

**立法會**  
**Legislative Council**

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**Panel on Information Technology and Broadcasting**

**Minutes of special meeting**  
**held on Thursday, 23 November 2006, at 4:05 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon Albert Jinghan CHENG (Chairman)  
Hon SIN Chung-kai, JP (Deputy Chairman)  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Albert CHAN Wai-yip  
Hon Ronny TONG Ka-wah, SC
- Members attending** : Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon WONG Ting-kwong, BBS  
Hon TAM Heung-man
- Members absent** : Hon Fred LI Wah-ming, JP  
Dr Hon LUI Ming-wah, SBS, JP
- Public officers attending** : Mr Francis HO, JP  
Permanent Secretary for Commerce, Industry and  
Technology (Communications and Technology)

Mr Bernard HILL  
Assistant Director of Telecommunications  
(Competition)

Mr P L PO  
Secretary for Broadcasting Authority

**Clerk in attendance** : Miss Erin TSANG  
Chief Council Secretary (1)3

**Staff in attendance** : Ms Pauline NG  
Assistant Secretary General 1

Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Elyssa WONG  
Deputy Head (Research and Library Services)

Ms Diana WONG  
Research Officer 2

Ms Debbie YAU  
Senior Council Secretary (1)1

Ms Annette LAM  
Senior Council Secretary (1)3

Ms May LEUNG  
Legislative Assistant (1)6

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Action

**I Issues relating to change in shareholding in PCCW Limited**

Relevant written responses to questions prepared by the Secretariat

(LC Paper No. CB(1)2040/05-06(01) -- List of questions relating to change in shareholding in PCCW Limited prepared by the Secretariat

- LC Paper No. CB(1)2076/05-06(01) -- Information paper provided by the Commerce, Industry and Technology Bureau
- LC Paper No. CB(1)2089/05-06(01) -- List of further questions relating to change in shareholding in PCCW Limited prepared by the Secretariat
- LC Paper No. CB(1)2169/05-06(01) -- Letter dated 31 August 2006 from Secretary for Commerce, Industry and Technology
- LC Paper No. CB(1)154/06-07(01) -- List of questions relating to issues under the purview of Panel on Information Technology and Broadcasting
- LC Paper No. CB(1)303/06-07(01) -- Reply dated 15 November 2006 from the Commerce, Industry and Technology Bureau
- LC Paper No. CB(1)312/06-07(01) -- Reply dated 15 November 2006 from Mr Richard LI, Chairman of PCCW Limited (English version only)
- LC Paper No. CB(1)355/06-07(01) -- Statement of Mr Francis LEUNG issued on 21 November 2006

Statements and newspaper cuttings

- LC Paper No. CB(1)312/06-07(02) -- Statements issued by the Commerce, Industry and Technology Bureau, Office of the Telecommunications Authority and the Broadcasting Authority respectively
- LC Paper No. CB(1)312/06-07(03) -- Newspaper cuttings on the change of ownership of Hong Kong Economic Journal

Announcements by PCCW Limited

LC Paper No. CB(1)308/06-07(02) -- PCCW's Announcement on "Proposed sale by PCRD of its shares in the Company" issued on 10 July 2006

LC Paper No. CB(1)308/06-07(03) -- PCCW's Announcement on "Discontinuation of discussions with Macquarie and TPG/Newbridge" issued on 25 July 2006

LC Paper No. CB(1)308/06-07(04) -- PCCW's Announcement on "Proposed Sale by PCRD of its shares in PCCW" issued on 12 November 2006

Question raised at Council meeting on 8 November 2006

LC Paper No. CB(1)335/06-07(01) -- Draft hansard on Oral Question No. 1 raised by Hon Emily LAU on "Acquisition of assets and shares in a listed telecommunications company" at Council meeting on 8 November 2006

Relevant information prepared by the Secretariat

LC Paper No. FS18/05-06 -- Fact sheet on 'Foreign press reports on the development of change in shareholding of PCCW Limited' from 20 June 2006 to 2 August 2006 prepared by Research and Library Services Division of the Secretariat (English version only)

LC Paper No. FS19/05-06 -- Fact sheet on 'Local press reports on the development of change in shareholding of PCCW Limited' from 19 June 2006 to 2 August 2006 prepared by Research and Library Services Division of the Secretariat (Chinese version only)

- LC Paper No. FS07/06-07 -- Fact sheet on 'Local press reports on the development of change in shareholding of PCCW Limited' from 3 August 2006 to 20 November 2006 prepared by Research and Library Services Division of the Secretariat (Chinese version only)
- LC Paper No. FS08/06-07 -- Fact sheet on 'Foreign press reports on the development of change in shareholding of PCCW Limited' from 3 August 2006 to 20 November 2006 prepared by Research and Library Services Division of the Secretariat (English version only)

Relevant statutory provisions

- LC Paper No. CB(1)318/06-07(01) -- (a) sections 7K, 7L, 7N and 7P of the Telecommunications Ordinance (Cap. 106);  
(b) sections 8, 13, 14 and 21 of the Broadcasting Ordinance (Cap. 562); and  
(c) sections 1 to 10, 20 and 33 of Schedule 1 to Cap. 562.

Letters from the parties concerned

- LC Paper No. CB(1)2090/05-06(01) -- Letter dated 2 August 2006 from Mr Richard LI, Chairman of PCCW Limited (English version only)
- LC Paper No. CB(1)2090/05-06(02) -- Letter dated 2 August 2006 from Mr Francis LEUNG of Fiorlatte Limited (English version only)
- LC Paper No. CB(1)2181/05-06(01) -- Letter dated 6 September 2006 from Mr Francis LEUNG of Fiorlatte Limited (English version only))

Introductory remarks

The Chairman explained that issues relating to the change in shareholding in PCCW Limited (PCCW) involved various aspects subject to the regulation of the Telecommunications Authority (TA), Broadcasting Authority (BA) and Securities and Futures Commission. The Panel would focus its discussion on the implications of the change in shareholding in PCCW on: (a) fair competition in the telecommunications and broadcasting markets; and (b) restriction on cross-media ownership under the Broadcasting Ordinance (BO) (Cap. 562). He informed members that while the Panel had extended invitation to Mr Richard LI and Mr Francis LEUNG, both of them had declined to attend the meeting but provided written information to the Panel, which had been issued to members on 17 and 22 November 2006 vide LC Paper Nos. CB(1)312/06-07(01) and CB(1)355/06-07(01).

Declaration of interests

2. The Chairman, Mr Ronny TONG and Mr James TO declared that they held shares of PCCW. Mr Albert CHAN declared that he had a court case with Mr LI Ka-shing.

Discussion

Proposed sale of shares in PCCW

3. Members noted that Mr Francis LEUNG through his wholly owned company, Fiorlatte Limited (Fiorlatte), had entered into an agreement on 9 July 2006 with Pacific Century Regional Developments Ltd (PCRD), a Singapore-listed company, pursuant to which Fiorlatte had agreed to acquire PCRD's entire stake in PCCW, which amounted to approximately 22.65% of the existing issued share capital of PCCW. Subsequently, Mr LEUNG had reached on-sale binding agreements on 12 November 2006 with Telefónica Internacional S. A. U (Telefónica), Li Ka Shing Foundation Limited and Li Ka Shing (Canada) Foundation so that they would acquire and hold PCCW shares representing 8%, 10% and 2% of PCCW's issued capital respectively. Mr LEUNG would acquire and continue to hold the remaining 2.65% interest.

Telecommunications

*Investigation conducted by TA*

4. Members noted that under section 7P of the Telecommunications Ordinance (TO) (Cap 106), where there was a change in relation to a carrier licensee, TA might conduct an investigation and form an opinion as to whether or not the change had, or was likely to have, the effect of substantially lessening competition in the telecommunications market. According to section 7P(16) of TO, there was a change in relation to a carrier licensee if a person became the beneficial owner or the voting controller of more than 15% of the voting shares in the licensee.

5. In this connection, Mr Howard YOUNG enquired whether the proposed sale by PCRD of its shares in PCCW to Fiorlatte and the latter's on-sale arrangements would trigger the regulatory mechanism under section 7P of TO. He also sought information on whether the carrier licensee in question had applied in writing to TA for prior consent to the proposed change under section 7P(6) of TO.

6. The Assistant Director of Telecommunications (Competition) (AD of T(C)) explained that before the proposed deal took place, TA was not in position to exercise his power of investigation under section 7P of TO. Moreover, he was not in a position to comment on the nature of the transaction until the proposed change in relation to the carrier licensee had occurred. AD of T(C) also confirmed that so far, no party had approached TA seeking prior consent to the proposed change in shareholding in PCCW.

7. While appreciating the *ex post* regulatory regime under TO whereby TA could only activate his power of investigation after he knew or ought reasonably to have known that the change had occurred, Mr Howard YOUNG however considered that TA should at least monitor the progress of the acquisition in order to ascertain the competition effects as resulting from the transaction.

8. In response, AD of T(C) advised that although TA was not entitled to initiate an investigation at the present stage, he had taken prudence in anticipating for a possible investigation, and had therefore been considering all available information in the public domain. He also explained in response to the Chairman's enquiry that the trigger point was reached when the transaction crystallized and the first installment of the transaction would soon be made. Until then, TA was entitled to assess whether the threshold for the change in relation to the carrier licensee be reached and if the answer was positive, whether the change was likely to have the effect of substantially lessening competition in the telecommunications market.

9. The Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT(CT)) highlighted the *ex ante* procedure and the *ex post* regulation provided under section 7P of TO. He said that under section 7P(6), there was a procedure whereby parties involved in the share transaction could apply to TA for prior consent to the proposed share transaction. TA would then go through the statutory procedures as provided in the section such as allowing the applicant to make representations etc, before granting the consent or otherwise. However, TA had not received any application seeking his prior consent to the proposed change in shareholding in PCCW. In the absence of a prior consent, TA might initiate an investigation under section 7P(2) within two weeks after he knew or ought reasonably to have known that a change in relation to the carrier licensee had occurred. As such, PSCIT(CT) pointed out that TA could not commence formal investigation at the present stage. Nevertheless, he assured members that TA had been liaising with PCCW and Fiorlatte on the progress of the deal, and would monitor the issue closely.

10. Mr James TO noted from a print media report issued by Takungpao on 1 August 2006 that TA was monitoring the proposed acquisition of PCCW by Mr Francis LEUNG. However, he was concerned that TA could not even arrive at a preliminary conclusion on the present case after monitoring it for over three months. He queried whether TA had been proactively taking action to follow up the case, given that a lot of the details relating to the proposed transaction had already been widely covered by the media, and TA should have no difficulty in obtaining the information for analysis to facilitate the forming of a preliminary opinion on the case.

11. In response, AD of T(C) stressed that a lot of preparatory work had been undertaken such as contacting the parties concerned for provision of information, and all the parties concerned were very co-operative in this respect. He however pointed out that although TA already had a lot of information about the case, an investigation could not be commenced legally until the trigger point had reached. He added that it was also not appropriate for him to make further comments on the case which might prejudice the investigation, if undertaken. PSCIT(CT) also stressed that the Administration and TA had been exercising due diligence in respect of the case, and TA was proactively monitoring the case, studying all relevant information, liaising closely with the parties concerned, as well as seeking legal advice on the case.

12. Noting that the shareholders of PCR D would cast vote on the proposed sale of shares in PCCW to Mr Francis LEUNG's consortium on 30 November 2006 and that most of the information relating to the proposed transaction was obtained from overseas, i.e. Singapore, Mr Albert CHAN expressed his dissatisfaction towards the inaction of the Administration on the issue. He queried whether the Administration would wait until the transaction had been completed and the change in shareholding had been effected before an investigation would be undertaken. He cautioned that if the Administration had delayed in taking necessary action and did not take on the due responsibilities in the handling of the present case, members of the public could lodge an application for judicial review in this respect. PSCIT(CT) reiterated that under TO, TA might commence *ex post* investigation if prior consent under section 7P had not been sought, i.e. TA might initiate an investigation within two weeks after he knew or ought reasonably to have known that the "change" had occurred. As such, PSCIT(CT) pointed out that TA, as a regulator, was not bound by the dates of the proposed transaction in taking his investigative action if it was considered necessary.

13. In this connection, Mr Albert HO noted that if the proposed sale were realized, under the Code on Takeovers and Mergers and Share Repurchases, Mr Francis LEUNG and Mr LI Ka-shing would be presumed to be "acting in concert" as the former would have acquired 22.65% of the existing issued share capital of PCCW from PCR D and then on-sold 12% to the latter. As Mr LEUNG was currently holding approximately 0.7% of PCCW shares and would acquire an additional 2.65% interest after the on-sold arrangements, he and Mr LI together would hold an aggregate interest of 15.35% in PCCW's issued share capital which had exceeded the 15% threshold under section 7P(16)(a) of TO. Since Mr LI



Ka-shing was currently holding a fixed carrier licence, i.e. Hutchison Global Communications Limited, his additional control of more than 15% of the voting shares in PCCW together with associated persons (i.e. Mr Francis LEUNG and the directors of the two Foundations) might constitute a change in relation to the licence of PCCW-HKT Telephone Limited under section 7P(16)(a) of TO. As such, he considered that if the proposed sale were realized, TA should make known to the public, and explain clearly whether an investigation would be initiated on the aforesaid fixed carrier licensee, and if not, the justifications for such a decision formed by TA.

14. In response, AD of T(C) stressed that TA always published the reasons for his decision, including the grounds leading to such a decision, as well as a full analysis of whether his power of investigation as provided under section 7P of TO should be exercised or otherwise. Mr Albert HO ascertained from AD of T(C) that all the details of the case, including the names and particulars of the parties involved, would be disclosed after the investigation, if conducted, as there should be no question of secrecy. In this connection, AD of T(C) drew members' attention that it was lawful for an existing carrier licensee to acquire up to 15% of the voting shares in another carrier licensee.

*"Associated person" and foundations*

15. Members noted that according to section 7P(16) of TO, there was a change in relation to a carrier licensee if a person, either alone or with any "associated person" became the beneficial owner or voting controller of up to more than the specified thresholds (i.e. 15%, 30% and 50%) of the voting shares in that licensee, and that under section 2 of TO, "associated person" included, inter alia, a relative of the licensee where the licensee was a natural person.

16. In this connection, Mr Howard YOUNG enquired whether the existing circumstances of the present case, i.e. the shares of PCCW of which Mr Richard LI was the Chairman and a director be on-sold to charitable foundations founded by his father, Mr LI Ka-shing, i.e. an associated person, was legally sufficient to warrant TA's initiation of an investigation.

17. Mr Albert HO also remarked that apart from Mr LI Ka-shing, the board of directors of Li Ka Shing Foundation comprised four of LI's family members, six existing or former employees of Cheung Kong (Holdings) Limited and three professionals who were very close to Mr LI. As such, it was apparent that other directors could have acted in accordance with the wishes of Mr LI Ka-shing as to acquire the shares in PCCW. He therefore also sought the Administration/TA's confirmation on whether the issue of "associated person" which included, inter alia, a relative of the licensee as defined in section 2 of TO was applicable to a consortium of investors comprising charitable foundations founded by a close relative of the Chairman and a director of a carrier licensee.

18. PSCIT(CT) reiterated that the Administration and TA were exercising due diligence in respect of the present case such as studying all relevant information and keeping in view the development. TA would take into account all relevant factors when considering the competition effect under section 7P. He, however, stressed that members' concerns could only be addressed after the legal opinions from the Department of Justice (DoJ) were obtained.

19. Mr Albert CHAN expressed similar concern that when a fund/foundation acquired voting shares in a carrier licensee, whether the fund/foundation which was seen to be managed by a board of independent directors but was in fact acting in accordance with the wishes of a particular person would be regarded by TA as being controlled by that person in the context of TA's consideration of competition effect as a result of the change in shareholding in relation to the licensee.

20. PSCIT(CT) cautioned against Mr CHAN's assumption. He said that it was the obligation of government officials to ensure that the legislative provisions would be correctly interpreted and applied to each individual case, including the present case which might involve complicated voting control held by natural persons and/or funds/foundations. He assured members that the Administration would study and analyze the case objectively on the basis of the facts and having regard to the legal opinions to be provided by DoJ.

21. Mr Albert HO was unconvinced, and said that the legal sector was very familiar with the operation of various foundations. He cautioned that the Administration and TA should study the background of the two charitable Foundations as well as their structures and internal decision-making policies in order to ascertain who assumed the ultimate control of the Foundations.

22. In this connection, Mr Albert CHAN noted that section 7P of TO had empowered TA to rule against a merger or acquisition involving carrier licensees exceeding a certain threshold where, in the absence of countervailing public benefit, the transaction had or was likely to have the effect of substantially lessening competition in a telecommunications market. He pointed out that the legislative intention of the provision was to prevent over-concentration of market power in a few operators through mergers and acquisitions, as well as undesirable cross-licence ownership which might adversely affect competition in a telecommunications market. He also noticed that the voting control of a company could be held by a natural person, a holding company or a fund/foundation. He then sought clarification from the Panel's legal adviser as to whether TA had the power under TO to regulate a change in relation to a carrier licensee where the change involved the acquisition of shareholding in the licensee through or by means of fund/foundation; or through a company wholly-owned by a natural person who subsequently received funding facility provided by another party who was an associated person.

23. In response, the Assistant Legal Adviser 3 explained that according to paragraph (e) of the definition of "voting control" in section 7P(18) of TO, "voting control" meant the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a carrier licensee through or by means of a trust, agreement or arrangement, understanding or practice. The section, as drafted, could be interpreted as to apply to cover situations where a person acquired the voting control of a carrier licensee through or by means a fund/foundation or agreement to provide a funding facility.

24. Miss TAM Heung-man enquired whether the Administration would consider lowering the percentage of the voting shares for a person to become the beneficial owner or voting controller in a carrier licensee to constitute a "change" under section 7P(16) of TO, and restricting the acquisition of shareholding in a carrier licensee through or by means of a charitable fund/foundation in order to safeguard competition in the telecommunications market.

25. Highlighting that the Telecommunications (Amendment) Bill 2002 was enacted after protracted discussion and having compromised the dissenting views among the industry, Members and the Administration, PSCIT(CT) said that he did not see any need to amend the existing legislation at this stage. He considered that it would be more appropriate that the adequacies or otherwise of the existing regulatory framework on mergers and acquisitions in the telecommunications industry be reviewed after the proposed transaction had taken place, and that TA had formed his opinion on the case.

#### *Foreign ownership*

26. Members noted that the proposed sale of 22.6% shareholding in PCCW to Fiorlatte had evolved from an initial plan for divestment of PCCW's core telecommunications and media related assets to potential foreign buyers, i.e. Australian investment bank Macquarie Group and US-owned firm TPG-Newbridge. The initial proposed acquisition had subsequently been discontinued.

27. Noting that there were concerns that the discontinuation of the proposed acquisition was allegedly due to political consideration, Miss TAM Heung-man requested the Administration to clarify whether it had any intention to amend the legislation in order to restrict the acquisition of shares of local telecommunications companies by foreign investors.

28. In reply, PSCIT(CT) stressed that there was no foreign ownership restriction over telecommunications licensees under TO, and the Administration had no intention to change the existing law. He added that when Hong Kong became a founding member of the World Trade Organization (WTO) in 1995, it had participated actively in WTO by sustaining the momentum of trade liberalization for goods and services, including telecommunications services, to international markets. Hong Kong had committed to further liberalize its fixed-line telecommunications market at the Doha round of multilateral trade negotiations in

2001. To fulfil its commitments made to WTO on the opening of the local telecommunications market, Hong Kong would not impose any restriction on foreign ownership over telecommunications licensees.

29. However, Ms Emily LAU pointed out that subsequent to the bids proposed by Australian investment bank Macquarie Group and US-owned firm TPG-Newbridge, PCCW's second-largest shareholder, the China Network Communications Group Corporation (China Netcom), had issued a statement, via Xinhua News Agency (XNA), to indicate its concern against a foreign takeover of PCCW's assets. Ms LAU opined that China Netcom should have raised its objection through the established formal channels such as the board meeting or shareholders' general meeting of PCCW. She considered that notwithstanding Hong Kong's undertakings to WTO for liberalization of its telecommunications market and that there was no foreign ownership restriction over carrier licensees under TO, the statement published via XNA not only sent a signal to foreign investors that the Chinese Government did not welcome their proposals but also politicized the issue. She expressed grave concern that such an unusual arrangement made by China Netcom and XNA might seriously undermine Hong Kong's well-founded status and reputation as an international financial centre, and also affect Hong Kong's business environment. She was also worried that in future, other Mainland companies might follow suit to make use of such an usual arrangement and ask XNA to issue statements to achieve their ends. In this connection, she enquired whether the Hong Kong Government had interfered with the intended acquisition of PCCW's assets by the two foreign companies.

30. Referring to an oral question on companies acquisition raised at the Council meeting held on 8 November 2006, PSCIT(CT) reiterated that in general, the Administration and the relevant regulators would not interfere with the business activities of commercial organizations. They would act in accordance with the relevant laws and licensing conditions.

31. Notwithstanding the Administration's reply, Ms Emily LAU considered that the Administration should reflect to the Central Government the concerns of Hong Kong people over such an unusual arrangement and the possible adverse consequences thereof, and that Mainland companies should follow Hong Kong's rules and regulations when conducting business in Hong Kong. In this connection, she noted that although Mr Francis LEUNG had teamed up with, inter alia, Telefónica which was a Spanish company and hence a foreign company, in the proposed acquisition of PCCW, China Netcom did not raise any concern which reflected China Netcom's different standards on the issue.

32. PSCIT(CT) said that he was not in a position to comment nor draw a conclusion on why the Spanish company took part in the proposed acquisition in lieu of the Australian and US companies, as well as the commercial decisions made by the relevant parties. He reiterated that as a matter of principle, the Administration would not interfere with the business activities of commercial organizations but would endeavour to maintain Hong Kong as an open market.

33. While sharing with Ms Emily LAU's view, Mr James TO opined that in response to XNA's statement, the Hong Kong Government should have considered issuing an official statement to clarify its policy stance that there was no foreign ownership restriction over carrier licensees under TO. He was also concerned that such an unusual arrangement made by China Netcom and XNA might deter foreign companies from investing in local companies. He cautioned that notwithstanding that there was no legislative restriction on foreign ownership, WTO would, on the basis of the actual business environment, assess whether Hong Kong was a truly free market.

### Broadcasting

#### *Disqualified persons (DPs) and cross-media ownership*

34. On disqualification for holding domestic free or pay television programme service licences, members noted that section 7 of Schedule 1 to BO had specified that the proprietor of a newspaper printed or produced in Hong Kong, a person who exercised control over such a proprietor or their associate(s) were DPs in relation to the licence.

35. In this connection, Mr SIN Chung-kai remarked that Mr Richard LI had reportedly been exercising control over a local newspaper, Hong Kong Economic Journal (HKEJ), such as by signing new employment contracts with existing staff. He enquired whether the acquisition of HKEJ by Mr Richard LI, the existing Chairman and director of PCCW, whose wholly-owned subsidiary, PCCW Media Limited (PCCW Media) was a domestic pay television programme service licensee, had breached the restriction on cross-ownership under BO; and if the answer was positive, whether investigation had been or would be conducted by BA.

36. In response, PSCIT(CT) explained that broadcasting licensees (except that a non-domestic TV licensee was not a DP in relation to a domestic pay TV licence), newspaper (including magazines), advertising agencies, and persons exercising control of them or their associates were DPs under BO who should not exercise control of a domestic free television programme service licensee or a domestic pay television programme service licensee, unless the Chief Executive in Council (CE in C) was satisfied that public interest so required and approved otherwise. He pointed out that under section 1(6) of Schedule 1 to BO, a person was regarded as exercising control of a corporation if he was a director or principal officer of the corporation, the beneficial owner/voting controller of more than 15% of the voting shares in the corporation, or he had the conferred power to ensure that the affairs of the corporation were conducted in accordance with his wishes. Noting that according to media reports, Mr Richard LI had acquired 50% interest in HKEJ through an off-shore company owned by an off-shore discretionary trust of which Mr LI was the settlor, PSCIT(CT) said that while there might seem to be prima facie evidence that Mr LI was a DP as defined under BO, it was incumbent upon the Administration and BA to ascertain whether Mr LI was indeed a DP by virtue of his relationship with HKEJ and also was exercising control of PCCW Media. In this

regard, BA had been collecting and studying the relevant information relating to both corporations, as well as seeking DoJ's legal advice.

37. Mr SIN Chung-kai was unconvinced, and pointed out that before the proposed sale of shares in PCCW took place, Mr Richard LI was already a DP by holding a domestic pay television programme service licence while at the same time controlling HKEJ. He enquired whether BA would take action under BO if there was proven evidence that Mr LI was exercising control of both corporations.

38. PSCIT(CT) said that as far as he understood, Mr Richard LI's acquisition of HKEJ was made through an off-shore company owned by an off-shore discretionary trust of which Mr LI was the settlor. He highlighted that the onus of complying with the statutory provisions in relation to DPs rested with the licensee. The licensee concerned should apply for prior approval of CE in C if there was or was going to be any DP issue arising as a result of or connecting to an acquisition. He, however, confirmed that so far, no application had been received in this respect. Nevertheless, he assured members that BA had been studying the available information and seeking legal advice and if justified, an investigation would be initiated. The Secretary for Broadcasting Authority (S for BA) supplemented that BA could only commence a formal investigation if there was reasonable cause to do so.

39. Mr SIN Chung-kai enquired whether the outcome of investigation, if conducted, would be made public. In reply, PSCIT(CT) said that while it was BA's decision to make public or otherwise the outcome of investigation, if conducted, he personally was of the view that if there was a conclusion that PCCW Media had complied with the DP provisions under BO, the relevant findings should be made public for enhancement of transparency. The Panel might also request the Administration/BA for a briefing on the findings. In this connection, S for BA highlighted that BA was an independent statutory body, and it would take into account the views of the Administration and Members before deciding on the disclosure of the outcome of investigation. As the S for BA, he would convey members' views expressed at the meeting to BA for consideration.

40. Mr Ronny TONG referred to section 9 of Schedule 1 whereby a licensee had the power to investigate a DP, and might, by notice in writing serve on the person who was believed to be a DP, require the person to confirm or refute that fact and if he confirmed it, to give certain specified particulars. He enquired whether as understood by the Administration/BA, the licensee concerned had exercised such power for investigation, and if not, the reason for not exercising such power. He also sought information on whether the Administration/BA had requested the licensee concerned to exercise such power. The Chairman invited PSCIT(CT) to address the enquiries raised by Mr TONG in the capacity of the Deputy Chairman of BA.

41. In reply, PSCIT(CT) said that under section 10 of Schedule 1, BA was statutorily empowered to obtain information and to conduct an investigation relating to DPs when there was reason to do so. He reiterated that BA had not conducted

investigation on PCCW Media pursuant to section 10 of Schedule 1, but was inviting PCCW Media to provide relevant information to facilitate BA's coming to a view on PCCW Media's compliance or otherwise with the DPs provisions in BO. BA might consider making public the outcome of the investigation, if conducted, when PCCW Media was found to have duly complied with the DP provisions. However, if it appeared to BA that the licensee was in breach of the DP provisions, it would follow the statutory procedures as provided in BO such as to require the concerned party to make representations, and, where appropriate, BA might impose sanctions. On whether the Administration/BA had requested the licensee concerned to exercise its investigative power as provided in section 9 of Schedule 1, PSCIT(CT) stressed that if BA had come to a view that the licensee should exercise the investigative power under section 9 of Schedule 1, it might be more appropriate for BA to exercise its power as conferred under section 10 of Schedule 1 to conduct a formal investigation.

42. The Chairman sought clarification as to whether Mr Richard LI, a major shareholder of PCCW, was a domestic pay television programme service licensee. If the answer was positive, he considered that BA should immediately commence investigation into the possible breach of the cross-media ownership restriction as Mr LI was a voting controller of more than 15% of the voting shares in HKEJ.

43. PSCIT(CT) advised that Mr Richard LI himself was not the holder of the domestic pay television programme service licence granted to PCCW Media. Given the highly complicated shareholding structures among the entities, PSCIT(CT) considered that a thorough analysis by legal experts was required before a reasonable conclusion could be drawn on whether there was a breach of the cross-media ownership restriction.

44. The Chairman sought confirmation from PSCIT(CT) as to whether he meant that the existing shareholding structures of PCCW Media could not sufficiently indicate that Mr Richard LI was the licence holder; and if so, the actual holder of the licence. In this connection, he expressed concern that simply through this kind of shareholding structures that could be easily arranged, corporations might acquire as many different media entities as they wanted without being regarded as DPs under BO.

45. In response, PSCIT(CT) reiterated that there was not sufficient evidence or information to support BA's commencement of investigation under section 10 of Schedule 1 at the present stage. PCCW Media, which held a domestic pay television programme service licence for the operation of now Broadband TV, was controlled by a group of holding companies which was in turn held by PCCW.

46. Mr Albert HO was unconvinced, and opined that for licensing purpose, the Administration and regulatory bodies should have been very alert to the complicated shareholding arrangements in consortia, and would have ascertained who was the ultimate major beneficial shareholder before granting the licence; otherwise, several licences might be granted to the same person which would defeat the purpose of the cross-media ownership restriction provisions under BO. The

Administration and regulatory bodies should not be confused by the complicated shareholding structures. Nevertheless, he was of the view that the Administration and BA should have had a clear understanding on which person and his associates should be subject to regulation under BO. Mr James TO shared Mr HO's views.

47. PSCIT(CT) reiterated that a thorough analysis on all the relevant facts and legal issues involved in the present case should be made before Members' concerns could be addressed.

48. Ms Emily LAU shared members' concerns on DPs, and urged the Administration/BA to obtain the legal advice as soon as possible and to expedite their study with a view to making an early decision on the issue for the public's information. In this connection, she considered that the Administration should apprise the Panel of the recommendations to be made by BA on PCCW Media's application, if lodged, for the approval of CE in C under section 3(2) of Schedule 1 before the application was considered by CE in C. In response, PSCIT(CT) said that when considering whether the application should be granted, CE in C would take account of the factors as set out in section 3(3) of Schedule 1. Since the factors to be considered by CE in C before granting the application or otherwise had already been set out clearly in BO, he personally did not see a need for the Administration to have a briefing for the Panel before the application was considered by CE in C.

49. Ms Emily LAU did not subscribe to the Administration's view. She said that since those factors as set out in the above provision covered a wide scope, it would be desirable for Members and the general public to be apprised of the recommendations made to CE in C by BA and the justifications thereof, before CE in C made a decision on the application. She added that as a matter of respect for the Legislative Council, the Administration should also consider doing so.

50. PSCIT(CT) said that in line with all other previous applications made to CE in C under section 3(2) of Schedule 1, CE in C would consider the application from PCCW Media, if lodged, in accordance with the statutory provisions under BO. As such, it might not serve any purpose for the Administration to have a prior briefing for the Panel. Nevertheless, Ms Emily LAU requested PSCIT(CT) to discuss the Panel's aforesaid request with the Secretary for Commerce, Industry and Technology.

51. Mr James TO remarked that the present case had already aroused widespread concern from the general public. As such, he enquired that if such an application was made to CE in C, whether the Administration would make it known to members of the public so that they could make representations on the application for CE in C's deliberative consideration before approval was granted or otherwise. Echoing Mr TO's views, Mr Albert CHAN said that apart from the general public, the minority shareholders of PCCW would also be very concerned about the case. In response, PSCIT(CT) said that the off-shore company had reportedly acquired 50% interest in HKEJ in September 2006; however, so far, no application made under section 3(2) of Schedule 1 had been received. As such, there was at present



no question of obtaining approval from CE in C. Nevertheless, he reiterated that if after studying the case and there was reason to believe that the licensee had breached the cross-media ownership restriction under BO, BA would commence investigation under section 10 of Schedule 1.

Way forward

52. Mr Albert CHAN was dissatisfied that despite the fact that the change in shareholding in PCCW had sparked off since June 2006, the Administration and BA still could not come up with a clear position on issues such as whether investigation should be conducted or otherwise, nor could the Administration and BA address members' various concerns raised at the meeting. He was of the view that BA's credibility as a regulator might be undermined. As such, Mr CHAN suggested and other members agreed that another special meeting would be held to follow up the subject, and the Secretary for Commerce, Industry and Technology should attend the meeting so as to address members' concerns. Separately, Mr CHAN requested the Panel's legal adviser to provide a paper on the legal issues involved in relation to cross-licence and cross-media ownership. He also requested the Clerk to forward members' concerns raised at the meeting to the Administration for a written response.

*(Post-meeting note: The list of concerns raised by members at the meeting was forwarded to the Administration on 11 December 2006 for response. The special meeting to follow up the subject has been scheduled for 11 January 2007 at 4:30 pm, and Members have duly been informed of the arrangement on 8 December 2006 vide LC Paper No. CB(1)441/06-07.)*

**II Any other business**

53. There being no other business, the meeting ended at 5:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
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