

立法會
Legislative Council

LC Paper No. CB(1)1297/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Tuesday, 6 February 2007, at 4:30 pm
in the Chamber 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 Ronny TONG Ka-wah, SC
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon Fred LI Wah-ming, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Albert CHAN Wai-yip
- Public officers attending** : Agenda Item IV
Mr Francis HO, JP
Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Tony LI
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)B

Mr Danny LAU
Assistant Director of Telecommunications (Operations)

Agenda Item V

Mr Francis HO, JP
Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Kevin CHOI
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)A

Mr Danny LAU
Assistant Director of Telecommunications (Operations)

**Attendance by
invitation** : Agenda Item IV

Hong Kong Journalists Association

Ms MAK Yin-ting
Press Freedom Subcommittee Member

Hong Kong CSL Limited

Mr Adam WONG
Director, Mobile Networks

Ms Jillian CORDEIRO
General Counsel

PCCW Limited

Mr Stuart CHIRON
Director of Regulatory Affairs

Hutchison Telephone Company Limited

Mr Oswald KWOK
Director of Legal and Regulatory

Hong Kong Broadband Network Limited

Mr Ricky WONG
Chairman

Mr Daniel LO
Manager, Network Development & Regulatory

Hong Kong Wireless Technology Industry Association

Mr Norman CHAN
Executive Committee Member

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

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Ms Elyssa WONG
Deputy Head (Research and Library Services)

Ms Vicky LEE
Research Officer 3

Ms Guy YIP
Council Secretary (1)1

Ms May LEUNG
Legislative Assistant (1)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)852/06-07 -- Minutes of special meeting held on
23 November 2006)

The Chairman referred to paragraph 52 of the minutes of the special meeting held on 23 November 2006 regarding a member's request for the Panel's legal adviser to provide a paper on the legal issues involved in relation to cross-licence and cross-media ownership. He related to members the advice of the Panel's legal adviser as follows: in the light of the latest development since 23 November 2006 which related to the disapproval of the sale of PCCW shareholding by shareholders of Pacific Century Regional Development Limited at its extraordinary shareholders' meeting on 30 November 2006, and the uncertainty of information that was available to the Panel over the identity of voting controllers of PCCW Media Limited and the Hong Kong Economic Journal, the Panel's legal adviser, after consulting Legal Adviser, considered that an opinion on the legal issues involved might involve too much speculation and might not be helpful to the

Panel at this stage of its work over the subject. Members took note of the legal adviser's advice. The minutes of the special meeting were confirmed.

2. In this connection, Ms Emily LAU recalled that she had requested the Administration to apprise the Panel of the recommendations to be made by the Broadcasting Authority (BA) on PCCW Media Limited's application, if lodged, for the approval of the Chief Executive in Council under section 3(2) of Schedule 1 of the Broadcasting Ordinance (BO) (Cap. 562). She enquired about the latest position of the issue. The Chairman advised that BA had, pursuant to section 10(1) of Schedule 1 of BO, required PCCW Media Limited and other relevant parties to provide information as to the voting controllers of PCCW Media Limited, and members were duly informed of this development vide LC Paper No. CB(1)634/06-07(03). At the special meeting held on 11 January 2007 to follow up on the subject, the Administration had also been requested to revert to the Panel for detailed explanation if BA had finally decided not to take any action after the investigation. Nevertheless, the Chairman said that Ms LAU's above request and concern would be related to the Administration again for the latter to take note of, and the Panel would keep in view the development of the issue.

(Post-meeting note: The above mentioned request and concern were duly related to the Administration on 16 February 2007.)

II. Information paper issued since the last meeting

(LC Paper No. CB(1)858/06-07(01) -- A referral made by the Complaints Division of the Secretariat enclosing a letter from a group of concerned clinical psychologists expressing views on obscene and indecent covers and contents of magazines)

3. Members noted the paper issued since the last meeting.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)853/06-07(01) -- List of outstanding items for discussion

LC Paper No. CB(1)853/06-07(02) -- List of follow-up actions)

4. Members noted that the following items were proposed by the Administration for discussion at the next Panel meeting to be held on 12 March 2007:

(a) Report on the Cyberport Project; and

- (b) Outcome of public consultation and subsidiary legislation to be made under the auction arrangements for the spectrum for CDMA2000 services.

5. The Chairman drew members' attention to the item on "Issues relating to the editorial independence of the Radio Television Hong Kong (RTHK)", which had originally been scheduled for discussion at the present meeting but was deferred as the Secretary for Commerce, Industry and Technology (SCIT) could not personally attend the meeting to take part in the discussion. As SCIT had advised that he would be available for the Panel meeting to be held on 12 March 2007 and he was glad to attend the meeting, the Chairman suggested that the item be put on the agenda for the March meeting. Apart from SCIT, the Director of Broadcasting and BA would also be invited to attend the meeting to take part in the discussion on issues relating to the editorial independence of RTHK, as well as the yardsticks of BA in imposing sanctions. Moreover, as the subject was of wide public concern, deputations interested in the issues should also be invited to attend the meeting to present their views. Members agreed. To allow sufficient time for discussion of the three agenda items, members further agreed that the meeting be held from 1:00 pm to 4:30 pm.

(Post-meeting note: At the instruction of the Chairman, a general notice inviting submissions on the issues relating to the editorial independence of RTHK and the yardsticks of BA in imposing sanctions was posted on the website of the Legislative Council (LegCo) on 13 February 2007, and interested parties were also invited to provide submissions and to attend the meeting. Members were duly informed of the above arrangements and invited to propose other organizations/individuals, if any, to which/whom the Panel should issue invitation vide LC Paper No. CB(1)932/06-07 issued on 12 February 2007.)

IV. Public consultation on proposed spectrum policy framework

(LC Paper No. CB(1)853/06-07(03) -- Paper provided by the Administration including the consultation paper

LC Paper No. IN02/06-07 -- Information note on "Spectrum Management in Hong Kong" prepared by Research and Library Services Division of the Legislative Council Secretariat)

6. Members noted that written submissions had been provided by a member of the public and three deputations not attending the meeting, namely, Hong Kong Telecommunications Users Group, SmarTone Mobile Communications Limited and Metro Broadcast Corporation Limited (LC Paper Nos. CB(1)233/06-07, CB(1)853/06-07(04), CB(1)884/06-07(01) and CB(1)884/06-07(02)).

7. The Chairman welcomed representatives of the Administration and deputations to the meeting. He said that written submissions received before the meeting had been circulated to members and uploaded onto the LegCo's website for public perusal. He requested the deputations to provide their written submissions, if they had not done so, or supplementary submissions, if any, to the Panel after the meeting. He also reminded the deputations that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by the said Ordinance.

Introduction by the Administration

8. At the invitation of the Chairman, the Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) (PASCIT(CT)) briefed members on the proposed spectrum policy framework with the aid of power-point presentation. In gist, he highlighted the following six areas which were covered under the proposed framework:

(a) Spectrum policy objectives

The proposed spectrum policy objectives were to, inter alia, facilitate the most economically and socially efficient use of spectrum, and strengthen Hong Kong's position as a telecommunications and broadcasting hub as well as its strategic position as the gateway between the Mainland and the world.

(b) Guiding principles in spectrum management

Unless there were overriding public policy reasons, a market-based approach would be adopted for spectrum management when there were competing commercial demands.

(c) Spectrum supply

The Telecommunications Authority (TA) would publish 3-year rolling spectrum release plans for the supply of spectrum to the market through an open, competitive bidding process. If feedback from the public was supportive of the promotion of spectrum trading, a feasibility study would be commissioned for introducing secondary trading of spectrum in the longer term. Spectrum liberalization, however, would not be considered for the time being as spectrum liberalization had not yet been proven in a small, densely populated place like Hong Kong; nevertheless, the development of spectrum liberalization in other jurisdictions would be monitored.

(d) Spectrum rights

TA should not vary or withdraw frequencies assigned to a licensee before the expiry of the spectrum assignment unless under special circumstances. If TA intended to change or not to renew the spectrum assignment upon its expiry, an appropriate notice period should be given. For frequency assignments which involve heavy infrastructure investments, the TA would also have to undertake an appraisal of the impacts of different options before initiating spectrum refarming exercises.

(e) Spectrum pricing

All commercial spectrum users would be required to pay spectrum utilization fee (SUF) in principle irrespective of whether there were competing commercial demands for the spectrum. Where there was no competing commercial demand, SUF would be set to reflect the opportunity cost of the spectrum.

(f) Spectrum for government services

The current command and control approach for spectrum management should continue to be applied to spectrum for government services, but administrative reviews would be made every three years to ensure the efficient use of the spectrum assigned.

Presentation of views by deputations

Hong Kong Journalists Association (HKJA)

(LC Paper No. CB(1)808/06-07(01) -- Submission (English version only))

9. Ms MAK Yin-ting, Press Freedom Subcommittee Member of HKJA said that HKJA was, in general, supportive of the Administration's proposal to liberalize the spectrum policy. She then highlighted HKJA's views as follows:

- (a) The proposals set out in the consultation document placed too much emphasis on commercial utilization of spectrum. The Government should consider seriously whether such a market-led mechanism would be conducive to the development of the broadcasting sector, in particular public service broadcasting (PSB), and community, public access and minority services. The consultant commissioned by the Government to undertake the spectrum policy review had also recommended that a clear line between services that were intended to achieve PSB objectives and services that were purely commercial should be drawn. As such, for the interest of the public, HKJA considered that the spectrum policy framework to be formulated should encourage media diversity, and consideration

should be given to adding a new policy objective in paragraph 31 of the consultation document, i.e. "to ensure that necessary spectrum was reserved for PSB and community, public access and minority services".

- (b) Notwithstanding the Government's efforts to encourage digitalization of the broadcasting industry in recent years, little progress had been made. The Government should, either through its spectrum policy or by means of allocating necessary resources, encourage technological upgrades with a view to promoting digital broadcasting, thereby encouraging media diversity, in particular PSB, to better serve the community.
- (c) On spectrum assignment, HKJA agreed that the market-led approach as proposed by the Government was adopted internationally. Nevertheless, the Government should consider putting in place, as a balance, measures such as anti-competition law or the setting of a limit on the number of channels that a single broadcaster was allowed to control in order to avoid monopolistic control of the media industry by major consortia. The spectrum policy should guard against market domination.

Hong Kong CSL Ltd (CSL)

(LC Paper No. CB(1)921/06-07(01) -- Submission (English version only))
(tabled at the meeting and subsequently issued on 7 February 2007)

10. Ms Jillian CORDEIRO, General Counsel of CSL said that while CSL had already made a detailed submission to the Government regarding the proposals as set out in the consultation paper, she would highlight CSL's views on two of the major issues, namely spectrum policy and spectrum pricing, as follows:

- (a) The Government should develop and finalize a comprehensive spectrum policy before considering spectrum implementation issues, such as the licensing of spectrum in the 850 MHz band to potentially enable the provision of a Code Division Multiple Access 2000 (CDMA2000) service, as well as the introduction and regulation of mobile television services in Hong Kong, on the grounds that:
 - dealing with implementation issues before formulating a policy would prejudice or prejudge the broad spectrum policy;
 - devising the spectrum policy would avoid policy decisions having to 'fit in' with decisions previously made in implementation consultations; and

- creating a spectrum policy would avoid implementation decisions having to be subsequently revised or unwound in order to be consistent with the spectrum policy.

As such, CSL considered that the contemplation of spectrum implementation issues, such as further release of spectrum, should be postponed until the fundamental, structural and policy considerations for spectrum management had been appropriately resolved.

- (b) To attract investment, a spectrum policy should include details on: the timing and manner in which spectrum would be allocated; whether spectrum would be allocated for particular services or a technology neutral approach would be taken; whether secondary spectrum trading would be allowed; whether spectrum use would be liberalized; how spectrum taxation would be dealt with; and how interference issues were to be settled.
- (c) Both secondary spectrum trading and spectrum liberalization were critical aspects of a market-led approach. As such, CSL considered that rather than considering the introduction of secondary spectrum trading in the "longer term future" and to "monitor" spectrum liberalization in other jurisdictions as proposed in the consultation paper, the Government should conduct a comprehensive consultation on these two critical aspects now.
- (d) The Government should further consult the industry on wider aspects of spectrum pricing which had not been adequately covered in the consultation paper. Since the Government had imposed a SUF on the use of spectrum for mobile services, CSL considered that a SUF should also be imposed on all future spectrum assignments and renewed assignments, and it should be determined in a clear, consistent and competitively neutral manner. The spectrum policy should ensure equitable pricing for future assignments in the same markets to eliminate the risk of anti-competitive asymmetries or distortions within those markets, and a level playing field should be maintained. To do otherwise would result in new entrants having an unfair and anti-competitive advantage over existing players, impacting and undermining competition in the telecommunications sector.

PCCW Limited (PCCW)

(LC Paper No. CB(1)921/06-07(02) -- Submission (English version only))
(tabled at the meeting and subsequently issued on 7 February 2007)

11. Mr Stuart CHIRON, Director of Regulatory Affairs of PCCW stressed that the logic of the spectrum policy review should be "policy first, implementation second", which was also consistent with the global best practice. However, due to the lateness of the commencement of the spectrum policy review, the discussion of which had already started in 2004, TA felt compelled to initiate prematurely the implementation consultations on the allocation of spectrum for Broadband Wireless Access (BWA) and the fifth 3G licence using CDMA2000 technology. While TA's initial spectrum proposal made in the BWA consultation exercise was found to be unwise due to interference problems, the necessity for urgent allocation of spectrum for the fifth 3G mobile service using CDMA2000 technology was also unclear as an independent analysis made in 2004 had already concluded that an additional licence would not be beneficial to users. Moreover, the proposal for allocation of spectrum for the rollout of CDMA2000 technology was inconsistent with the technology neutral and market-driven principles. As such, PCCW considered that the Government should adopt the "policy first, implementation second" approach. TA should also wait for the fundamental issues pertaining to the spectrum policy framework to be finalized before making any decisions on the allocation of spectrum for future wireless services.

Hong Kong Wireless Technology Industry Association (HKWTIA)

12. Mr Norman CHAN, Executive Committee Member of HKWTIA said that HKWTIA welcomed and supported the Administration's review on the spectrum policy framework. HKWTIA hoped that the review could be completed as soon as practicable so as to facilitate the industry, new entrants in particular, in making informed investment decisions.

Hutchison Telephone Company Limited (Hutchison)

(LC Paper No. CB(1)921/06-07(03) -- Submission)
(tabled at the meeting and subsequently issued on 7 February 2007)

13. Mr Oswald KWOK, Director of Legal and Regulatory of Hutchison said that Hutchison welcomed the Government's initiative to conduct the spectrum policy review, but stressed that the Government should complete the review first before undertaking any further licensing of mobile services, which was a promise made by the Government in 2004 when the 2G licence renewal exercise was concluded. He then highlighted Hutchison's views as follows:

- (a) Since radio spectrum was a finite public resource, public interest could only be best served if each of the important aspects of the spectrum policy, including policy objectives, guiding principles in spectrum management, spectrum rights, spectrum supply, spectrum for government services and spectrum pricing, had been carefully considered and debated under a proper consultation process.

- (b) The Government had departed from the logical process of "policy first, then licensing" when conducting separate consultations on many mobile licensing proposals, such as CDMA2000 service in the frequency band of 850 MHz, and BWA service in the frequency band of 3.4 GHz-3.6 GHz. There was a risk that the uncoordinated approach would not make the most efficient use of the available spectrum resources in Hong Kong. Moreover, if the market was fragmented by different technologies and development standards, the industry could not achieve economies of scale and this would be detrimental to the interests of consumers. Without economies of scale, healthy market competition among operators could also not be able to be achieved.
- (c) Hutchison noted with concern that according to the consultancy study commissioned by the Government in 2004, the prospect of CDMA2000 service becoming a major mobile service was not clear. As such, the Government's recent proposal for releasing spectrum for the provision of CDMA2000 service, without any backup by a cost and benefit analysis or an updated market study, was highly questionable in terms of realizing the full economic potential of the concerned frequency band.

Hong Kong Broadband Network Limited (HKBN)

(LC Paper No. CB(1)921/06-07(04) -- Submission (English version only))
(tabled at the meeting and subsequently issued on 7 February 2007)

14. Mr Ricky WONG, Chairman of HKBN stressed that the Government should continue rolling out its initiatives that were in the pipeline while conducting a policy review. He also made the following remarks:

- (a) Hong Kong had lagged behind overseas countries such as Korea, Japan and Singapore in the licensing of CDMA2000 and Worldwide interoperability for Microwave Access (WiMAX) respectively. For the best interests of consumers, the Government should expedite the granting of licences for those services.
- (b) The same standard should be applied by the Government on the areas of spectrum management and assignment. For instance, if auction was used for allocation of spectrum for new licenses, the same mechanism should be adopted when the existing spectrum assignment expired so as to avoid double standard. Such measure was also consistent with the Government's practice in auctioning land for commercial uses.

- (c) Consideration should not be given to the introduction of secondary trading of spectrum in Hong Kong as it might give rise to anti-competitive behaviour in the spectrum market such as spectrum hoarding by major consortia. The effective regulatory control of the spectrum market would also be undermined, which was detrimental to the interests of consumers.

Discussion

The approach of "policy first, implementation second"

15. Noting that representatives of a number of operators present at the meeting had expressed the same view that the Administration should first complete a comprehensive spectrum policy review before finalizing implementation issues, Mr Howard YOUNG asked whether the industry was of the opinion that the market was already saturated and there was no need for issuing additional licences.

16. Mr Oswald KWOK of Hutchison remarked that industry operators shared the common wish that the Administration should lay down clear, open and consistent principles to maintain a level playing field and to ensure fair competition among existing operators and prospective new entrants to the market. The Administration should not, in particular, put in place measures which aimed at favouring new entrants without due regards to existing operators as this would upset the fairness of market competition.

17. Mr Stuart CHIRON of PCCW also reiterated PCCW's support for the approach of "policy first, implementation second". Regarding the need for issuing additional licences, he said that the independent analysis commissioned by the Government in 2004 had already indicated that an additional licence would not bring about any benefit to the market, a conclusion which was made on the basis of striking a balance between market saturation, investment, innovation and the ability for operators to earn a reasonable return, etc. As such, he stressed that the Government should demonstrate clearly the benefits of granting additional licences before proceeding with it.

The technology neutral principle and the provision of CDMA2000 service

18. Considering Hong Kong's position as an international city with overseas visitors from commercial markets such as Japan and Korea who would normally use non-GSM handsets, Mr Howard YOUNG invited deputations' views on whether there was a need for Hong Kong to provide service to this niche market. Regarding the provision of CDMA2000 service, Mr Howard YOUNG also invited the industry's views on whether a market-led approach should be adopted for spectrum allocation and management whereby spectrum with competing demands would be auctioned or, whether out of strategic consideration to maintain Hong Kong's position as an international city, the Administration should enable industry operators to provide CDMA service to business visitors and tourists to Hong Kong.

19. Mr Oswald KWOK of Hutchison stated that Hutchison had been providing CDMA2000 service through IS95B standard to offer roaming services to visitors from overseas such as the United States and the Mainland. So far, Hutchison had not received any complaints against its service quality. Nevertheless, in order to cater for the need of overseas visitors using different networks, he suggested that as an alternative option to the granting of a full service licence, consideration could be given to the issue of a roaming network licence to meet overseas visitors' roaming needs.

20. Mr Stuart CHIRON of PCCW added that consumers could also resort to other substitutes such as the use of phone cards, traditional IDD or rental phones. In this connection, he remarked that the Government had all along been upholding the technology neutral principle in granting licences, and had allowed the winning bidder to decide on the details of the business plan, including the technology to be deployed. However, in the recent proposal for granting the fifth 3G licence, the Government had discarded the technology neutral principle by specifying that the licensee should use CDMA2000 technology. He was concerned that the same approach might be adopted by the Government for the sixth 3G licence in specifying, say, the use of Time Division Synchronous Code Division Multiple Access (TD-SCDMA) technology. As such, he considered that the Government should justify, with economic analysis, its departure from the technology neutral principle for the grant of the fifth 3G licence using CDMA2000 technology. He was of the view that if there was a real demand, the market would certainly provide the service to meet customers' needs.

21. In view of the industry's concern that the proposal of releasing spectrum for the provision of CDMA2000 service had departed from the Administration's technology neutral principle, Mr Jasper TSANG requested the Administration to respond to such concern. In reply, the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT(CT)) said that while the market-led and the technology neutral approaches were, in general, the guiding principles for spectrum management, there might be circumstances where the spectrum policy framework should allow for flexibility to take into account strategic considerations in spectrum management decisions. In the case of the provision of CDMA2000 service in Hong Kong, he remarked that there was a huge number of mobile subscribers in the Mainland on a CDMA2000 network, and the Mainland was poised to issue a 3G mobile licence using CDMA2000 technology shortly. To maintain Hong Kong's strategic position as a world city and the gateway between the Mainland and the world, and in view of the increasing economic integration with the Mainland, spectrum allocation and spectrum release decisions might need to take into account the wider benefits that might be brought about through harmonization with the Mainland's use of spectrum. Moreover, there was also a need for the compatibility of telecommunications infrastructures and services with developed countries so as to ensure the availability of seamless roaming telecommunications services and the provision of first-class mobile services to visitors from all over the world. Nevertheless, he stressed that the proposals as set out in the consultation papers on the release of spectrum to enable the provision of CDMA2000 service and on the proposed spectrum policy

framework were the preliminary views put forth by the Administration for consultation to gauge the views and reactions of the industry.

Spectrum rights at the end of assignment

22. On the suggestion put forth by a deputation as to re-auction the spectrum upon the expiry of the spectrum assignment, Mr SIN Chung-kai was concerned that such an arrangement might have negative impact especially when the service provided by the licensee concerned had a large number of subscribers. He then invited the industry's views on whether they anticipated any problems in the implementation of such an arrangement. Mr Ricky WONG of HKBN said that since he considered it unfair for auctioned licences to be renewed at a very favourable discounted price, he therefore proposed to re-auction spectrum rights upon expiry. He stressed that there were also economic benefits in re-auctioning the spectrum rights as a re-auction would fetch billions of dollars for public revenue. Citing the example of the privatization of the rail in the United Kingdom, he held the view that it was feasible to change the service operators, and consumers would not be affected if the new operator was given an appropriate period to roll out the necessary network. The Chairman added that the services for commuters were also not disrupted when the Government withheld licence for China Motor Bus.

23. In this connection, Mr SIN Chung-kai sought information from the Administration as to whether in other jurisdictions, there were cases of withdrawing spectrum assignment at the end of the licence period. In reply, PASCIT(CT) said that different countries had different arrangements for different types of spectrum assignment upon expiry of licences. In New Zealand, for example, if the existing operator did not accept the renewal fee as suggested by the Administration, the concerned spectrum would be re-assigned through auction. As for other countries, the renewal fee was determined by means of negotiation with the existing operator. As far as the Administration understood it, there was not any case in which spectrum was re-assigned by auction at the end of the licence period. Mr Ricky WONG of HKBN remarked, however, that notwithstanding the lack of precedent cases, the proposal for re-assigning spectrum by auction at the end of the licence period was feasible. As such, he urged the Administration to give the proposal serious consideration as it was in the interests of consumers and would also generate revenue for the public coffers.

Technological development in Hong Kong

24. Referring to the comments made by Mr Ricky WONG of HKBN that Hong Kong had lagged behind overseas countries such as Korea, Japan and Singapore in the licensing of CDMA2000 and WiMAX, Ms Emily LAU sought clarification from the Administration as to whether progress was really slow in those respects. In reply, PSCIT(CT) acknowledged that the Administration also had the concern that Hong Kong was lagging behind in technology and market development in terms of wireless broadband access, mobile TV services and WiMAX. For instance, on the development of CDMA2000 network, although Hong Kong was the first place to roll out a commercial network based on IS95B

standard back in 1995, there had not been any enhancement since then.

25. Ms Emily LAU then sought elaboration on the reasons underlying the lack of progress on the deployment of advanced technologies and the introduction of new services. She also enquired whether effort had been made by the Administration in addressing the problems so identified, such as promoting technological enhancement by the industry, and whether the industry had been co-operating with the Administration in this regard. PSCIT(CT) said that one of the major differences in opinion between the Administration and the industry was whether the allocation of frequency bands for BWA and a fifth 3G licence using CDMA2000 technology should be proceeded with when the proposed spectrum policy framework was still under consultation. While acknowledging that there were interference issues raised in the earlier consultation for licensing of BWA, he pointed out that the need for release of spectrum for the provision of CDMA2000 service was actually a matter of different opinions on whether the market was saturated. As such, he remarked that it was necessary to conduct a review on the existing spectrum policy with a view to formulating a more responsive and transparent policy on areas such as the guiding principle of whether TA should use a market-led approach in spectrum management unless there were overriding public policy reasons to do otherwise and etc, so as to provide transparency to the industry to facilitate their making of informed investment decisions.

26. In this connection, Mr Oswald KWOK of Hutchison shared with the meeting that in deploying 3G WCDMA and HSDPA standards, Hong Kong had attained world class standard in mobile phone transmission technology.

27. Mr Ricky WONG of HKBN opined that while new entrants to the market might welcome new technologies which would open up new business opportunities to them, existing operators might prefer technology standstill which could save their additional investments on technological enhancement and the upgrading of their networks.

28. Mr Stuart CHIRON of PCCW remarked, however, that PCCW was committed to developing new technology and was in the process of rolling out WiFi throughout Hong Kong. At the end of the exercise, Hong Kong would have more WiFi hotspots than any other cities in the world. As such, he stressed that PCCW was not sitting on its deployed technology.

Public service broadcasting

29. On the concern raised by Ms MAK Yin-ting of HKJA that there was no mention of PSB in the consultation document, PSCIT(CT) pointed out that the development of PSB was mainly a matter of government policy stance and was therefore not included in the current consultation, the focus of which was on the utilization of spectrum in commercial broadcasting. He recapitulated that in January 2006, the Chief Executive had appointed an independent Committee on Review of Public Service Broadcasting (Review Committee) to conduct a fundamental and critical review of PSB and its future development. The

Administration had also in the policy address committed to conducting public consultations on all relevant issues and formulating a comprehensive, responsive and transparent spectrum policy framework. Noting the Administration's response, Ms MAK reiterated, however, HKJA's call on the Administration to give due consideration to reserving the necessary spectrum for PSB, as well as the setting up of community channels and public access channels for use by different community and minority groups, so as to encourage greater media diversity. She remarked that the Administration should not just focus on the recommendations made by the Review Committee; instead it should consider the issue in a comprehensive way.

30. PSCIT(CT) noted Ms MAK's concern, and said that all the relevant matters would be discussed by the Review Committee. He also assured that the Administration would take all factors into careful consideration in mapping out the future development of PSB in Hong Kong, and would draw up comprehensive strategic plan for the development of PSB, taking into account the views of stakeholders and the public.

31. In this connection, the Chairman noted that additional frequency spectrum could be released as a result of digitalization of broadcasting services. He therefore enquired when the Administration would conduct a public consultation on the allocation and use of the released spectrum for broadcasting. In reply, PSCIT(CT) said that the matter would be taken forward upon the finalization of the Review Committee's report which would set out all key issues for consideration, including the emergence of new multimedia services and mobile TV, etc for further consultation.

32. While concurring with HKJA's call for greater media diversity, Ms Emily LAU drew the Administration's attention to two relevant LegCo motions and also the Report on the Study of Public Service Broadcasting for Hong Kong prepared by the Panel on Information Technology and Broadcasting in October 2006. She urged the Administration to take heed of the Panel's views apart from considering the recommendations of the Review Committee. The Chairman shared Ms LAU's views and concerns.

33. In response, PSCIT(CT) assured members that the Administration had always given due consideration to the views of LegCo and the Panel, and would continue to do so. He stressed that the spectrum policy framework was still under consultation and the Administration would be open to all views expressed, and would draw up a comprehensive strategic plan having due regard to the views of LegCo, the industry and the public.

The way forward

34. The Chairman remarked that while there was consensus amongst industry players that a level playing field should be maintained, leading market players such as CSL, PCCW and Hutchison which took up more than 50% share of the market held different views from new market entrants on the deployment of new technologies. Referring to the observation made by Mr Ricky WONG of HKBN

that there might be circumstances where the existing operators were content with the current state of the market competition and did not see a business case to upgrade their networks to enhance their competitiveness in innovation or quality of service, the Chairman cited as a case in point the lukewarm response of Commercial Radio Hong Kong and Metro to the Administration's invitation to trial launch digital audio broadcasting so as to avoid bringing in market competition. He remarked that in order to strengthen Hong Kong's strategic position as a world city and the gateway between the Mainland and the world, the Administration should, instead of withholding implementation pending further consultation, proceed to formulate the spectrum policy framework on the basis of the findings of the consultation, and implement the licensing arrangements accordingly. In reply to the Chairman's enquiry on the Administration's way forward and time-table, PSCIT(CT) affirmed that the Administration planned to finalize the spectrum policy framework on the basis of the views received during consultation for consideration by the Executive Council in the next three months. The Chairman noted and requested to put on record that this would be after the election of the Chief Executive.

V. Consultation paper on mobile TV

(LC Paper No. CB(1)853/06-07(05) -- Paper provided by the Administration including the consultation paper

LC Paper No. CB(1)853/06-07(06) -- Press release issued by the Administration on 26 January 2007

LC Paper No. IN07/06-07 -- Information note on "Mobile Television" prepared by Research and Library Services Division of the Legislative Council Secretariat)

Presentation by the Administration

35. At the invitation of the Chairman, Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) (DSCIT(CT)) briefed members on the introduction and regulation of mobile television (mobile TV) services and related issues with the aid of power-point presentation. In gist, she remarked that the development of mobile TV services which exemplified multimedia convergence was gaining momentum, and had already been commercially launched in overseas jurisdictions such as the United Kingdom and South Korea, while trial services were planned in many other countries. Technical trials on mobile TV in Hong Kong were also conducted by some local operators. To facilitate the launch of mobile TV services in Hong Kong, the consultation aimed to seek views from the public and the industry on the introduction and regulation of commercial mobile TV services in Hong Kong with focus on four

major regulatory aspects, namely, spectrum availability, spectrum allocation, spectrum assignment, and licensing arrangements.

36. On spectrum allocation, DSCIT(CT) advised that four frequency bands, namely, Band III, L Band, UHF Band and S Band, had been identified for the introduction of digital broadcasting services. On spectrum allocation, the Administration had put forth three options for consideration, i.e. a service-neutral approach allowing spectrum users to decide which digital broadcasting services, viz. mobile TV, digital terrestrial television (DTT) and digital audio broadcasting (DAB) they wished to provide and the technologies to be deployed for service delivery; a conventional approach allocating frequencies for specific uses, and a pro-mobile TV approach allocating frequencies primarily for mobile TV while allowing other ancillary services. On spectrum assignment to optimize the economic and efficient use of spectrum resources, the Administration proposed to adopt a market-led approach, whereby spectrum would be assigned by auction when there were competing commercial demands, in which case a spectrum utilization fee (SUF) would be charged. On licensing arrangements, views were solicited on whether mobile TV programme services should be licensed under the Broadcasting Ordinance (BO) (Cap. 562), or whether a light-handed approach should be adopted whereby the contents of mobile TV services would be subject to regulation by other relevant legislation, such as the Control of Obscene and Indecent Articles Ordinance (Cap. 390).

37. DSCIT(CT) advised further that subject to the outcome of the consultation which would end on 25 April 2007, a draft implementation framework for introducing mobile TV would be formulated for a second round of consultation.

Discussion

The development of digital broadcasting in Hong Kong

38. Noting the technological advances and development of mobile TV in other parts of the world, Ms Emily LAU expressed grave concern over Hong Kong's technology lag, and enquired about the reasons for the lack of progress in the deployment of new technologies and the introduction of new services.

39. PSCIT(CT) shared Ms Emily LAU's concern, and agreed that Hong Kong needed catching up in digital broadcasting. On the progress of implementing DTT, PSCIT(CT) recapitulated that prior to taking a decision on the implementation framework for DTT, the Administration had conducted two rounds of consultation in 2000 and 2004 with a view to introducing DTT as soon as possible. The implementation of DTT was in progress. The Administration was now evaluating Asia Television Limited (ATV) and Television Broadcasts Limited's (TVB) proposals for the technical standard for DTT transmission. The choice was either to adopt the European DVB-T standard which was widely adopted internationally; or the national standard of the Mainland which had yet to be promulgated then. Since the Mainland promulgated the national standard in August 2006, and that both ATV and TVB had indicated that they would adopt the national standard for

digital broadcasting, PSCIT(CT) was confident that DTT services would be launched in Hong Kong this year as scheduled.

40. As for the development of DAB, PSCIT(CT) said that although the Administration's adoption of the market-led approach had the drawback of rendering Hong Kong trailing behind in the deployment of new technologies, such an arrangement could enable Hong Kong to benefit from the international experience. In this regard, he informed the meeting that the international experience in the rollout of DAB as a standalone service was not entirely successful. Except in the United Kingdom where the penetration was about 11%, some Nordic countries had decided to terminate or pull back further investment in DAB. The market trend, however, was to include digital radio services and other value-added services as ancillary services to mobile TV, and South Korea was the notable example of the world's trend of moving towards mobile multimedia broadcasting. PSCIT(CT) added that the success of South Korea in leading the world in digital broadcasting was due to strong government support and assistance in finalizing the national standard and the promotion of technology development to facilitate the rollout of mobile TV services. In the case of Hong Kong, however, since the market-led approach was adopted, the development of DAB would depend on whether there were operators willing to make the capital outlay for provision of the service.

41. In this connection, the Chairman referred to the consultation document which stated that application for rolling out DAB trials could be made to the Telecommunications Authority (TA), and enquired whether all interested parties or just the existing licensed operators could apply for such trial services. DSCIT(CT) and Assistant Director of Telecommunications (Operations) confirmed that as proposed in the consultation document entitled "Second Consultation on Digital Terrestrial Broadcasting in Hong Kong" published in 2003, any parties who were interested in launching digital radio services could apply for the approval of TA to conduct such trials.

Spectrum Availability

42. In view of the latest technological development and the possible release of spectrum for new services, Mr Howard YOUNG enquired whether there were sufficient spectrum resources to support the rollout of mobile TV services, and whether services such as mobile TV, mobile video conferencing, electronic games, etc would compete for the same spectrum. In reply, PSCIT(CT) informed that although digitalization and advances in technology had released spectrum for new services, potential competition for spectrum allocation did exist among mobile TV services, other digital broadcasting services such as DTT and DAB, as well as other telecommunications services in the four frequency bands identified for digital broadcasting services. In particular, both DTT and mobile TV services would compete for the remaining two unassigned single frequency network multiplexes in the UHF Band. As such, views of the industry and the public were sought on whether the spectrum in Band III, L Band, UHF Band and S Band should be made available for mobile TV services, and the relative priority of the various digital

broadcasting services taking into account commercial market interests and consumer preferences. Referring to Mr YOUNG's concern on video conferencing, PSCIT(CT) advised that such a technology currently available on the 3G platform involved the allocation of another spectrum bandwidth which was not the focus of the current consultation.

Licensing and regulation of mobile TV services

43. In response to Ms Emily LAU's concern as to whether the contents of mobile TV would be subject to regulation, PSCIT(CT) pointed out that the existing mobile TV services in the form of real time point-to-point streaming of video clips and video-on-demand as provided on the 3G mobile telecommunications platform were not licensable services under BO. In the case of mobile TV, it was primarily intended for reception outdoor on the move and the contents of which were designed for small display devices. As such, mobile TV services did not fall within the existing licensing regime under BO which appeared to focus on regulating television services intended for reception by an audience within specified premises. The major consideration was therefore whether the TV services aimed at viewers on the move or within specified premises. He pointed out that in the event that mobile TV was technically feasible for reception by an audience of specified premises such as domestic households on fixed in-door large display devices like televisions or computers, this might, subject to legal opinion, become licensable service under BO.

44. Noting that mobile TV could have video transmission for reception on the move through mobile terminals such as mobile phones, Ms Emily LAU enquired whether television programmes produced by a television programme service licensee under BO were also allowed for transmission to mobile phones. DSCIT(CT) confirmed that such kind of television programmes, subject to technical feasibility, were allowed for transmission to mobile devices such as mobile phones, and there was no licensing requirement for such transmission. She, however, pointed out that such kind of programmes might not be entirely suitable for mobile TV which was primarily intended for reception outdoor on the move and the audience of which usually had a comparatively short attention span. As such, with the rollout of mobile TV in future, new service modes and new form of products might have to be developed and packaged depending on market considerations and audience preferences.

45. Mr Jasper TSANG remarked that according to his understanding, mobile TV services including television programmes and video programme services provided on mobile phones and other mobile communications devices could be made available for reception at home through the installation of a simple device or equipment. Since mobile TV services were not licensable services under BO but the contents of which could be made available for viewing at specified premises such as domestic households, he enquired whether this would constitute a legal loophole which should be plugged. In reply, PSCIT(CT) explained that only television programme services falling within the categories of "broadcasting services" which were specifically "for reception by an audience of specified

premises" were licensable under BO. As such, mobile TV services such as television programmes, video clips, etc provided on mobile phones but indirectly made available for reception at home on television or computer through a device might not necessarily fall within the meaning of "broadcasting services" under BO for which licensing was required. Nevertheless, further study and careful deliberation were required in this respect, and public views were also sought in the current consultation exercise as to whether the contents of mobile TV should be subject to regulation and hence licensable under BO. He added that on the international scene, many jurisdictions were adopting a wait-and-see approach on the regulation of mobile TV services. In this connection, the Chairman supplemented that as mobile TV services currently were not licensable under BO, the contents of which, irrespective of whether they were made available on mobile phones or television sets at home, were therefore not subject to regulation. Likewise, there was also no licensing requirement for the viewing and playing of purchased or rented DVD and VCD on television sets or computers at home.

46. The Chairman noted that under the pro-mobile TV approach of putting DAB services ancillary to mobile TV services, successful bidders of the spectrum might use some of the spectrum to operate DAB. He then sought clarification on whether such an arrangement, if implemented, would compromise the existing principle of restricting cross media ownership. PSCIT(CT) stressed that the Administration had no intention of relaxing the existing statutory restriction on cross media ownership. He pointed out that the current licensing regime aimed at regulating television services intended for reception within specified premises. However, the existing mobile TV services in the form of point-to-point video-on-demand or real time video streaming provided on the 2.5G or 3G mobile telecommunications platform were not licensable services under BO. As such, the key consideration as set out in the consultation paper was whether mobile TV programme services should be licensed and regulated under BO. Nevertheless, he added that under the existing licensing regime, a mobile TV service provider with a mobile carrier licence under the Telecommunications Ordinance (TO) (Cap. 106) could acquire or hold either a television programme service licence under BO or a sound broadcasting licence under TO, but not both licences; or else this would contravene the restriction on cross media ownership under BO.

47. On the licensing requirement, Mr SIN Chung-kai asked and PSCIT(CT) confirmed that under the existing proposal, entry to the commercial mobile TV market would not be restricted to the existing licensed network operators. A successful bidder of an auction would be granted a mobile carrier licence under TO for operation of a network for transmitting mobile TV via the assigned frequencies.

48. Noting the international experience that the rollout of DAB was not very successful and the general world trend was to put digital broadcasting services as an embedded value-added services ancillary to mobile TV, the Chairman enquired whether mobile TV carrier licensees and television network operators could refuse leasing out spare spectrum to interested parties for digital broadcasting, and whether the Administration, when granting a mobile carrier licence under TO to the network operator for transmitting mobile TV services, would consider making the

leasing arrangements of unused spectrum mandatory so as to ensure efficient utilization of spectrum. He also opined that with the digitalization of broadcasting services and hence the release of more frequency spectrum, consideration should be given to requiring licensed operators to lease out spare spectrum to, say, minority groups to provide them a platform to express and voice their views. PSCIT(CT) said that under the existing legislation, network licence holders had the right to lease out unused spectrum as well as to decide on the terms of the lease and to whom they would lease out the spectrum. As to whether the commercial leasing arrangements should be made mandatory, he advised that as this was purely a commercial consideration and commercial arrangement between the licence holders and the prospective lease-holders, it might not be appropriate for the Government to intervene nor the TA to perform any regulatory role.

VI. Any other business

49. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 1
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