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Panel on Commerce and Industry

Meeting on 20 November 2007

**Background Brief on
Government Electronic Trading Services**

Purpose

This paper sets out the background of the implementation of the Government Electronic Trading Services (GETS)¹, and issues relating to the two GETS service providers. It also summarizes the major views and concerns expressed by members at previous Panel meetings.

Background

2. To promote electronic commerce, improve efficiency and reduce the use of paper, the Government has since 1997 introduced GETS, a front-end electronic services, for the trading community to submit six trade-related official documents, namely (a) Import and Export Declaration (TDEC); (b) Dutiable Commodities Permit (DCP); (c) Electronic Manifest (EMAN); (d) Certificate of Origin (CO); (e) Production Notification (PN); and (f) notifications under the Textiles Trader Registration Scheme (TTRS).

3. In providing the front-end electronic services, a service provider collects data electronically from traders and carriers, confirms their identity, validates such data, charges the account of the trader for the relevant fees and levies, and transmits the data to the Government's back-end computer systems for the latter to perform a wide variety of functions, including customs clearance, compilation of trade statistics, import and export licensing control, origin certification, etc.

¹ formerly known as Electronic Data Interchange (EDI) services

4. To cater for the needs of traders/carriers who do not have the information technology (IT) capability of making direct electronic submissions from their own offices, a GETS service provider is required to provide the Electronic Trading Access Service (ETAS) whereby paper submissions by traders/carriers are converted into electronic submissions for onward transmissions to the Government.

GETS service providers

Tradelink Electronic Commerce Ltd

5. In December 1992, the Government granted an exclusive franchise to Tradelink Electronic Commerce Ltd (Tradelink) for the provision of GETS. The franchise was for seven years, beginning from the start of Tradelink's commercial operation in 1997 and expiring on 31 December 2003.

6. The Government concluded a non-exclusive agreement with Tradelink in December 2003 for the latter to continue to provide GETS² for a period of five years (i.e. from 1 January 2004 to 31 December 2008). The Government has subsequently extended its contract with Tradelink by 12 months, i.e. until the end of 2009. At present, Tradelink provides GETS for all the six trade-related documents.

Global e-Trading Services Limited

7. After consulting the Panel and the trade in 2001, the Government decided to bring in competition for the provision of GETS through an open tender exercise. Following a tender exercise for TDEC, DCP and EMAN services in April 2002, Global e-Trading Services Limited (Global) was appointed as an additional GETS service provider for a period of five years from 1 January 2004 to 31 December 2008. The Government has subsequently extended its contract with Global by 12 months, i.e. until the end of 2009. At present, Global provides GETS for TDEC, DCP and EMAN.

² The contract period for providing TDEC, DCP and EMAN is for five years beginning from 1 January 2004. The contract period for services relating to textiles trade (i.e. restrained textiles export licence (RTEL), PN and TTRS) or predominantly related to textiles trade (i.e. CO, of which over 90% of the transaction volume in 2003 were textiles-related) is for a period of one year which has been subsequently renewed (except RTEL service which was no longer required from January 2005 onwards) in view of service need.

Measures to ensure fair competition between the two GETS service providers

8. The objective of opening up the GETS market is to introduce into the market competition in price, quality of service, and development of value-added services to the benefit of the trading community. To achieve this policy objective, the Administration's approach in regulating the GETS market consists of several key elements as set out in the following paragraphs.

9. Both service agreements are signed on a non-exclusive basis. Thus, the Government has the right to introduce new service provider(s) any time for the provision of GETS in respect of any individual trade document if there is a need to do so (e.g. if there is collusion among service providers to the detriment of the trading community).

10. In addition, the contract period of the service agreements is for five years only. If an individual service provider's performance is not entirely satisfactory, the Government may, apart from giving feedback to the concerned service provider through regular meetings, consider not to renew the service agreement with that service provider when the current agreement expires.

11. To ensure that there will be genuine competition among the service providers, there are prohibitions against cross-ownership among the service providers.

12. To ensure that in the actual day-to-day operations, the service providers will have the maximum flexibility to respond to changing market situations to compete with each other, as long as the service providers abide by the ceilings they have committed for their service charges, the service providers are free to adjust their prices and marketing strategies to compete with each other, in order to maximize the benefits competition may bring to the trading community.

13. If at any time during the contract period, all other service providers have withdrawn from providing any specific service resulting in a service provider becoming the only provider of that service, the remaining service provider will adopt the then prevailing prices and discount packages for that service as the ceiling for a specified period of time within which the Government could complete a new tender exercise for appointing new operator(s) and the operator(s) could launch the concerned service.

14. Service providers should not engage in any act which will prevent, restrict, discourage or restrain competition in relation to the provision of GETS. If in the opinion of the Government, the service provider has engaged in any such conduct, the Government may require the service provider to cease such conduct(s). The service provider may, if it so wishes, make representations to the Government. If the Government is not satisfied with the representations and the differences cannot be resolved by mutual consultation within a prescribed timeframe, either party may institute legal proceedings.

15. To ensure that a trader has a genuine choice among the service providers, service providers are required to make each service independently available for subscription and publish its service charges.

16. Service providers also have to supply information which the Government may reasonably require to ensure their compliance with the provisions of the service agreements.

17. All the measures in paragraphs 9 – 16 above were agreed and incorporated in the service agreements signed with Tradelink in late 2003. Some of these measures (paragraphs 13 – 16) were not included in the service agreements with Global on TDEC and DCP, as such agreements had already been signed with Global in early 2003. The Government proposed to Global in January 2004 that a supplemental agreement on the above terms should be signed. However, no such agreement was eventually signed because while Global has expressed its recognition of the importance of instituting safeguards to ensure fair competition, it has taken the view that the terms proposed by the Administration are not sufficient mainly because they have not spelt out particular behaviours which might be practised by a "dominant player" and the controls applicable to these behaviours. That notwithstanding, the Government had incorporated these measures (paragraphs 13 – 16) in the subsequent service agreement on EMAN signed with Global in early 2006. Moreover, in order to perform the role as the regulator of GETS service providers, the Government holds regular meetings with the two service providers to ensure that all services are provided in accordance with the terms in the respective service agreements.

Complaints concerning business practices in GETS

18. Members noted at the Panel meeting held on 14 June 2004 that Global had lodged some complaints against certain business practices of Tradelink. The outcome of the Administration's investigation on such complaints and on additional complaints from Global and Tradelink lodged in 2005 is at **Appendix I**. The Administration has informed the service providers concerned of the outcome of its investigation and has taken the necessary actions to ensure fair competition in the GETS market. According to the information provided by the Administration in May 2007, it has not received any new complaint from the service providers since January 2006.

Members' major views and concerns

19. Noting the Government's initiative to bring in additional GETS service provider, Panel members have enquired whether the Government, being one of Tradelink's major shareholder, would consider selling its shares in Tradelink through public offers or reselling them to a private company, so as to maintain a level playing field in the market. Noting members' concern, the Administration

has advised that it will gradually withdraw from Tradelink and suitable options will be explored. In this respect, the Government has downsized its shareholdings in Tradelink from 42.5% to 12.3% during the latter's initial public offering exercise in 2005.

20. The Panel has also attached importance to ensuring fair competition among GETS service providers. Members have expressed concern on whether adequate checks and balances have been put in place to guard against anti-competitive acts of the GETS services, and whether sanctions are provided against acts of unfair competition. In this regard, members have suggested the Administration to formulate guidelines and codes of practice for compliance by service providers on the provision of GETS to avoid any anti-competitive practices. The Administration has advised that the service agreements on GETS have contained provisions to prohibit any act which will prevent, restrict, discourage or restrain competition in relation to the provision of GETS. After a complaint about a GETS service provider's anti-competitive act has been investigated and found substantiated, the Administration will require the service provider to cease such act. Meanwhile, the service provider being complained against may make representation to the Government in respect of the complaint. If the Government is not satisfied with the representation and the differences cannot be resolved by mutual consultation within a prescribed timeframe, the Government may send to the service provider concerned a warning in writing of the Government's intention to terminate the relevant service contract.

Latest position

21. The Administration will seek members' views on the arrangements for the provision of GETS after the expiry of the current contracts signed with Tradelink and Global at the Panel meeting to be held on 20 November 2007.

Relevant papers

22. A list of relevant papers is at **Appendix II**.

Complaints relating to Business Practices in the GETS market

	Date of Complaints Received	Details of Complaints	Outcome of Investigation
1	June 2004	Global e-Trading Services Ltd. (Global) alleged that the web page of Tradelink Electronic Commerce Ltd. (Tradelink) indicated that 100% of Import and Export Declaration (TDEC) transactions were processed through Tradelink even after Global had launched its services.	The allegation was substantiated. The relevant information in Tradelink's webpage was updated upon being notified by the Government.
2	June 2004	Global alleged that Tradelink misinformed users that the Government would make electronic submission of notifications under Textiles Trader Registration Scheme mandatory soon and that it would be better for users to stay on using Tradelink's TDEC services.	According to the Government's service contracts on GETS, service providers are required to make each service independently available for subscription. There was no evidence to indicate that Tradelink had breached this provision.
3	June 2004	Global alleged that Tradelink posted notices at all its Electronic Trading Access Service (ETAS) outlets and made verbal notification to ETAS users defaming Global as an unknown party soliciting information from ETAS users.	The allegation was not substantiated, as no company name was mentioned in the relevant notices.
4	June 2004	Global alleged that Tradelink misinformed customers that an agent which handled their TDECs was going out of business when the agent decided to work with Global.	The allegation was not substantiated, as details of the customers concerned were not available for verification.

5	June 2004	Global alleged that Tradelink bore one third of the late penalties incurred by a customer on condition that the customer would not use Global's services; gave away free computer software to customers in exchange for long term exclusive service contracts; and offered a rebate of the rental for the first three months as incentive to lock in TDEC service agents.	The allegation was not substantiated, as details of the customers concerned were not available for verification.
6	June 2004	Global alleged that Tradelink threatened a TDEC service agent that it would urge the agent's clients to switch to another agent if the former worked with Global.	The allegation was not substantiated, as details of the TDEC service agent concerned were not available for verification.
7	March 2005	Global alleged that Tradelink sought to maintain its dominant share in the GETS market by (i) offering low prices selectively to companies which were Global's marketing targets and (ii) locking in major traders by virtue of the exclusive contracts it held for Dutiable Commodities Permits (DCP) and TDEC services.	Having regard to the outcome of a competition impact analysis conducted by experts in competition affairs and the general principles for consideration of anti-competitive conduct, the Government found that the allegation was not substantiated.
8	March 2005	Global alleged that Tradelink attempted to maintain its monopoly in the GETS market after 2004 by soliciting the withdrawal of the potential bids for the 2002 GETS tender exercise.	On the basis of the information available, there was no evidence to substantiate the allegation.

9	September 2005	Global alleged that Tradelink's exclusive agreements with Government Approved Certification Organisations (GACOs) prevented GACOs from cooperating with Global and allowed Tradelink to maintain its monopoly in the provision of the Certificate of Origin (CO) service.	The Government found that certain provisions in the agreements between Tradelink and GACOs appeared to have the effect of fettering the statutory functions of GACOs and restraining competition in the provision of CO service. The Government asked Tradelink to procure appropriate amendments to the relevant contracts in January 2006. Tradelink took action to clarify and rectify the relevant contracts in February 2006.
10	November 2005	Tradelink alleged that it received several enquiries from its customers who had received calls from another GETS service provider which urged them to switch to using Global as Tradelink would cease operations. One customer called Tradelink to ask whether they would increase their annual fees for their services, quoting sources of information from Global.	The allegation was not substantiated, as details of the customers concerned were not available for verification.
11	November 2005	Tradelink alleged that Global sent a message by fax to traders, carrying a statement that implied Tradelink's computer systems could not comply with the Government's requirements for the provision of GETS.	The statement made reference to a circular of Tradelink about certain features of its new service. The Government considered that Global quoted the circular out of context and reminded Global in February 2006 of the need to be cautious when conducting marketing activities in future.

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of Panel on Commerce and Industry (CI Panel) on 12 February 2001	<ul style="list-style-type: none"> ✧ Administration's paper : "Future Arrangement for Provision of Government Electronic Data Interchange Services" ✧ Minutes of meeting held on 12 February 2001 	<p>CB(1)552/00-01(05)</p> <p>CB(1)938/00-01</p>
Meeting of CI Panel on 14 April 2003	<ul style="list-style-type: none"> ✧ Administration's paper : "Tender exercise for the provision of front-end Government Electronic Trading Services (GETS) for processing certain official trade-related documents" ✧ Minutes of meeting held on 14 April 2003 	<p>CB(1)1410/02-03(05)</p> <p>CB(1)1823/02-03</p>
Meeting of CI Panel on 9 February 2004	<ul style="list-style-type: none"> ✧ Administration's paper : "Agreements with Tradelink on the provision of GETS" ✧ Minutes of meeting held on 9 February 2004 ✧ Follow-up paper provided by the Administration : "Agreements with Tradelink on the provision of GETS beyond 2004" 	<p>CB(1)933/03-04(05)</p> <p>CB(1)1319/03-04</p> <p>CB(1)628/04-05(01)</p>
Meeting of CI Panel on 14 June 2004	<ul style="list-style-type: none"> ✧ Administration's paper : "GETS" ✧ Minutes of meeting held on 14 June 2004 ✧ Follow-up paper provided by the Administration : "GETS market" 	<p>CB(1)2087/03-04(03)</p> <p>CB(1)2415/03-04</p> <p>CB(1)1815/06-07(01)</p>
Information paper circulated to CI Panel on 12 April 2006	<ul style="list-style-type: none"> ✧ Administration's paper : "Appointment of New Service Provider and Service Agents for Electronic Submission of Cargo Manifests" 	<p>CB(1)1295/05-06(01)</p>

Committee	Paper	LC Paper No.
Meeting of CI Panel on 16 October 2007	✧ Administration's paper : Policy Agenda of Commerce, Industry and Tourism Branch and Innovation and Technology Commission, Commerce and Economic Development Bureau	CB(1)32/07-08(03)