

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1551/06-07  
(These minutes have been seen  
by the Administration)

Ref: CB1/PL/ITB/1

**Panel on Information Technology and Broadcasting**

**Minutes of special meeting**  
**held on Thursday, 11 January 2007, at 4:30 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 Fred LI Wah-ming, JP  
Dr Hon LUI Ming-wah, SBS, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Albert CHAN Wai-yip  
Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon Emily LAU Wai-hing, JP
- Public officers attending** : Agenda Item II  
  
Mrs Marion LAI, JP  
Deputy Secretary for Commerce, Industry &  
Technology (Communications and Technology)  
  
Mr Bernard HILL  
Assistant Director of Telecommunications  
(Competition)  
Office of the Telecommunications 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 Debbie YAU  
Senior Council Secretary (1)1

Ms Guy YIP  
Council Secretary (1)1

Ms May LEUNG  
Legislative Assistant (1)6

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**I. Matters Arising**

The Chairman informed members that while the Panel had extended invitation to Mr Richard LI, Chairman of PCCW Limited, he declined to attend the special meeting. However, Mr LI had provided a letter dated 4 January 2007 to the Panel, which, at Mr LI's consent, had already been issued to all Members on 8 January 2007 vide LC Paper No. CB(1)654/06-07(01). Members of the Panel on Financial Affairs and all other Hon Members of the Legislative Council (LegCo) had been invited to attend this special meeting.

2. Noting that Mr Richard LI had indicated that his letter could be provided to the Administration and the Broadcasting Authority (BA) on a confidential basis if the Panel so decided, the Chairman sought members' consent or otherwise as to the release of the letter to the Commerce, Industry and Technology Bureau and BA. Since Mr LI had also advised that his letter should not be made available to the media and the public, the Chairman reminded members that if in the course of discussion, members considered it necessary to refer to the content of the letter, the meeting would need to be held in private.

3. Mr SIN Chung-kai stated that he did not have any objection in forwarding the letter to the Administration because the latter was accountable to the LegCo and should therefore be provided with any information which could facilitate the discussion. Separately, he indicated that he did not consider it necessary for the Panel to discuss the letter at the meeting nor did he have any comments on the letter.

4. Mr Howard YOUNG also agreed to provide Mr LI's letter to the Administration. He considered that it was not meaningful to discuss the letter as Mr Richard LI was not available at the meeting and that the content of the letter was simple and straightforward.

5. Sharing the views of Mr SIN Chung-kai and Mr Howard YOUNG as to provide the Administration with a copy of Mr LI's letter, Mr Albert CHAN opined that this would facilitate the Panel's discussion on the subject.

6. However, Mr Ronny TONG held that the Panel should not act as the letter box of the Administration as Mr Richard LI could communicate and/or exchange information with the Administration at his liberty. All the Panel needed to do was to ascertain whether the Panel was satisfied with the information provided by Mr LI. As such, there was no need for the Panel to consider whether Mr LI's letter should be made available to the Administration or not.

7. While expressing that there might be different perspectives as to whether the Panel would become a letter box by tendering Mr LI's letter to the Administration, Mr Fred LI opined that the major consideration lied in whether the provision of the letter to the Administration could facilitate the Panel's discussion on PCCW's alleged breach of the cross-media ownership requirement under the Broadcasting Ordinance (BO) (Cap 562); if the answer was positive, the Panel should provide the letter to the Administration. Since the Chairman had been following up the matter closely, he sought the Chairman's views in this respect.

8. The Chairman opined that there was no question of whether the Panel was acting as a letter box of the Administration or not. He stressed that Mr LI did not wish to pass his letter to the Administration; nevertheless, Mr LI had expressed that the Panel could do so if it so decided. The Chairman was of the view that the tendering of the letter to the Administration could facilitate the Panel's discussion, in particular that queries could be raised with the Administration for response on certain substantive information as contained in the letter. Yet, Mr Ronny TONG maintained his stance as he considered that the Panel could by all means raise queries with the Administration on the basis of the information already available to the Panel or even on a hypothetical basis. As such, he objected to furnishing the Administration with a copy of Mr LI's letter.

9. Mr Jasper TSANG, however, sided with the Chairman, and pointed out that pursuant to the established practice, LegCo Panels would usually pass information so received to the Administration for meaningful discussion on the concerned issues unless the Panel had deliberately decided not to do so. In the present case, he held that it was particularly impracticable for the Panel to have meaningful discussion with the Administration without referring to the content of Mr LI's letter which had in fact addressed the queries/concerns raised by the Panel on the matter.

10. In this connection, the Chairman expressed his query as to whether Mr Richard LI had a right to stipulate such a requirement in the handling of his letter by the Panel; in other words, whether the Panel was obliged to follow Mr LI's instruction as to keep his letter confidential and could not discuss it openly, say, upon passing it to the Administration.

11. Mr Ronny TONG pointed out that Mr Richard LI had served his letter on a confidential basis. As such, there might be a breach of confidence if the Panel had failed to keep the letter confidential. Nevertheless, he also pointed out that Panel members were covered by the protection and immunity as provided under the Legislative Council (Powers and Privileges) Ordinance (LC(P&P)O) (Cap. 382). In this connection, the advice from the Panel's legal adviser was sought.

12. In reply, Assistant Legal Adviser 3 (ALA3) advised that under common law, if a person had provided information on a condition that it should be kept confidential and the recipient was aware of this condition and had agreed to abide by it before perusal of the information so received, the recipient would be under an obligation to keep the information confidential. On the immunity and protection afforded to Members under LC(P&P)O, she referred members to sections 3 and 4 of the Ordinance. Section 3 provided that there should be freedom of speech and debate in LegCo or proceedings before a committee, and such freedom of speech and debate should not be liable to be questioned in any court or place outside LegCo. Section 4 provided that no civil or criminal proceedings should be instituted against any member for words spoken before, or written in a report to, LegCo or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise. She explained that the intent of these provisions was to enable Members to discharge their duties as LegCo Members without fear of being liable to civil or criminal proceedings. It was however doubtful whether these provisions were intended to apply to situations as in the present case where Panel members were aware of the condition of confidentiality and had seemingly decided to accept the condition by the conduct of perusing the information contained in Mr LI's letter, but wished to act otherwise after perusing the letter.

13. Mr Ronny TONG also remarked that under common law, a duty of confidence could normally arise out of a matter of contract. In a situation like the present case, when Panel members received the confidential letter, it involved a matter of contractual duty of confidence, and he was not sure whether Panel members were really protected under a matter of contract. As such, he was of the view that the Panel could consider writing back to notify Mr Richard LI of the Panel's refusal to keep his letter on a confidential basis and to request him to reply the same to the Panel on an open basis. By doing so, the Panel could have a free hand in dealing with Mr LI's letter in whatever way the Panel preferred. However, if Mr LI refused to so reply, consideration could be given to invoking the power provided under LC(P&P)O to summon Mr LI to attend the Panel meeting in person and to answer members' inquiries.

14. Mr Jasper TSANG was concerned, however, in what way the Panel had indicated its acceptance of the condition of keeping Mr LI's letter in confidence despite the fact that the letter was provided by Mr LI under a confidential cover.

15. Mr Ronny TONG said that normally speaking, if the recipient did not raise any objection upon receipt of the letter, it would mean that the recipient had accepted the condition imposed thereupon; or else, the recipient should immediately return the letter to the sender to signify the non-acceptance of the condition.

16. At the invitation of the Chairman, ALA3 advised that a person could indicate his/her acceptance or otherwise of a condition imposed upon by the sender either verbally or by conduct. In the present case, the Secretariat had issued Mr LI's letter to Members under a confidential cover. As such, any Members who did not wish to accept the condition that the letter should be perused in confidence should have returned the letter to the Secretariat immediately.

17. On Mr Albert CHAN's query that Mr LI had indicated that his letter should not be made available to the media or the public via the Council's website, the library or the press box which might imply that the letter could be made available to the aforesaid parties by means other than the aforementioned, ALA3 explained that on a proper construction of Mr LI's letter, the intention of Mr LI was to keep his letter confidential. As the essence of the letter is its content, it followed that apart from the physical copy of the letter *per se*, the content of the letter should also be kept confidential and hence could not be discussed in public. Mr Ronny TONG also shared that the aforementioned request raised by Mr LI in his letter should not be interpreted out of context to mean that Mr LI agreed to the release of his letter to the media and the public other than the ways mentioned in his letter.

18. In view of the divergent opinions among members, the Chairman suggested to put to vote two issues, viz, whether a copy of Mr LI's letter should be passed to the Administration and BA; and whether the Panel should meet and discuss with the Administration in private with respect to the next agenda item.

19. Mr Jasper TSANG remarked that he would prefer the Panel having discussion with the Administration in public, but members should refrain from referring to the content of the letter in the course of the discussion.

20. The Chairman then ordered to ring the voting bell for two minutes. Members cast their votes. While four members supported to pass a copy of Mr Richard LI's letter to the Administration and BA, three members voted against it.

clerk

(*Post-meeting note: Mr Richard LI's letter dated 4 January 2007 was forwarded to BA under confidential cover on 12 January 2007.*)

21. Before the second question was put to vote, Mr Ronny TONG cautioned that if the Panel decided to continue the discussion in public and if individual members accidentally disclose the content of the letter, all members present at the meeting might have the legal liability having regard to the Panel's legal adviser's earlier advice that the protection and immunity afforded under LC(P&P)O might not be applicable to the present case. As such, he considered that the Panel should discuss the next agenda item with the Administration in a closed meeting.

22. Sharing Mr TONG's views, Mr Howard YOUNG opined that as the Panel had already decided to pass a copy of Mr Richard LI's letter to the Administration and might, in the course of the discussion with the Administration, mention the content of the letter, the Panel should better have the discussion with the Administration held in a closed meeting to uphold the confidentiality requirement, unless Panel members agreed not to touch upon the content of the letter during the discussion.

23. Mr Albert CHAN held a different view, however, and considered that Panel members would exercise due care in avoiding to disclose the content of the letter during the discussion with the Administration.

24. Mr Ronny TONG remarked that to uphold the confidentiality requirement, if the Panel discussed the next agenda item with the Administration at an open meeting, he would withdraw from the meeting. Mr Howard YOUNG held the same position.

25. The Chairman then put the second question to vote. Three members supported that the Panel should discuss the next agenda item with the Administration in closed meeting while three members voted against it, and one member abstained.

26. As the question of whether the Panel should meet and discuss with the Administration the next agenda item in private was not supported by a majority of the members voting, the meeting continued to be held in public.

27. The Chairman indicated his personal view that he did not agree to have discussion with the Administration behind closed door. As the Panel had come to a decision that the meeting would continue to be held in public, he reminded members not to mention the content of Mr LI's letter in the course of their discussion with the Administration.

28. At this juncture, Mr Ronny TONG returned his copy of Mr LI's letter to the Secretariat. Both Mr TONG and Mr Howard YOUNG withdrew from the meeting.

**II. Further discussion on issues relating to change in shareholding in PCCW Limited and cross-media ownership**

- (LC Paper No. CB(1)634/06-07(01) - List of concerns raised by members at the special meeting held on 23 November 2006
- LC Paper No. CB(1)634/06-07(02) - Paper provided by the Commerce, Industry and Technology Bureau
- LC Paper No. CB(1)634/06-07(03) - Letter dated 5 January 2007 from the Broadcasting Authority
- LC Paper No. CB(1)634/06-07(05) - Administration's reply to question no. 19 as raised by Hon Emily LAU on "Cross-media ownership restrictions" at Council meeting held on 20 December 2006
- LC Paper No. CB(1)634/06-07(04) - Draft minutes of special Panel meeting held on 23 November 2006 (English version only)
- LC Paper No. FS13/06-07 - Fact sheet on "Local press reports on the development of change in shareholding of PCCW Limited (Based on local press reporting from 21 November 2006 to 9 January 2007)" prepared by the Research and Library Services Division of the Secretariat (Chinese version only)
- LC Paper No. FS14/06-07 - Fact sheet on "Foreign press reports on the development of change in shareholding of PCCW Limited (Based on foreign press reporting from 21 November 2006 to 9 January 2007)" prepared by the Research and Library Services Division of the Secretariat (English version only)

29. The Chairman welcomed representatives from the Administration to attend the meeting. He added that BA had also been invited but had declined to attend the meeting. A copy of Mr Richard LI's letter dated 4 January 2007 was then passed to the Administration on the spot.

Declaration of interest

30. While the Chairman declared that he no longer held any shares of PCCW, Dr LUI Ming-wah declared that he held shares of PCCW.

Discussion

31. Mr Albert CHAN was concerned that a person might own a company by directly holding its shares, or might indirectly exercise control of it by means of a trust. He pointed out further that the person, who set up the trust and did not have a voting control over the company which held the trust nor was he a member of its board of directors, could have bona fide control over the company as the board of directors might in fact be acting in accordance with his wishes. Under such circumstances, Mr CHAN enquired whether such person had breached the restriction on cross-media ownership under BO if he was a domestic pay television programme service licensee and at the same time exercised control of another media company indirectly through a trust; and if the answer was negative, whether the Administration would regard this as a loophole in law which should be plugged.

32. In response, the Deputy Secretary for Commerce, Industry & Technology (Communications and Technology) (DSCIT(CT)) stated that under BO, "voting control" referred to 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 of a licensee through or by means of a trust, agreement or arrangement, understanding or practice. However, she stressed that whether holding shares by means of a trust would be regarded as exercising "voting control" and thus a possible breach of the restriction on cross-media ownership would have to be assessed on a case-by-case basis.

33. Noting that Mr Richard LI's acquisition of Hong Kong Economic Journal (HKEJ) was made through an off-shore company owned by an off-shore discretionary trust of which Mr LI was a settlor, Mr Albert CHAN referred to the media reports and pointed out that there was evidence showing that Mr LI had participated in major decision making process of both PCCW Limited whose wholly-owned subsidiary PCCW Media Limited (PCCW Media) was a domestic pay television programme service licensee, as well as HKEJ. As such, he requested the Administration to confirm whether Mr LI should be regarded as exercising control of HKEJ and hence a disqualified person (DP) as defined under BO.

34. DSCIT(CT) drew members' attention to the press release issued on 5 January 2007 by BA which stated that pursuant to section 10(1) of Schedule 1 to BO, BA had required PCCW Media, holder of a domestic pay television programme service licence, and other relevant parties to provide information as to the voting controllers of PCCW Media. She stressed that as BA, the independent regulator of the broadcasting industry, had formally invoked the above section to

require the parties concerned to provide the requisite information, it was inappropriate for the Administration to comment on the case.

35. Mr SIN Chung-kai recapitulated his remark made at the previous special Panel meeting on 23 November 2006 that there seemed to be prima facie evidence that Mr Richard LI was exercising control of both PCCW Media and HKEJ, and hence in breach of the restriction on cross-media ownership. Although BA had exercised its power as conferred under section 10 of Schedule 1 to obtain information in relation to DPs, there was no mention on any deadline to be imposed upon the information collection process. As such, he enquired whether the Administration/BA would have any deadline on when enforcement action would be instituted if it was later substantiated that there was a breach of the aforesaid restriction.

36. In response, DSCIT(CT) opined that it would be premature at the present stage to discuss enforcement action to be taken as it all depended on the information collected during the investigation process. On section 10 of Schedule 1, she pointed out that although it had empowered BA to obtain information and to conduct investigation in relation to DPs, it did not specify any deadline for compliance. Nevertheless, she stressed that as a responsible independent regulator, BA would expedite its work in collecting the requisite information and analyzing the case with a view to completing the investigation as soon as practicable. She added that as far as she understood, a deadline had been set for the relevant parties to provide information as to the voting controllers of PCCW Media.

37. In further reply to Mr SIN Chung-kai and the Chairman as to the deadline concerned, DSCIT(CT) said that as she was not a representative of BA, she did not have any knowledge on the actual date on which the deadline was set, but she believed that it would be in the region of two to three weeks' time. She supplemented that upon receipt of the initial replies from the relevant parties, BA might require the provision of further information for in-depth analysis.

38. Notwithstanding her knowledge that BA had imposed a deadline for submission of information by the relevant parties, the Chairman remarked that DSCIT(CT) was unable to provide information on the exact date on which the deadline was set. As such, he enquired whether DSCIT(CT) wished to withdraw her earlier remark that she knew of the deadline imposed by BA. DSCIT(CT) reiterated that as she understood it, there was a deadline for about two to three weeks for submission of the information. Nevertheless, she had no idea as to the actual date on which the deadline was set, and that she would withdraw her earlier remark if the Chairman considered it appropriate to be so.

39. Mr SIN Chung-kai highlighted, however, the need for government officials to respond to members' enquiries with integrity. He considered that if BA had set a deadline for the relevant parties to provide the requisite information, DSCIT(CT) should inform the Panel accordingly unless BA had indicated to her that it did not consent to her disclosure of such information to members; or else, she had to

explain why she did not relate such information to members.

40. In reply, DSCIT(CT) stressed that she knew of a deadline imposed by BA on the provision of information by the relevant parties though the actual date of which she had no knowledge about. Nevertheless, in view of members' concern, the Administration would be pleased to check with BA and revert to the Panel on the actual date of the deadline.

41. Mr SIN Chung-kai expressed that while BA had declined the Panel's invitation to attend this meeting, government officials attending the meeting also refused to disclose the actions already undertaken by BA, such as the deadline imposed by BA on the relevant parties to provide the requisite information. He considered this highly undesirable. Echoing Mr SIN Chung-kai's views, the Chairman remarked that since government officials had agreed to attend the meeting in spite of BA's absence, the Panel had reasonable expectations that the attending government officials could answer members' enquiries on BA's behalf.

42. On whether it was BA that requested the Administration not to disclose the date on which the deadline was set or it was DSCIT(CT)'s personal decision to refuse to relate to the Panel the concerned information, DSCIT(CT) explained that she had made verbal enquiry with BA on the deadline set for the provision of information by the relevant parties. As she understood it, a deadline was set but she had not sought from BA further information such as the actual date on which the deadline was set. As such, the Chairman requested the Administration to inform members in writing as soon as possible after the meeting the actual date on which the deadline was imposed by BA.

Admin

*(Post-meeting note: BA subsequently advised in writing that the deadline on which PCCW Media and other relevant parties had to provide the requisite information was 26 January 2007. BA's reply as provided via the Administration was circulated to members vide LC Paper No CB(1)826/06-07(01) on 29 January 2007.)*

43. In this connection, Mr Albert CHAN recalled a previous case in which the Government had taken legal actions against an operator who had breached the land grant conditions. Yet, the operator concerned took advantage of the cumbersome legal procedures to continue to profiteer from the illegal practice. As such and in view of the fact that it would usually take a long time such as a few years for the legal proceedings to draw to a close, he enquired whether consideration would be given to prohibiting the acquisition of HKEJ by Mr LI or revoking/suspending the licence held by PCCW Media if the Administration was quite certain that there was an alleged breach of the requirement on cross-media ownership and that legal action would likely to be undertaken in the present case.

44. In reply, DSCIT(CT) said that as Mr CHAN's enquiries were highly hypothetical, the Administration was not in a position to provide any comment. Noting the Administration's response, the Chairman sought clarification on whether

the Administration/BA was empowered to impose sanctions on a licensee for breach of the requirements imposed upon it. DSCIT(CT) remarked that as BA, the independent regulator, was conducting the investigation in the present case, it was not appropriate for the Administration to respond to enquiries in those respects.

45. Mr Albert CHAN then sought the opinions from the Panel's legal adviser. ALA3 advised that under section 28 of BO, if BA was satisfied that the licensee contravened a requirement under BO which was applicable to the licensee, BA might impose a financial penalty on the licensee. BA could also suspend or revoke the licence under sections 31 and 32 of the same Ordinance respectively if, having regard to all the circumstances including the number of occasions and the gravity in respect of which after the issue of the licence, the licensee had contravened a requirement under BO which was applicable to it. In further reply to Mr CHAN, she said that the restriction on cross-media ownership as specified under Schedule 1 to BO was one of the requirements under BO that was applicable to the licensee.

46. Noting the legal adviser's advice, Mr Albert CHAN requested to put on record his disappointment on the reserved attitude of the Administration in providing information on the power conferred upon BA under BO.

47. Mr Albert CHAN then enquired as to when the Administration would report to the Panel the outcome of BA's investigation. DSCIT(CT) advised that the Administration would have close contact with BA to keep in close view the progress of the investigation. As to when the outcome of the investigation would be available, she remarked that as the issue in question had aroused wide public concern, she believed that BA would undertake a thorough and yet efficient investigation into the case.

48. On the copy of Mr LI's confidential letter which had been tendered to the Administration, Mr Albert CHAN was of the view that some of the information contained therein worth to be verified by the Administration to facilitate members' thorough understanding of the case. As such, he enquired whether the Administration would consider responding to the content of the letter and providing a reply to the Panel on a confidential basis. Mr SIN Chung-kai considered, however, that it was not necessary for the Administration to respond to that letter. Instead, the Administration should revert to the Panel for detailed explanation if BA, after due investigation, decided not to take action against the parties concerned.

Admin

49. While taking note of Mr SIN Chung-kai's views, DSCIT(CT) said as the Administration had just got hold of a copy of Mr LI's letter, the Administration would need some time to go through the letter in detail before it could decide on whether a response should be provided.

*(Post-meeting note: The Administration indicated that as BA was looking into the case, it was inappropriate for the Administration to respond to Mr LI's letter. The Administration's letter dated 22 January 2007 was*

circulated to members vide LC Paper No CB(1)729/05-06(01) on 23 January 2007.)

**III. Any other business**

50. At this juncture, Mr Fred LI and Dr LUI Ming-wah returned their copies of Mr Richard LI's confidential letter to the Secretariat.

51. There being no other business, the meeting ended at 5:40 pm.

Council Business Division 1  
Legislative Council Secretariat  
11 May 2007