to monitor rail fare adjustments after the rail merger. In reply, DS/ETW said that the FAM would be transparent and objective. Moreover, before introducing fare adjustments, the post-merger corporation (MergeCo) would need to provide relevant information to the Panel to confirm that its adjustments were in compliance with the FAM.

16. Mr LEE Cheuk-yan was, however, concerned that after the implementation of the FAM, under which fares would be adjusted according to a set formula without any need to seek separate approval or consultation, there would no longer be any control over fare increase. The requirement to provide relevant details to LegCo would not help because LegCo could not veto fare increases as long as they were made in accordance with the formula. Since the formula did not give any regard to affordability of the public, fare increases might be excessive and affect the livelihood of the general public. He therefore urged the Administration to add a new provision in the proposed legislation, requiring any fare increase of MergeCo to be subject to the approval of LegCo. If not, he would introduce a Committee Stage amendment (CSA) to this effect to safeguard public interest. He also opined that the two railway corporations should be urged to reduce their fares before proceeding with the rail merger.

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17. In response, DS/ETW pointed out that the introduction of a FAM which was based on objective and transparent indices was an improvement over the fare autonomy presently enjoyed by the two railway corporations. Since all fare adjustments would be regulated by the FAM, there was no need to seek Government or LegCo approval for future fare adjustments. As the fare adjustment formula would have regard to changes to the composite Consumer Price Index (CPI) and the wage index, affordability of the public had already been reflected therein. In fact, many places, such as London, the Netherlands, Singapore and San Francisco, adopted similar fare adjustment formula.

18. Mr LEE Cheuk-yan, however, pointed out that in an attempt to gain shareholders' support for the rail merger, the Government was keen to ensure they would have financial gains from the rail merger. As such, if MergeCo was given a free hand to increase fares, rail fares might escalate out of control for the sake of generating more fare revenue. He therefore indicated reluctance to support the Bill if LegCo was not given the power to approve fare increases by MergeCo. He also disagreed that the FAM would be an improvement because at present, although the two railway corporations enjoyed fare autonomy, they had to consider the political implications of any fare increase when putting forward such proposals. Under the FAM, however, fares would automatically be adjusted upwards without any regard to political implications or any need to seek Board approval when, in a given year, the overall fare increase exceeded the range of 1.5%.

19. In response, DS/ETW explained that one of the objectives of implementing the FAM to allow both downward and upward adjustment of fares according to the relevant formula was to address the concern that fare adjustments should not be politicized. The proposed FAM was an improvement for a number of reasons, including firstly, the formula would have regard to changes in the composite CPI and the wage index, which were well-established indices. Secondly, while according to present fare autonomy there was no way to ask the two corporations to reduce fares, the FAM would, on the other hand, allow both downward and upward adjustment of fares. Thirdly, railway fares would be reduced immediately upon the rail merger before being adjusted upwards and downwards according to the FAM. Greater predictability would therefore be provided for both the public and the shareholders.

20. Mr LEE Cheuk-yan was however not convinced. He was concerned that notwithstanding the proposed fare reduction on Day One of the rail merger, given the time required for dealing with the merger exercise, railway fares might be adjusted upwards shortly after the rail merger. DS/ETW assured members that this would not be the case because regard would need to be given to changes to the composite CPI and the wage index for a period of time before fare adjustments could be made. At the request of the Chairman and Mr LEE, he agreed to confirm in writing the earliest date on which railway fares could be adjusted upwards in accordance with the proposed fare adjustment formula.

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21. Mr LEUNG Kwok-hung shared Mr LEE Cheuk-yan's views and concerns about

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the FAM, and said that it would help MergeCo to increase fares only because the possibility of fare reductions was remote having regard that further deflation in future was unlikely. He also saw a need to give due regard to the political implications of fare increase, and pointed out that such considerations could help safeguard public interests. Without such political considerations, profits would become a more important consideration than public interests when introducing fare adjustments. This would be undesirable because railway fare adjustments would affect the livelihood of millions of people.

Franchise-related matters

22. Mr WONG Kwok-hing noted that the procedures for revocation of the franchise granted to MTRCL to operate the MTR and KCR railways for 50 years after the rail merger could be triggered if there was something untoward in the operation of the KCR railways, and asked if the above circumstances included incidents such as the East Rail incident in December 2005 involving the problem of cracks in the underframe equipment of trains. In response, DS/ETW said that incidents like the East Rail incident were handled according to the relevant legislation, which had clearly set out the circumstances under which the relevant franchise could be revoked. He assured members that the Administration and KCRC were actively following up on the East Rail incident. In fact, as a result of the remedial measures taken and continued monitoring and improvement efforts made, the KCRC had maintained safe operation notwithstanding the incident. He further assured members that it was the Administration's priority to ensure safe rail service, and the procedures to revoke the franchise concerned would be triggered if warranted due to safety problem of the railway systems.

23. Ms LI Fung-ying sought details on what constituted "substantial failure by MergeCo to comply with an obligation under the service concession agreement (SCA) which had certain significant consequences such as endangering passenger safety", which was one of the grounds quoted for franchise revocation, in particular the specific criteria for determining whether there was such a failure. In reply, DS/ETW said that payment default, breach of the restrictions against disposals of KCRC's major assets or breach of the restrictions against the creation of security by MergeCo over its rights under the SCA would trigger procedures for revocation of the franchise as it related to the KCR railways.

Concerns about the implications of the rail merger on rail service

24. Keen to ensure safe and satisfactory rail service, Mr Andrew CHENG enquired how MTRCL could, after taking over KCRC, effectively ensure that this former bureaucratic public body would be able to provide reliable service notwithstanding the frequent service disruptions in the past. In particular, he enquired whether the Administration would take any measures to maintain proper and efficient service, such as by imposing more stringent penalties for service disruptions through amendments to the Mass Transit Railway Ordinance (MTRO) (Cap.556) and the Kowloon-Canton

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Railway Corporation Ordinance (Cap.372), and by giving greater power to the Hong Kong Railway Inspectorate (HKRI) to monitor railway service. In response, DS/ETW pointed out that the two railway corporations were required to maintain a safe and efficient service at all times in accordance with the operating agreement and the relevant legislation. The performance and safety of MTR and KCR systems were also up to international standards. He assured members that the Administration would continue to take necessary steps to ensure the continued provision of a safe and reliable railway service after the rail merger. The Administration considered that there was no need to revise the existing regulatory regime for the operation and safety of railways. HKRI also had sufficient resources to discharge their duties.

25. Mr Andrew CHENG, however, pointed out that the annual cumulated service disruptions caused by railway incidents had exceeded 2 000 minutes for several years in a row, and stressed the need for the Government to gear up service monitoring to ensure the services of the two railway corporations would improve instead of deteriorate after the rail merger. In response, DS/ETW said that due to network expansion and frequency improvement, much more rail trips were being operated nowadays and it would be unfair to use the above figure to assess the performance of the railway systems. He assured members that railway safety had all along been the prime concern of the Administration and adequate measures had been put in place to ensure railway safety.

26. Mr LEE Wing-tat remarked that at present, KCRC, being a public corporation, was more willing to offer concessions to the traveling public. On the other hand, MTRCL, being a listed company, was only aiming at profit maximization. He was worried that soon after the rail merger, the corporation culture of KCRC would follow that of MTRCL which would have a bearing on the interest of passengers. He also commented that MTRCL was reluctant to implement projects which were financially not viable but could generate significant transport and economic benefits. He called on the Administration to address the problem so as to ensure that delivery of new railway projects such as Shatin to Central Link after the rail merger would not be affected. Noting that the two railway corporations would align their service and maintenance standards after the rail merger, he urged MergeCo to ensure that the best practices of the railway corporations be adopted as the benchmarks for standardization and compliance. This was one of the prerequisites for members' support for the rail merger.

27. In reply to Mr LEE Wing-tat's question as to whether the existing fare concessions would discontinue and whether MergeCo would adopt the best practice of the two railway corporations for considering fare-related issues, DS/ETW advised that MergeCo would review the related fare issues including promotional campaigns and other concessionary schemes from time to time, taking into account the prevailing market conditions and the need to balance the interests of various stakeholders.

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28. Addressing Mr LEE Wing-tat's concern about the implementation of new railway lines, DS/ETW explained that there were two approaches for the delivery of new railway projects which were not natural MTR-extension projects after the rail merger, namely, the 'ownership approach' (under which MergeCo would fund, construct and operate the new railway) and the 'concession approach' (under which Government would fund the construction of the new railway and MergeCo would be granted a service concession to operate the new railway based on financial terms to be determined according to a pre-agreed mechanism). The Administration would assess each project on its own, having regard to all relevant factors.

29. In response to Mr LEE Wing-tat, DS/ETW said that the two railway corporations had already indicated that they would adopt the best practices which would be one of the sources of merger synergies. However, as regards their service and safety standards, in considering that the operating environment of the two railway systems were different and the maturity of different railway lines were different, it might not be appropriate to standardize their standards in certain circumstances. He further elaborated that at present there was a requirement on MTRCL to have its safety management system reviewed by independent safety experts on a regular basis and this would be extended to cover the railway system of KCRC after the merger. He further said the Administration basically found MTRCL's present performance satisfactory notwithstanding its listing status. After the rail merger, different performance standards including service disruptions would be imposed on different railway lines in recognition of their different characteristics. He however assured members that the standards imposed would not be lower than the present standards.

30. The Chairman shared the concerns raised by Mr LEE Wing-tat. He therefore requested the Administration to provide a comparison of the existing best practices adopted by the MTRCL and KCRC respectively in the areas of service performance and customer service pledges, maintenance standards and service improvements, and fare concessions and promotion programmes.

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Concerns about the merger procedures

31. Noting that the Administration would proceed to hold an Extraordinary General Meeting for its minority shareholders to approve the merger package only after the necessary legislative amendments were approved by LegCo, Ms Miriam LAU expressed concern that the efforts made by LegCo in scrutinizing the Bill might be wasted if the minority shareholders did not render their support to the rail merger proposal. Addressing her concern about the work plan of the rail merger proposal, DS/ETW said that since the minority shareholders had to know the statutory regulatory regime for MergeCo as well as the circumstances under which the relevant franchise would be revoked, there was a need for LegCo to approve the related frameworks governing the above before MTRCL's minority shareholders could be invited to approve the merger proposal. MTRCL would make arrangements for an Independent Financial Adviser to provide the necessary advice on the merger proposal to the minority shareholders to facilitate their consideration of the proposal after approval of

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the merger legislation. Ms LAU was however still unconvinced, and said that the proposed procedures might set a precedent that LegCo's decision was not final but could be overruled by the public. In reply to her question about the proposed legislative timetable, DS/ETW advised that if the Bill could be introduced into LegCo before the summer recess, the Administration hoped that the scrutiny process could be completed by the first quarter of 2007 or before.

32. As the rail merger proposal could not be taken forward without the support of minority shareholders, Mr LEE Cheuk-yan expressed concern that investment fund or hedge fund holding substantial shares of MTRCL could abort the deal if they wished. This might imply that such funds would have greater power than the Government, LegCo and the general public. Mr LEUNG Kwok-hung shared his views. In response, the Principal Assistant Secretary for Financial Services and the Treasury (PAS(Tsy)) emphasized that LegCo and MTRCL's minority shareholders each had their own distinctive power in approving the merger legislation and in giving a green light to the rail merger package for MTRCL respectively. As such, LegCo's power could not be said to be diminished in the event that the rail merger failed to secure the approval of MTRCL's minority shareholders. Mr LEE, however, pointed out that if the merger proposal was not supported by the minority shareholders, the relevant Bill passed by LegCo would not take legal effect as a result. This would have far-reaching implications on the work of LegCo.

Concerns about Government officials' roles on the Board of MergeCo

33. Mr LEE Wingt-tat pointed out the existing composition of MTRCL Board could not represent public interest as members came mostly from the business and the commercial sectors with none from the general public. He urged the Government to be more open in appointing Board members to MergeCo to ensure the general public could be adequately represented. In response, DS/ETW took note of Mr LEE's view and remarked that there were established arrangements for appointment of directors to MTRCL which would remain unchanged after the rail merger.

34. Mr WONG Kwok-hing enquired whether Government officials would sit on the Board of MergeCo and if so, the number and how their satisfactory attendance at Board meetings to effectively monitor rail service on behalf of the public could be ensured. In reply, DS/ETW advised that the Administration had no intention to change Government's representation in MTRCL after the rail merger. The Administration would ensure its participation in Board meetings to keep abreast of the issues discussed by the Board. If, for instance, the Secretary for the Environment, Transport and Works (SETW) was unable to attend any Board meeting, efforts would be made to send a sufficiently senior official to attend the meeting on behalf of SETW to ensure the Government's involvement.

35. Mr WONG Kwok-hing found the above meeting attendance arrangement undesirable as the alternative representative had no right to vote at meetings. Under such circumstance, he queried how SETW could safeguard public interest to monitor

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the performance of railway corporation. In response, DS/ETW assured members that if there would be voting at any particular meeting, SETW would make arrangement for appropriate attendance accordingly. Moreover, where important issues were concerned, Government would have already conducted internal discussion and formed a view on them before attending the relevant Board meetings. Mr WONG was still unconvinced, and quoted the East Rail incident to highlight the importance of close monitoring of rail service by the Government. In his view, the legislative exercise should be taken as an opportunity to improve Government's participation in the Board meetings of MergeCo. In reply, DS/ETW emphasized that the Administration was already taking various remedial measures in the wake of the incident, including examining improvements to the notification mechanism. Mr WONG nevertheless formally requested that the Bill be introduced to address the meeting attendance problem he highlighted above.

36. Mr LEE Wing-tat highlighted the conflicting roles of Government officials sitting on the Board of MergeCo, where they had to simultaneously represent the conflicting interests of the general public and the corporation, namely, the public interest to request for the provision of a reliable, safe, and high quality railway service at low fare vis-à-vis the commercial interest of the corporation to maximize its profit. Noting that the Administration would not introduce any amendment to the composition of the Board of MTRCL after the rail merger, Mr LEE asked whether CSAs could be introduced to the Bill to address the above role conflict, Assistant Legal Adviser 3 (ALA3) said that this would hinge on the purpose of the Bill because the CSAs to it had to be within its scope. Since the Bill was not available, she could not advise at this stage whether the contemplated CSAs would be in order. In fact, when the President determined whether any CSA was relevant to the subject matter of the Bill, she would have to give regard not only to the Bill but also the LegCo Brief concerned and other relevant information.

37. In reply to the Chairman on provisions regarding the need for Government officials sitting on the Board of MergeCo to balance the above conflicting interests, PAS(Tsy) said that the interests of the general public and the corporation might not necessarily be conflicting. Mr LEE Wing-tat disagreed, and pointed out that the decisions to develop new railway lines such as Airport Express Line and West Rail, which were not financially viable, were made in consideration of public interests. If, however, Government representatives in MergeCo's Board could not ensure it would give sufficient regard to public needs because of their parallel role as Board members of a commercially-operated company, they might not be able to urge MergeCo to similarly develop financially-infeasible new railway lines to meet public needs. In response, PAS(Tsy) pointed out that many of the railway lines required for the sake of public interests had already been built and hence there should not be conflicts in this regard in future. In general, he could see no fundamental conflict between the operational need of the two railway corporations and the public's transport needs. Mr LEE Cheuk-yan, however, pointed out that such lines had been developed with Government subsidization in the form of property development rights or permission to increase fares, which though beneficial to MergeCo, might continue to affect the interests of the public. To address members' concerns about the conflicting interests of the general public and

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MergeCo, the Chairman requested the Administration to clearly delineate the role of Government officials sitting on the Board of MergeCo and set out how Government could balance the above conflicting interests. The Chairman also asked ALA3 to examine how the Bill could ensure that the Government officials sitting on the Board of MergeCo would safeguard public interests.

38. Ms Miriam LAU also saw a need to address the above highlighted conflicting role of the Government officials sitting on MergeCo. In her view, the East Rail incident showing the need to improve the notification mechanism was one example in this regard. As such, the Bill should clearly provide for Government officials' power to properly monitor MergeCo to safeguard public interests.

Other views and concerns

39. Ms Miriam LAU enquired about the true identity of MergeCo, which as she observed was in fact MTRCL, since the rail merger was very much a takeover of KCRC by MTRCL. While confirming that MTRCL would be the legal entity of MergeCo, DS/ETW said that there was a need to use the term "MergeCo" to refer to the post-merger MTRCL because firstly, its Chinese name would be amended. Secondly, the scope of the franchise of the post-merger MTRCL would be expanded with the employment contracts of KCRC staff transferred to it.

40. Mr Albert CHAN indicated opposition to the rail merger, which in his view might enable MTRCL to do greater damage given its expanded scope of operation. He also opined that the Administration should take the opportunity of the legislative exercise to rectify the many mistakes made in the rail policy as follows –

- (a) The Administration should take back the many privileges presently enjoyed by MTRCL under MTRO, such as the exemptions from taking noise mitigation measures if it considered them not feasible, and from providing access facilities for the disabled in its stations. For example, there was no access for the disabled from Lai King Station to Lai King Estate. It was infuriating to see such disregard of public interests out of commercial considerations. The above exemptions should therefore not be tolerated;
- (b) MergeCo should not be allowed to engage in businesses other than provision of rail service, in particular property development and management. It should also not be allowed to expand into the Mainland and international market. This was because such aggressive expansion was risky. Should any relevant commercial decision result in loss, the public would suffer because Government was the majority shareholder of MergeCo. This was unfair because the public had not given MTRCL the mandate to invest overseas when they supported its privatisation; and
- (c) There was a need to subject MTRCL to proper public monitoring to obviate such transfers of interests as the offer of special Airport Express Line (AEL)

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fares to staff of commercial corporations working at the Hong Kong International Airport. The Link Management Limited, which refused to attend meetings of the LegCo, was an example of how little the public could do to monitor the operation of privatized public services.

41. Mr LEUNG Kwok-hung echoed Mr Albert CHAN's view in paragraph 40(b) above, and stated opposition to the rail merger for the following reasons –

- (a) The merger proposal was a sinful attempt to devour public resources and a trap to provide an opportunity for a small group of people to make money at the expense of the interests of the general public;
- (b) The rail merger was indeed a takeover of KCRC by MTRCL, which was in turn controlled by its highly paid management; and
- (c) Instead of effecting the rail merger to allow MTRCL to monopolize rail service to make huge profits, there was a need to communize MergeCo and put rail service, which should be a public service provided by the Government, under direct supervision by the Chief Executive. In this way, profits made by MergeCo could be reinvested in rail development instead of being used to pay dividends to its shareholders, especially as the profits made were from property development which might help boost property prices and involve unfair resumption of land supported by the Government.

42. Mr LEE Wing-tat opined that platform screen doors had yet to be installed in all KCRC stations. He also criticized that the television broadcasting on West Rail cars were too disturbing, and expressed concern about excessive advertising activities by the railway corporations to make profits without regard to passengers' need for rest during train journeys. He opined that the above situations should be improved in the context of the legislative exercise. The Administration noted his views.

43. Noting that KCRC would cease to have any railway operating function after the rail merger but its Managing Board would continue operation with the Board members continuing to receive honorarium, Ms Miriam LAU queried whether KCRC's residual functions could be absorbed by other Government departments, thereby saving the need for allocating additional resources to sustain the continued operation of KCRC and its Managing Board, especially as the term of SCA was 50 years. In response, PAS(Tsy) and DS/ETW emphasized that KCRC's continued existence was necessary because after the rail merger it would still retain certain administrative, accounting and treasury functions arising from its financial obligations and the need to monitor compliance with the SCA. Ms LAU was however unconvinced, and requested the Administration to provide detailed justifications for keeping KCRC and its Managing Board in operation and the related estimates of expenditure, including the honorarium for Board members.

44. Ms LI Fung-ying sought to ascertain how existing contracts of MTRCL would be treated after the rail merger, highlighting the need to retain MTRCL's undertakings

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regarding minimum wages for workers employed by its new service contractors. In response, DS/ETW confirmed that the rail merger would not affect MTRCL's existing contracts or its obligations and rights thereunder. Ms LI, however, was not convinced, pointing out that the management of MergeCo was different from that of MTRCL. In response, DS/ETW clarified that MergeCo was in fact MTRCL with expanded scope of operation.

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45. At the Chairman's request, the Administration agreed to address members' concerns raised at previous meetings and include the relevant information in a consolidated written response before the Bill was introduced into the Legislative Council.

V Any other business

46. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
6 July 2006