

立法會
Legislative Council

LC Paper No. CB(1)2282/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 14 May 2007, at 2:30 pm
in the 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 Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV
Mr Howard DICKSON
Government Chief Information Officer

Mr Stephen MAK, JP
Deputy Government Chief Information Officer
(Operation)

Mr Alex MA
Assistant Government Chief Information Officer
(Programme Management and Application Integration)

Agenda Item V

Mrs Marion LAI, JP
Deputy 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 T F SO
Assistant Director of Telecommunications (Support)

Agenda Item VI

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

Ms Lorna WONG
Principal Executive Officer
Broadcasting Authority

Mr P L PO
Secretary
Broadcasting Authority

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)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)1551/06-07 -- Minutes of special meeting held on 11 January 2007)

The minutes of the meeting held on 11 January 2007 were confirmed.

II. Information paper issued since last meeting

2. Members noted that no paper had been issued since the last meeting held on 17 April 2007.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1552/06-07(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1552/06-07(02) -- List of follow-up actions)

3. Members agreed that the following items would be discussed at the next Panel meeting to be held on 11 June 2007:

- (a) Release of spectrum for broadband wireless access services;
- (b) Progress in the implementation of digital terrestrial television broadcasting in Hong Kong;
- (c) Report on the Review of Administration of Internet Domain Names in Hong Kong; and
- (d) Review on the Convergence of Fixed and Mobile Communications Services.

4. As the release of spectrum for broadband wireless access (BWA) services and the implementation of digital terrestrial television (DTT) broadcasting were subjects of wide public concern, members agreed that the industry, stakeholders and other interested parties should be invited to attend the meeting to present their views. To allow sufficient time for discussion, members further agreed that the meeting be held from 12:45pm to 4:15pm.

(Post-meeting note: At the instruction of the Chairman, general notices inviting submissions on the two subjects relating to the release of spectrum for BWA services and the implementation of DTT were posted on the website of the Legislative Council (LegCo) on 18 May 2007. Interested parties were also invited to provide submissions and to attend the meeting. Members were duly informed of the above arrangements vide LC Paper No. CB(1)1688/06-07 issued on 22 May 2007 and were invited to propose other organizations/individuals, if any, to which/whom the Panel should issue invitation.)

IV. Report on project governance and results

(LC Paper No. CB(1)1552/06-07(03) -- Paper provided by the Administration)

Briefing by the Administration

5. At the invitation of the Chairman, Government Chief Information Officer (GCIO) briefed members on the progress of project governance in the Government and reported the results of its implementation in the first year since its introduction in April 2006. With the aid of power-point presentation, he outlined the background of project governance, project performance of the on-going projects during the fiscal year 2006-2007 showing project slippages by duration and value, observations made on project slippages, as well as a series of strengthening measures introduced since April 2006 to enhance governance. He highlighted the major points as follows:

(a) *Background of project governance*

- (i) The Government's investment on administrative information technology (IT) projects amounted to \$2 billion a year, of which about \$500 million was on small projects costing from \$150,001 to \$10 million each and funded through a block vote administered by the Office of Government Chief Information Officer (OGCIO). About \$1,500 million was on major projects with funding secured from the Finance Committee directly by Government bureaux/departments (B/Ds).
- (ii) Of the 492 on-going projects conducted during the fiscal year 2006-2007 at a total value of \$6,884 million, 465 were small projects with a total cost of \$2,206 million, and 27 were major projects costing a total of \$4,678 million.

(b) *Project performance*

- (i) 49 projects (about 10%) with a total value of about \$3,867 million had slippages, and 30 of them had delays exceeding 6 months.

- (ii) 434 small projects (93% in number) amounting to \$2,077 million (94% in value) were on schedule.
- (iii) Of the 27 major projects, 18 projects (67% in number) amounting to \$3,738 million (80% of the major projects investment or 54% of overall projects investment) experienced slippages.

(c) *Challenges of major projects*

Delays in most projects were rarely due to technology problems. Most of the delays in major projects were due to complex business requirements, business transformation, as well as difficulty in securing business leadership and qualified staffing in B/Ds. As only a few B/Ds had experience in managing large IT projects, there was in general a lack of sufficient experience in complex change management. Moreover, while some project plans were too idealistic with insufficient contingency, insufficient measures to manage user expectations also attributed to delay in major projects.

(d) *Actions taken by OGCI*

A series of strengthening measures were introduced since April 2006 including:

- (i) project risk profile assessment was conducted during early stage of project planning for early identification of risks relating to the cost, scale and complexity.
- (ii) a three-tier governance mechanism was put in place whereby senior officers including GCIO and Deputy Chief Government Information Officer (DGCI) would participate in the project steering committee of high risk projects as government IT advisor to review the project organization, monitor the progress and provide management advice where applicable. The level of OGCI involvement depended on the project tier. OGCI was actively engaged in six troubled major project work-outs.
- (iii) there was a regular reporting mechanism for OGCI to monitor the health status of all projects, particularly the 12 major projects in delay.
- (iv) continued emphasis would also be put on project management training to sustain the on-going improvements of B/Ds' knowledge and competency in project management.

6. With regard to the role of OGCIO, GCIO recommended that instead of just being an advisory and support agency, OGCIO's co-approval should be made a requirement before funding requests for major projects were put forward by B/Ds to the Finance Committee for consideration. The role of OGCIO in this process was to review the state of readiness of new major projects, and to see that the necessary improvements were duly considered by the requesting B/Ds.

Discussion

The proposed enhanced role of OGCIO

7. Referring to some past corruption cases relating to tendering and procurement in government projects such as the piling in Housing Authority's construction projects, Mr Albert CHAN expressed concern about the proposed enhanced role of OGCIO in co-approving major IT projects. He remarked that millions of dollars could be involved in a change in the tendering requirements and procedures of IT projects that entailed advanced technological knowledge with which not everyone was familiar. As such, Mr CHAN enquired about the mechanism to be put in place to guard against any possible abuse of power by OGCIO, in particular GCIO, and the measures to be introduced to ensure that there would be no corruption and illegal practices in procurement and tendering.

8. In response, DGCIO(O) stressed that the Government had put in place a stringent procurement and tendering mechanism with well-defined guidelines for compliance by B/Ds concerned. The tendering of major projects was centrally processed and managed by the Central Tender Board (CTB). Both procurement and tendering processes were well monitored. He also clarified that there was no project delay due to corruption or illegal practices. GCIO supplemented that to minimize any future project delay, the role of OGCIO was primarily on providing advice from a professional and technical perspective on whether the major projects proposed by B/Ds had the adequate resources, leadership, and expertise to proceed, as well as commenting on the viability of the timeframe for implementation and contingency plan. In this regard, the Chairman remarked that the tackling of corruption was under the purview and responsibility of the Independent Commission Against Corruption (ICAC). As such, should there be any suspected cases of corruption relating to tendering and procurement in Government projects, these should be reported to the ICAC for follow-up.

9. Mr SIN Chung-kai indicated his support for the proposed co-approval role of OGCIO in assessing and providing advice on the viability and readiness of major projects. He said that there were previous cases where contracts could not be completed, or re-tendering had to be made as some B/Ds concerned were unaware of the latest market trends, or sometimes preferred to maintain their own stand-point. He also recalled that in the past decade, the Government had swung along the continuum of centralization and de-centralization in accordance to the prevailing situation and need. He opined that whether to centralize or decentralize management control was a management decision vested within the Government. The over-riding concern was how to maintain the right balance in response to the

need of the time. In this regard, Mr SIN suggested that OGCIIO should continue to monitor the progress of the projects, and to conduct a review in two years' time to see if the enhanced governance would help reduce project delays.

10. On the proposed co-approval role of OGCIIO for major projects, Ms Emily LAU asked whether major projects that were without the approval and support of OGCIIO could not be submitted to the Finance Committee for consideration. DGCIIO(O) said that OGCIIO's major emphasis was to advise B/Ds on the project viability and alert B/Ds of the risks involved with a view to minimizing project delays. Ms LAU sought further clarification on whether the role of OGCIIO was that of an advisory one for B/Ds' reference only, or whether OGCIIO's approval was a pre-requisite for funding request to be put to the Finance Committee for consideration, as stated in the power-point on IT Project governance. In reply, GCIIO said that he considered it the responsibility of OGCIIO to advise LegCo members on the viability and readiness of a proposed major project and to indicate whether a major project submitted to the Finance Committee for funding request had OGCIIO's support from a professional and technical perspective. He added that the E-Government Steering Committee had in principle supported the co-approval role of OGCIIO. He nevertheless remarked that LegCo members and B/Ds were at liberty to decide whether to take OGCIIO's advice or not when considering the funding of a major project.

Award of contracts through tendering

11. Mr Jasper TSANG said that under the government policy of awarding contracts to the lowest bid, he had received views from the industry that there were occasions that some contractors, in order to secure the contract, had put in an exceptionally low quotation. There were also complaints that post-tender requirements outside the tender specifications were sometimes imposed by B/Ds. Mr TSANG sought information on whether there was a mechanism on assessing the viability of the quotations received in the tendering exercise.

12. In reply, DGCIIO(O) said that tender requirements and specifications of all major projects were vetted and pre-approved by the CTB which had a well-established mechanism in assessing the bids received and in determining the award of contracts. As regards tender requirements, he said that, under normal circumstances, B/Ds would not impose unreasonable demands on contractors. In cases where additional requests or reasonable modifications had to be made to the tendering requirements, representatives of B/Ds and the contractors concerned would attempt to settle any disputes through negotiation at committee level. If considered necessary and in line with the tendering procedures, the total project cost would be correspondingly adjusted to be commensurate with the new requests and/or modifications made to the requirements. DGCIIO(O) added that OGCIIO had in the past successfully mediated in negotiations to the mutual satisfaction of the parties concerned. He also stressed that unless with the agreement of the CTB, B/Ds could not unilaterally cancel any contract with the contractor(s). Any unresolved disputes would be brought to the CTB for resolution and a final decision.

Project slippages

13. Referring to slippages in major projects and, in particular, the cancellation of Social Welfare Department's (SWD) contract as reported in the media, Mr Albert CHAN opined that it would be difficult for middle-aged management who was not knowledgeable in IT to be responsible for managing and monitoring large scale IT projects of a complex nature. He was concerned whether the OGCIO/management of B/Ds had sufficient understanding of the needs of the frontline staff of B/Ds and whether the cutting edge technology recommended or deployed by the contractor would suit the operational needs of the user B/Ds.

14. In reply, GCIO said that although there might be technical problems, delays in most projects were rarely due to technology problems. On the contrary, most of the small projects of purely technology nature had experienced no difficulties and were on schedule. Most of the delays in major projects were due to complex business requirements and business transformation requiring a major change in the way the department conducted its business, which could be a long process. Senior management's commitment in the project therefore had an essential part to play in containing the slippages. DGCIO(O) supplemented that the contract of SWD's project on Client Information System was cancelled because the contractor could not deliver the system by the completion date specified in the contract.

15. Referring to Annex 2 of the Administration's paper (LC Paper No. CB(1)1552/06-07(03)) on details of the 18 projects experiencing slippages, Ms Emily LAU sought explanation on the reasons for delays in respect of items 13,14, 15 and 17.

16. Concerning item 13 on "Enhancing the E-Government infrastructure to support the new strategy for E-Government service delivery", DGCIO(O) explained that in view of the unsatisfactory progress made by various departments for service delivery in other phases, OGCIO anticipated that project completion would be delayed by seven to 12 months. Nevertheless, he added that Phase 1 system was already in production. On item 14 regarding SWD's project on the implementation of Information System Strategy Phase II, he pointed out that the part on technical infrastructure was in production since October 2004, while re-tendering for the Client Information System was under evaluation for roll-out in early 2009. In respect of item 15 on Transport Department's (TD) project "Replacement of the Vehicles and Drivers Licensing Integrated Data III System", he advised members that Phase 1 system which was in production in February 2007 was behind schedule due to contractor's performance while Phase 2 System was expected to be on schedule. Nevertheless, he remarked that OGCIO's close cooperation with TD in resolving the problems so identified had enabled a catch up with the slippage, and the development for Phase 2 system was in progress for roll out in June 2007. On item 17, he said that Water Supplies Department's project on "Customer Care and Billing system" was already in production.

17. Ms Emily LAU enquired whether project delays would entail additional costs and if yes, the estimated additional costs so incurred. In reply, DGCIO(O) said that project slippages would not incur additional costs as disbursement would only be made upon completion of the contract.

V. Subsidiary legislation to be made under the Unsolicited Electronic Messages Ordinance

(LC Paper No. CB(1)1552/06-07(04) -- Paper provided by the Administration

LC Paper No. CB(1)1582/06-07(01) -- Letter dated 10 May 2007 from the Secretary for Commerce, Industry and Technology)

Briefing by the Administration

18. At the invitation of the Chairman, Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) (DSCIT) briefed members on the proposed Unsolicited Electronic Messages Regulation (UEM Regulation) relating to sender information and unsubscribe facility in commercial electronic messages. She said that the regulation would be made shortly after the passage of the Unsolicited Electronic Messages Bill (UEM Bill). She also advised members that the Bills Committee for the UEM Bill had completed its scrutiny of the Bill and the Administration planned to seek resumption of the Second Reading Debate for the UEM Bill on 23 May 2007. Clause 56 of the UEM Bill empowered the Secretary for Commerce, Industry and Technology (SCIT) to make regulations, among other things, for the purposes of any provision of the UEM Bill. In this regard, the Administration proposed that SCIT should make the UEM Regulation under Clause 56 of the UEM Bill to prescribe, for the purposes of Clauses 7 and 8 of the UEM Bill, detailed information or conditions that different forms of commercial electronic messages had to include/comply with.

19. In response to Ms Emily Lau's enquiry, DSCIT elaborated on the proposed UEM Regulation which aimed to establish supplementary rules about the sending of commercial electronic messages. She explained that Clause 7 of the UEM Bill required a commercial electronic message to contain clear and accurate information identifying the individual/organization who/which authorized the sending of the message (sender), and on how the recipient could readily contact that sender. On the content of sender information, the Administration proposed that the name, the physical address (i.e. usual place of business) and the contact electronic address (e.g. telephone number, email address, etc.) of the sender should be included in the message. In view of the inherent message length constraint, text messages sent through Short Messaging Service (SMS) could be exempt from containing the physical address.

20. DSCIT added that Clause 8 of the UEM Bill prescribed the general requirements for an opt-out regime. The sender of a commercial electronic message had to provide in a clear and conspicuous manner at least one unsubscribe facility that could be used conveniently and readily by recipients to make unsubscribe requests. To facilitate the recipients to know quickly who the sender was and how to send unsubscribe requests before reading the message, it was proposed that the sender information and the statement on unsubscribe facility should be given at the beginning of the electronic message.

Discussion

Timing of commencement

21. Ms Emily LAU enquired about the timing of commencement of the UEM Regulation. DSCIT advised that the Administration's intention was to bring the UEM Bill, except the provisions related to the opt-out regime (Part 2 of the UEM Bill and other supporting provisions), into force as soon as possible after enactment, i.e. around mid 2007, whereas Clauses 7 and 8 of the UEM Bill, which were part of opt-out regime, were intended to commence towards the end of 2007 or early 2008. The UEM Regulation should come into operation at the same time as Clauses 7 and 8 of the UEM Bill. Subject to the passage of the UEM Bill, the Administration aimed to complete the negative vetting of the UEM Regulation before the summer recess of the Legislative Council (LegCo) for commencement on a day to be appointed by SCIT by notice in the Gazette. DSCIT said that this would allow sufficient time for the telemarketing companies to upgrade their systems and provide necessary training to their staff to comply with the requirements of the UEM Bill, and also for the Office of the Telecommunications Authority (OFTA) to set up the do-not-call register systems and prepare guidelines and publicity materials for the telemarketing industry and the community on compliance with the UEM Bill and UEM Regulation.

22. Responding to Ms Emily Lau's further enquiry about the do-not-call register, DSCIT said that the UEM Bill provided for the setting up of the register by OFTA whereby members of the public who did not wish to receive commercial electronic messages could opt out from receiving such messages from all electronic marketers by registering their electronic addresses in the register. Senders of commercial electronic messages were required to access the updated register to ascertain the electronic addresses to which they should not send commercial electronic messages unless they had obtained specific consent.

23. Considering that the public at large would probably prefer an early commencement of the UEM Regulation, Ms Emily LAU enquired when the public could cease to receive unsolicited electronic messages and junk emails. Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) (PAS/CIT(C&T)) advised members that under the provision of the UEM Bill, senders should not send UEM to electronic addresses listed on the do-not-call registers 10 working days after the electronic addresses were registered. In this connection, the Chairman noted that in the event that the UEM Regulation

came into operation by the end of 2007, members of the public who registered their electronic addresses with the do-not-call register could cease to receive commercial electronic messages from mid-January 2008.

24. Noting that the Administration planned to complete negative vetting process for the UEM Regulation within the current legislative session, Mr Jasper TSANG expressed concern about the tight legislative timeframe and asked whether there would be sufficient time for the Subcommittee, if formed, to complete scrutiny of the proposed regulation before the end of the current LegCo session in July 2007. He also enquired about the consequences in the event that the negative vetting of the UEM Regulation was not completed before the summer recess, particularly when the industry held divergent views.

25. PAS/CIT(C&T) informed members that subject to the passage of the UEM Bill on 23 May 2007, the UEM Ordinance would be gazetted on 1 June 2007, and SCIT would make the UEM Regulation shortly afterwards which would be gazetted on 8 June 2007 for negative vetting by LegCo from 13 June 2007.

26. DSCIT stressed that the Administration's objective to complete the negative vetting of the UEM Regulation before the LegCo summer recess was to allow sufficient time (about six months from the enactment of the Bill in mid 2007 till the commencement of the Regulation in end 2007) for the Administration to publicize the new legislation to enhance the community's understanding and to promulgate the necessary code of practice to provide guidance for the industry on compliance with the UEM Bill and UEM Regulation, and also to allow time for the industry to be compliance-ready in terms of system upgrade and staff training. She said that the commencement of the UEM Regulation would be delayed in the event that the making of the UEM Regulation was held up till the 2007-08 legislative session.

Consultation with the industry

27. Referring to the Administration's paper (LC paper No. CB(1)1552/06-07(04)), Mr Jasper TSANG sought elaboration from the Administration on the industry's reservation about the UEM proposal. In reply, DSCIT said that of the 14 representative industry associations consulted on the proposed regulation, only two telemarketing associations had provided specific comments. Although the responding associations were concerned that telemarketers' creativity would be limited by the requirement that the sender information and the unsubscribe facility statement should be provided at the beginning of the message, they, nevertheless, supported the majority of the proposals. As such, there were no major divergent views. DSCIT said further that the Administration was mindful of the need to strike a balance between respecting the rights and wishes of recipients and allowing the development of legitimate electronic marketing in Hong Kong. While understanding the industry's concern about creativity, the Administration considered that the ability of the recipients to learn about the basic sender and unsubscribe information at the beginning of the message to facilitate them to make an early choice on whether they would like to spend time on reading the message should also be borne in mind.

She then invited members' views in this regard.

28. The Chairman said that from consumers' point of view, to avoid a waste of time, early disclosure of sender and unsubscribe information at the beginning of the message was preferable.

29. Noting the tight legislative timeframe, Mr SIN Chung-kai urged the Administration to make use of the time during the lead-up to the making of the regulation to further consult the industry on the effectiveness and adequacy of the regulation proposals and in drawing up the code of practice for the industry.

30. Acknowledging members' concern, DSCIT said that the Administration had all along attached great importance to consultation with the industry and stakeholders. She assured members that the Administration would continue to liaise with the stakeholders to seek their views and to strive for a consensus as far as practicable.

31. In this connection, Mr Albert CHAN said that although the focus of the regulation proposals was not on personal data privacy, there was nevertheless a possibility that personal data would be involved for direct marketing purposes. As such, he called on the Administration to ensure that all relevant privacy concerns should be adequately addressed.

Concluding remark

32. Summing up, the Chairman requested the Administration to take note of members' views and concerns. Noting that members did not have objection to the regulation proposals, the Chairman concluded that the Panel supported in principle the proposed regulation on sender information and unsubscribe facility in commercial electronic messages under the UEM Bill.

VI. Proposed acquisition of Asia Television Limited's shares by Citic Guoan Group and related matters

(LC Paper No. CB(1)1552/06-07(05) -- Letter dated 7 May 2007 from the Secretary for Commerce, Industry and Technology

LC Paper No. CB(1)1582/06-07(02) -- Relevant statutory provisions (section 8 of Cap. 562, and sections 1, 3, to 10, and 19 to 24 of Schedule 1 to Cap. 562)

LC Paper No. CB(1)1582/06-07(03) -- Relevant newspaper cuttings)

Briefing by the Administration

33. Members noted that at the Panel meeting held on 5 June 2006 to discuss issues relating to the proposed acquisition of the shares of the Asia Television Limited (ATV) by CITIC Guoan Group (CGG), the Panel had agreed that the subject be further discussed so that members could understand more about the impact on ATV's competitiveness and its editorial independence consequent to the transfer of its shares to CGG, if approved.

34. Referring to the recent press coverage about ATV's sale of a 58% stake to the Mingly Corporation (Mingly), the Chairman invited the Administration to brief members on the latest development of the issue.

35. DSCT referred members to the background information concerning the ownership and corporate control applicable to ATV and the latest position as announced by ATV with respect to the two proposed acquisitions of ATV's shares set out in SCIT's letter dated 7 May 2007 ((LC Paper No. CB(1)1552/06-07(05)).

Discussion

Concern about freedom of expression and editorial independence

36. Mr Albert CHAN recapped that previous discussions on the proposed acquisition of ATV's shares by CGG were mainly focused on the restriction of cross-media ownership and prohibition of disqualified persons (DPs) from becoming a domestic free or pay television programme service licensee or from exercising control of such a licensee. However, given the pervasiveness and the high penetration of television programme services, he considered it equally important to have a careful scrutiny of the background of CGG and to assess the political implications, if any, of the proposed acquisition of ATV's shares by CGG, a Mainland enterprise which as the name suggested might have connections with the Mainland Authority. While he appreciated that the injection of new capital might help avoid the risk of monopoly build-up in the media and increase the diversity of media development which was conducive to healthy competition for the broadcasting industry, Mr CHAN was concerned about the possible impact of the proposed acquisition, if approved, on the freedom of expression and editorial independence of the broadcaster if ATV was controlled mainly by individuals and companies with Mainland background or had ties with the Central Government. He also expressed grave concern on whether there would be undue political influence on ATV's programming policy resulting from the proposed transfer of shares if approved. In this connection, he sought further information on the background of CGG, in particular, whether it had any financial ties with the Central Government or was funded by the Central Government. He also sought clarification on the respective approving authorities and related arrangements in respect of DPs and unqualified voting controllers (UVCs) holding television programme service licences or exercising control over such a licensee.

37. In response, DSCT said that the broadcasting industry in Hong Kong was regulated by the Broadcasting Ordinance (BO) (Cap.562). She referred members to the Administration's background note (Annex A to LC Paper No. CB(1)1552/06-07(05)) on the four areas of ownership and corporate control under BO applicable to a domestic free television programme service licensee including ATV, namely, fit and proper person requirement, corporate status requirement, ordinarily-resident in Hong Kong requirement, and restrictions on DP. She pointed out that Part 2 of Schedule 1 to BO contained provisions on restrictions on DPs for the purpose of dealing with cross-media ownership. Under section 3(2) of Schedule 1, a DP under section 4(1) should not be allowed to hold a domestic free or pay programme service licence or exercise control of such a licensee unless the Chief Executive in Council (CE in C), on application by the concerned licensee, was satisfied that public interest so required and approved otherwise. When considering an application for DPs to exercise control of a domestic television programme service licensee, the CE in C should take into account of, but not limited to, the four factors as stipulated under section 3(3) of Schedule 1 to BO, namely the effect on competition in the relevant service market; the extent to which viewers would be offered more diversified television programme choices; the impact on the development of the broadcasting industry, and the overall benefits to the economy.

38. Principal Executive Officer of the Broadcasting Authority (PEO/BA) supplemented that under BO, a voting controller who was not ordinarily resident in Hong Kong was a UVC. In the case of domestic free television programme service (FTV) licensee, there were certain restrictions on the residence requirements for persons and companies exercising voting control of a licensee to limit or restrict the influence and control of a FTV licensee by those not meeting the "ordinarily resident in Hong Kong" requirement. These included that unless prior approval had been granted by the Broadcasting Authority (BA) under section 20 of Schedule 1 to BO, a UVC should not hold, acquire, or exercise, or cause or permit to be exercised, 2% or more in the aggregate of the total voting control of a FTV licensee. She further elaborated that in the case of an individual, "ordinarily resident in Hong Kong" meant residence in Hong Kong for not less than 180 days in any calendar year, or residence not less than 300 days in any two consecutive calendar years. In relation to a company, it meant the majority of the directors were ordinarily resident in Hong Kong continuously for not less than seven years, and that the control and management of the company was bona fide exercised in Hong Kong. PEO/BA further advised that when considering UVC applications, assessment would be made by BA on the basis of a set of well-established criteria including the financial ability of the applicant and the financial position of the licensee in question, the benefit to be brought by the applicant to the operation of the licensee and the broadcasting scene, the long-term commitment of the applicant to continue to provide a service catering for the needs of the Hong Kong community, whether the approval would result in control and management of the licensee being exercised outside Hong Kong, and whether the applicant would maintain and uphold the licensee's freedom of expression and editorial independence.

39. In response to Mr Albert CHAN's request for clarification as to whether CGG had any financial ties with the Central Government, DSCT said that as the proposed acquisition by CGG had both DP and UVC implications and the applications in question were being processed by the CE in C and BA respectively in accordance to the relevant statutory provisions and established procedures, the Administration could not at the present stage offer any comment on matters relating to the applications.

40. Responding to Mr Albert CHAN's further enquiry on whether the existing regulatory regime had stipulated any restrictions on a state-owned enterprise or a subsidiary of a state-owned enterprise and the related statutory restrictions on UVC, both DSCT and PEO/BA confirmed that BO did not stipulate statutory restrictions on whether a state-owned enterprise or a subsidiary of a state-owned enterprise could become a holder of a domestic television programme service licence or exercising control of such a licensee.

41. In this connection, the Chairman enquired whether there were any specific regulatory restrictions on cross-media ownership with respect to a foreign company or business. DSCT clarified that of the various categories of DPs restricted from holding a domestic free or pay television programme service licence or exercising control of such a licensee, restriction on an advertising agency applied to an agency in Hong Kong or in any other jurisdiction overseas, as well as their controllers and associates. Other DP restrictions referred to persons or companies operating local media businesses, including another television programme service licensee under BO, a sound broadcasting licensee under the Telecommunications Ordinance (Cap. 106), and a proprietor of a newspaper (including magazine) printed or produced in Hong Kong, as well as their controllers and associates.

42. Given that broadcasting was one of the most powerful and influential means of communication today, Mr Albert CHAN cautioned that the possible impact on press freedom and editorial independence in programming policy brought about by the Mainland authorities' direct control and intervention through capital investment in a local media organization might lead to much public outcry.

43. Sharing a similar view, Ms Emily LAU said that editorial independence, media freedom and freedom of expression were essential corner-stone and cardinal principles of any civil society and advanced economies. The public at large had great concern about the possible impact of the proposed acquisition, if approved, on the editorial independence of ATV and whether there would be undue political influence on ATV's programming strategy as evidenced by the heavy presence of the electronic media in the conference room to report on the issue. She reiterated her stance expressed at the 5 June 2006 meeting against approving the proposed acquisition by CGG that had both DP and UVC implications. She said that she personally did not wish to see the control of domestic television programme services falling into the hands of a Mainland enterprise. She opined that to uphold the principle of "one country, two systems", the Central Government should refrain from interfering with the broadcasting and media industry. As press freedom and freedom of expression were among the core values much treasured by the Hong

Kong people, Ms LAU believed that Hong Kong people would insist on the principles of having domestic television programme services being managed and controlled by local people.

Proposed acquisition of ATV's shares by CITIC Guoan Group

44. Ms Emily LAU recapped that when the proposed acquisition of ATV's shares by CGG was last discussed at the meeting on 5 June 2006, the Panel was of the view that it was not appropriate to approve the proposed acquisition and that the Administration should revert to the Panel before it made a final decision on whether or not to approve the proposed acquisition. Noting that ATV announced on 4 April 2007 that some of its shareholders had entered into another set of conditional agreements with Mingly, Ms Emily LAU said that it was not clear from the information provided by the Administration as to whether the previous proposed acquisition of CGG was superseded. She then sought clarification on the present state of play and the latest proposed changes in ATV's shareholding structure. She was also concerned whether the respective approving authorities had made any decision on the proposed acquisition by CGG and if yes, what were the decisions, and if no, why it had taken so long to come to a decision.

45. In reply, DSCT referred members to paragraphs 6 to 8 of SCIT's letter of 7 May 2007 outlining the sequence of the development. She said that as stated in paragraph 6, ATV had, in October 2006, tendered its formal applications to the CE in C for approval for certain DPs (CGG) to exercise control of ATV and to the BA for approval for certain UVC (CGG) to acquire ATV's shares and for a change in ATV's shareholding structure. As mentioned in paragraph 7, ATV had, on 4 April 2007, announced that ATV and some of its shareholders had entered into another set of conditional agreements with Mingly. According to the announcement, Mingly, supported by Soft-trek Corporation and ABN AMRO, might become the majority shareholder of ATV if the aforementioned applications were approved. DSCT added further that ATV had filed applications to the CE in C and the BA on 17 and 26 April 2007 respectively for the requisite approval based on the latest proposed changes in its shareholding structure as a result of the two proposed acquisitions. She stressed that as the newly proposed application involving Mingly would have impact on the overall corporate and shareholding structure of ATV as well as the previous applications relating to CGG, ATV's revised applications concerning the two proposed acquisitions were being processed by the CE in C and BA according to the relevant statutory provisions and established procedures.

46. On Ms Emily LAU's concern about the long time taken to consider the applications, PEO/BA said that although ATV had announced the proposed acquisition by CGG in May 2006, it was not until October 2006 that the Administration/BA had received from ATV's all relevant information supporting the application. She stressed that in view of the complexity of the issues involved, and the need to seek elaboration and clarification on the information submitted, it took time to process ATV's application. She said further that as there was a subsequent change in the situation in the applications which involved a newly

proposed acquisition by Mingly, the Administration and BA were now seeking ATV's further clarification and supplementary information. PEO/BA supplemented that section 27(1) of BO had stipulated that unless with the consent in writing of the concerned party (i.e. ATV in question), any information, data, document or record which was provided in confidence to the BA should be treated as confidential and should not be disclosed or divulged.

47. In this connection, Ms Emily LAU and the Chairman sought clarification on whether the application in respect of the proposed acquisition by Mingly had taken the place of the previous application relating to CGG. In reply, DSC clarified that as ATV had advised that the newly proposed application by Mingly would impact on the overall corporate and shareholding structure of ATV as well as the previous applications relating to CGG, ATV's revised applications concerning the two proposed acquisitions were under processing by the CE in C and BA according to the relevant statutory provisions and established procedures.

48. Noting that ATV had tendered its formal applications to the CE in C and the BA in relation to the proposed acquisition by CGG in October 2006, Mr SIN Chung-kai enquired whether the Administration/BA had ever rejected the applications. He also sought clarification as to how many applications or how many times had ATV submitted applications in relation to the proposed acquisition of ATV's shares by CGG, and whether ATV had ever revised its application relating to CGG during the period from October 2006 to April 2007. DSC referred members to paragraph 6 of SCIT's letter, and reiterated that ATV's applications in respect of the proposed transfer of shares to CGG and related information received in October 2006 were being processed by the CE in C and the BA in accordance with the established procedures. Noting that it had already been six months since ATV had tendered its formal applications in October 2006, Mr SIN enquired about the Administration's performance pledge for processing such application. He also queried whether a period of six months was considered reasonable for processing such application. In response, DSC stressed that the requisite information gathering and processing as well as deliberative consideration of the application taking into account all relevant factors in accordance with the established procedures indeed required ample processing time.

49. In this connection, Mr Albert CHAN expressed great disappointment on the lack of transparency over the proposed acquisitions. He criticized that the Administration had not been forthcoming and co-operative in providing all the necessary information pertaining to the matter to facilitate a meaningful discussion with the Panel. He pointed out that given the pervasiveness of FTV programme services, any control of the media would have wide implication on freedom of expression and editorial independence of the media which involved public interest and would affect the livelihood of the public. As such, he was of the view that every open and responsible government official should in all honesty give LegCo Members and the public a clear and truthful account on how the Government had handled or would handle the applications in question, including the issues involved and the factors which had been considered. He regretted that the Administration had not fully apprised the Panel of all the particulars of the present state of play in

order that members could pursue discussion in the light of the latest development. He opined further that for important and sensitive policy issues involving a policy decision on the control and management of mass media such as the present case concerning the proposed acquisitions of ATV's shares, SCIT himself should attend the meeting to exchange views with members. Sharing his view, Ms Emily LAU was also disappointed that not even the Permanent Secretary for Commerce and Technology had attended the meeting and hence expressed doubt on the usefulness of the Accountability System. Mr Ronny TONG also voiced his dissatisfaction over the scanty and piecemeal information provided by the Administration.

Public interest

50. Mr Ronny TONG noted from paragraph 9 of Annex A to LC Paper No. CB(1)1552/06-07(05) (i.e. the background note on ownership and corporate control applicable to domestic FTV programme service licensees) that pursuant to section 3(3) of Schedule 1 to BO, the CE in C, in considering the public interest for granting the approval to DP to become the holder of a domestic free or pay television programme service licence or to exercise control of such a licensee, should take account of , but not limited to, four factors , namely the effect on competition in the relevant service market; the extent to which viewers would be offered more diversified television programme choices; the impact on the development of the broadcasting industry and the overall benefits to the economy. Mr TONG considered that the factors to be taken into account by the CE in C were too generalized to throw any meaningful light on the criteria, principles and yardsticks to be applied by the CE in C when making assessment and deliberations. He further queried on what basis and against what objective criteria would the Administration assess whether and if so, how a change in shareholding structure resulting from the proposed acquisition would enhance development of the broadcasting industry or increase competitiveness in the relevant service market. Moreover, he pointed out that although the factors to be considered by the CE in C were set out, what constituted "public interest" was not clearly defined in the legislation. As such, he raised concern on how to ensure that the decision made by the CE in C was for the public interest and not just arbitrary decision. He further opined that the existing BO, a piece of legislation enacted under the former Hong Kong British Government in the colonial era, was out-dated. Mr TONG asked whether the Administration would consider reviewing the BO to increase transparency in order that the public would be well aware of the factors taken into consideration by the CE in C, and fully understand the yardsticks and criteria for assessment as well as the reasons for the decision made. In this connection, the Chairman drew members' attention to a past case in late 1970s in which the Government, in consideration of the public interest, had refused to grant approval for Mr LAM Sau-fung who did not satisfy the "ordinarily resident in Hong Kong" requirement to become a licence holder or exercise control of the Commercial TV.

51. In response to Mr Ronny TONG's above concerns, DSCT reiterated that the CE in C would take into account of, but not limited to, the four statutory factors as set out in section 3(3) of Schedule 1 to BO to make an objective decision on whether or not approval would be granted to DP. Such decision would be publicly

announced. On whether the existing BO should be reviewed, she stressed that the Administration was open-minded and would welcome and give due consideration to the views of LegCo Members and any members of the public on the necessity or otherwise of such a review.

Way Forward

52. Ms Emily LAU suggested and members concurred that as agreed by the Panel at its meeting on 5 June 2006, the Administration/BA should revert to the Panel before it made a final decision on whether or not to approve the proposed acquisitions, as well as to advise the Panel on how the various relevant factors had been assessed, including public views, if any, in the process.

53. The Chairman requested the Administration to take note of members' views and concerns and to revert to the Panel in due course.

VII. Any other business

Special meeting

54. The Chairman reminded members that a special meeting had been scheduled for Thursday 17 May 2007 from 2:30 pm to 4:30 pm in Conference Room A to discuss the report issued by the Committee on Review of Public Service Broadcasting and related issues. Representatives of the Review Committee, the Administration including those of the Radio Television Hong Kong and all other Hon Members of LegCo had been invited to attend the meeting.

55. In this connection, Ms Emily LAU suggested and members agreed that another special meeting be held to receive views from deputations on the matter. The Chairman directed the Clerk to consult members on the arrangements for the special meeting.

Clerk

(Post-meeting note: A circular (LC Paper No. CB(1)1616/06-07) was issued on 15 May 2007 to consult members' availability for the special meeting. Having regard to members' returns, the Chairman directed that the special meeting be scheduled for Friday, 29 June 2007 at 10:45 am. At the Chairman's instruction, a general notice inviting submissions on the subject was posted on the LegCo website on 22 May 2007. Interested parties were invited to provide submissions and to attend the meeting to present their views. Members were duly informed of the above arrangements vide LC Paper No. CB(1)1656/06-07 issued on 21 May 2007 and invited to propose other organizations/individuals, if any, to which/whom the Panel should extend invitation.)

Action

56. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
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