

立法會
Legislative Council

LC Paper No. CB(1)2728/08-09
(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, 8 June 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : Agenda Items IV and V

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mrs Marion LAI CHAN Chi-kuen, JP
Director-General of Telecommunications

Mr HA Yung-kuen
Deputy Director-General of Telecommunications

Agenda Item VI

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Jeremy GODFREY
Government Chief Information Officer

Mr Stephen MAK, JP
Deputy Government Chief Information Officer
(Consulting and Operations)

Mr Jason PUN
Senior Manager (Digital Economy Facilitation)
Office of the Government Chief Information Officer

- Attendance by invitation** : Agenda Item VI
Mr Jonathan SHEA
Chief Executive Officer
Hong Kong Internet Registration Corporation Limited
- Clerk in attendance** : Ms YUE Tin-po
Chief Council Secretary (1)3
- Staff in attendance** : Ms Annette LAM
Senior Council Secretary (1)3
Ms May LEUNG
Legislative Assistant (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1791/08-09 -- Minutes of meeting held on
7 April 2009)

The minutes of the meeting held on 7 April 2009 were confirmed.

II. Information paper issued since last meeting

2. Members noted that no paper had been issued since the last meeting held on 11 May 2009.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1784/08-09(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1784/08-09(02) -- List of follow-up actions)

Special meeting

3. The Chairman informed the meeting that, at the request of Mr LEE Wing-tat, Ms Emily LAU and Mr Ronny TONG, a special meeting had been scheduled for 30 June 2009 to follow up the "Mid-term review of the domestic free television programme service licences". Members also agreed to include in the agenda of the meeting the following items proposed by the Administration:

- (a) Progress update on the provision of Wi-Fi facilities at Government premises; and
- (b) Progress report on the pilot run of Customer Complaint Settlement Scheme.

Regular Panel meeting in July 2009

4. Members noted that the next regular Panel meeting would be held on 13 July 2009 at 2:30 pm to discuss the following items:

- (a) Public consultation on public service broadcasting including issues related to the future of Radio Television Hong Kong and the opening up of radio/TV channels for use of the community;
- (b) Review of Control of Obscene and Indecent Articles Ordinance (Cap. 390); and
- (c) Information security.

IV. Review of PNETS Licence Regime

(LC Paper No. CB(1)1784/08-09(03) -- Administration's paper on review of the Public Non-Exclusive Telecommunications Services and Services-Based Operator licensing regimes

LC Paper No. CB(1)1844/08-09(01) -- Administration's paper on review
(*tabled at the meeting and subsequently issued via e-mail on 8 June 2009*) of the Public Non-Exclusive Telecommunications Services and Services-Based Operator licensing regimes (power-point presentation material))

Presentation by the Administration

5. Following a brief introduction by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)), the Deputy Director-General of Telecommunications (DDG of T) gave a power-point presentation on the review of the Public Non-Exclusive Telecommunications Services ("PNETS") and Service-Based Operator ("SBO") licensing regimes conducted by the Telecommunications Authority (TA). Members were briefed on the existing licensing regimes for facility-based operators (under carrier licence) and service-based operators (under PNETS and SBO licences), and the proposed Modified SBO Licence. Members noted that the scope of the Modified SBO licence would be expanded by creating a new "class 3" type of service to replace the PNETS licence, and allowing Class1/Class2 service providers to offer fixed, mobile or converged services under the Modified SBO Licence. Details of the licensing regimes, the scope of service, licence conditions, fee structure, licence validity period and the migration arrangements were set out in LC Paper Nos. CB(1)1784/08-09(03) and CB(1)1844/08-09(01). Members also noted that the streamlined licensing regime would encourage SBOs to provide a greater variety of services under a single licence, resulting in more choice for consumers. On the way forward, TA would finalize the new SBO licensing framework, taking into account the views received during the two-month consultation conducted from March to May 2009. TA would then issue a statement setting out her decision on the subject and publish the Modified SBO Licence in the Government Gazette. It would take about one year from the effective date of the new SBO licensing regime to complete the migration of all the existing SBO and PNETS Licences to the new regime.

Discussion

Public consultation

6. Dr Samson TAM noted that a total of eight submissions were received during the two-month public consultation conducted by TA from March to May 2009. He invited the Administration to comment on the eight submissions received, and asked whether the views expressed by the eight deputations were representative of the majority view of the industry players and licensees.

7. The Director-General of Telecommunications (DG of T) advised that the eight organizations that had put in their submissions represented a broad range of industry bodies, including fixed and mobile telecommunications operators and

financial groups. Their feedback was comprehensive, encompassing a wide range of relevant issues. The duration of the consultation was considered appropriate and sufficient for interested stakeholders to express their views. She said that as no fee increase was involved and the new licensing regime was mainly to streamline the existing licensing arrangements for the further development of the telecommunication industry, there was not much dispute over the proposed Modified SBO Licence. While there were views suggesting fine-tuning of certain proposed arrangements, respondents were in general supportive of the proposal. TA would take into account the views received before finalizing the new SBO licensing framework.

Fee structure

8. Dr Samson TAM noted that under the Modified SBO Licence, the fixed annual fee for Class 1 licensee would be reduced to align with that of Class 2, and the "number fee" for each subscriber number would be reduced from \$7 to \$3. While he welcomed the fee reduction which would provide added incentive for service providers to offer a greater variety of innovative services for consumers, he asked whether the proposed fee reduction would have an impact on the financial position of the Office of the Telecommunications Authority (OFTA).

9. In response, DG of T said that fee levels for licences issued by OFTA were determined on full-cost recovery principle to meet the cost of administering the licences. Past experience in implementing the SBO showed that there was no difference in the resources deployed to administer Class 1 and Class 2 licensees. After prudent assessment of income and expenditure, TA had come to the view that the proposed fee reduction would not have any adverse impact on OFTA's financial position.

Consumer education

10. Ms Cyd HO said that she had received many complaints from members of the public that they were led into signing up for telecommunications services without full understanding of the service content and the payment terms. In view of the great variety of service plans and packages available in the market, she asked whether OFTA would consider providing relevant information about these services to enable consumers to make informed choices and get the best value for money.

11. DG of T advised that in view of the highly competitive market situation in Hong Kong, service providers had come up with a large variety of telecommunications service plans, including tailor-made packages at competitive prices, for certain customer groups. It was up to an individual to make his own choice according to his needs. Consumers should always check out service details and make sure that they understood all the items and conditions of the service contracts before subscribing to any telecommunications services. To protect and promote consumer interests, OFTA had launched a series of consumer education programmes, including initiatives such as seminars organized at district levels,

distribution of pamphlets, DVDs, posters, as well as TV and radio announcements. The publicity and education initiatives aimed at raising consumer awareness of the important points to note before subscribing to services. Quick tips on solving common Internet access problems were also provided through a thematic website, public talks, and print advertisements. Apart from these large scale programmes, public education activities were conducted from time to time and consumers were provided with advice and smart tips on various telecommunications services such as mobile phone, fixed line, broadband, and international direct dialing services.

Consumer dispute handling mechanism

12. Mr WONG Ting-kwong said that there were cases that had been brought to his attention in which some minors had subscribed to telecommunication services without full knowledge of the details of the service plans. Referring to the proposed dispute resolution scheme, he doubted whether the self-regulatory regime that was without any legal backing would be effective in resolving consumer disputes. He enquired about the details of the mechanism and operation of the proposed scheme. He asked when and under what circumstances disputes would be handled under the scheme.

13. Ms Cyd HO also expressed reservation about the effectiveness of the proposed self-regulatory consumer disputes handling regime. She opined that instead of leaving it to service providers to settle disputes with their customers, OFTA should take up a more active role in coordinating the handling of consumer disputes. She urged the Administration to draft a standard service contract for reference by service providers, and consider setting up a complaints unit under OFTA, or in collaboration with the Consumer Council (CC), to provide a one-stop dispute handling service to the public.

14. In response, DG of T said that the rapid growth of the telecommunications industry, the pervasiveness of telecommunications services, and keen market competition had led to an increase in the number of consumer disputes about contractual matters. She highlighted that the Administration attached great importance to safeguarding the rights and interests of consumers, and had taken an active role in enhancing consumer awareness and protection. For consumer protection, TA proposed to insert a special condition in the Modified SBO Licence requiring licensees to comply with the code of practice which might be issued by TA with respect to service contracts, and also to submit consumer disputes to an independent dispute resolution scheme for handling. This arrangement was similar to that under the new unified carrier licence introduced in August 2008. The draft code of practice which set out TA's guidance on service contracts (including terms and conditions as well as the font size to be used), and selling practices (particularly those involving minors and the elderly), had been issued to industry bodies for comments. The Administration would finalize the draft code taking into account views and suggestions received.

15. On disputes handling mechanism, DG of T said that reference had been made to models in overseas economies such as the United Kingdom and Australia whereby a voluntary alternative dispute resolution scheme operated by the industry was set up to address contractual issues between service providers and their customers through mediation and adjudication. A pilot programme on a Consumer Dispute Adjudication Scheme had commenced operation in September 2008. Deadlock cases that could not be resolved through negotiations between the companies and the customers would be referred to the dispute resolution scheme for mediation by independent third party or adjudication by professional adjudicators. The Administration would brief the Panel on the details and progress of the pilot scheme in due course. DG of T highlighted that it was the Government's policy to keep its intervention to the minimal if the self-regulatory regime driven and supported by the industry turned out to operate satisfactorily. TA would encourage the industry to tackle consumer disputes proactively and voluntarily. She assured members that OFTA would continue to closely monitor market situation and compliance by service providers in this respect.

16. Mr LEE Wing-tat noted that consumer dissatisfaction and disputes involving telecommunication services had consistently been high on the list of complaints received by CC. He said that as the basic salary of frontline sales staff of the telecommunications industry was low, these staff might resort to undesirable selling practices in order to earn more commission. As such, he was of the view that apart from issuing a code of practice for compliance by service operators, an internal code on sales practices prohibiting misleading and deceptive sales practices should also be drawn up for frontline staff to observe. The service operators should ensure staff compliance and be held responsible for any breaches. Referring to the blacklisting of main contractors by the Housing Authority for hiring illegal immigrants, he said that sanctions should also be imposed on telecommunications service operators for undesirable selling practices of their staff. He further opined that the source of funding for the dispute resolution scheme would have a direct bearing on the independence and credibility of the scheme. Referring to the complaint handling mechanism operated under The Real Estate Developers Association of Hong Kong whereby the staff concerned were employed by real estate developers, he doubted whether a dispute resolution scheme funded by telecommunications service operators could be truly independent and impartial.

Summing up

17. The Chairman requested the Administration to take note of members' concerns and brief the Panel on the detailed operation of the dispute resolution scheme in due course.

V. Report on the follow-up actions for fixed mobile convergence

(LC Paper No. CB(1)1784/08-09(04) -- Administration's paper on progress on implementation of initiatives related to fixed-mobile convergence

LC Paper No. CB(1)1784/08-09(05) -- Paper on development of fixed-mobile convergence prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)1844/08-09(02) -- Administration's paper on progress (*tabled at the meeting and subsequently issued via e-mail on 8 June 2009*) on implementation of initiatives related to fixed-mobile convergence (power-point presentation material))

Presentation by the Administration

18. With the aid of power-point, DDG of T updated members on the progress of various initiatives undertaken by the Administration to facilitate the development of fixed-mobile convergence (FMC) in Hong Kong following the Statement entitled "Deregulation of Fixed-Mobile Convergence" issued by TA on 27 April 2007. Details were set out in LC paper Nos. CB(1)1784/08-09(04) and CB(1)1844/08-09(02).

Discussion

FMIC negotiations

19. Members noted that after the end of the two-year transition period on 27 April 2009, FMIC would be determined by commercial negotiations and agreements between fixed network operators (FNOs) and mobile network operators (MNOs). Dr Samson TAM and Ms Cyd HO expressed concern that some fixed and mobile operators had not yet reached an agreement on the post-transitional FMIC arrangement. They enquired whether the Administration had any timeframe in mind for the conclusion of the commercial negotiations of the FMIC arrangements, and at what time TA would intervene to provide regulatory guidance on FMIC if the interconnecting parties failed to reach an agreement. Ms Cyd HO was particularly concerned that the absence of a satisfactory agreement between the interconnecting parties would affect the quality of interconnection service.

20. In response, DG of T said that in order not to interfere with the commercial negotiations between FNOs and MNOs, TA did not intend to issue replacement guidance after FMIC de-regulation. During the transition period, TA had been encouraging and facilitating the concerned parties to take part in negotiations on the

new FMIC arrangement. Quite a few major fixed and mobile network operators had already reached some form of agreement or understanding on the post-transitional FMIC arrangements. TA would continue to urge and facilitate the remaining operators to conclude their negotiations as soon as practicable. Given the positive progress of negotiations in general among the market players, and noting that no complaints had been received so far, TA did not see the need for intervention at this stage and would not specify a time limit for the negotiations. TA would however keep close track of market developments and the quality of interconnection service to ensure effective market operation in various services. If parties had engaged in negotiation in good faith but still failed to reach agreement, and if the public interest so warranted, TA would consider intervention as appropriate, including the use of the power granted under the Telecommunications Ordinance (Cap. 106) (TO). On the quality of interconnection service, she said that while TA would closely monitor the standard of service, the interconnecting parties concerned would raise interconnection problems, if any, with TA in the first instance.

VI. Review on administration of Internet domain names in Hong Kong

(LC Paper No. CB(1)1784/08-09(06) -- Administration's paper on progress update of the review of the administration of Internet domain names in Hong Kong

LC Paper No. CB(1)1191/08-09(07) -- Administration's paper on progress update of the review of the administration of Internet domain names in Hong Kong

LC Paper No. CB(1)1191/08-09(08) -- Paper on review on administration of Internet domain names in Hong Kong prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)1791/08-09 -- Minutes of meeting held on 7 April 2009)

Briefing by the Administration

21. PSCED(CT) drew members' attention to the Administration's written response (letter dated 27 April 2009 in Appendix A to LC Paper No. CB(1)1784/08-09(06)) to concerns raised by members and deputations at the Panel meeting held on 7 April 2009. He said that with the establishment of the new governance structure, including the new Board structure and the Consultative and Advisory Panel (CAP), the Administration believed that the Hong Kong Internet Registration Corporation Limited (HKIRC) would be able to function more

effectively and in accordance with the principles of transparency and openness. HKIRC had posted the CAP member list and started posting a summary of the minutes of its Board meeting on the website for public information. HKIRC would further consult CAP and the public on the draft outline of the Memorandum of Understanding (MOU). The Administration and HKIRC would take into account the outcome of the consultation when finalizing MOU.

Discussion

Appointment of Directors to the Board

22. Ms Emily LAU said that she was given to understand that the attendance rates at Board meetings of those Board directors reappointed to the Board were low. She enquired about the criteria for selecting Board directors for reappointment, and whether their past attendance record had been taken into account when considering reappointment.

23. In response, the Government Chief Information Officer (GCIO) said that directors were appointed to the Board of HKIRC in accordance with the prevailing principles and mechanisms similar to those used in making appointment to other Government advisory and statutory bodies. Each appointment was made on the basis of the merit of the individual concerned, taking into account the candidate's ability, expertise, experience, integrity and commitment to public service as well as the candidate's availability for appointment, and having regard to the functions and nature of the business of HKIRC. In appointing directors to the Board of HKIRC, the Government's main objective was to ensure that the Board, through its directors collectively, would have access to a good spread of expertise on Internet domain name administration, corporate and financial management, as well as experience in good corporate governance practices, legal, accounting, internal and security audit.

24. PSCED(CT) supplemented that Board meeting attendance record was one of the factors that had been taken into account when making reappointment to the Board. He assured members that if warranted, action would be taken as appropriate to address problem on attendance, if any. At Members' request, the Administration undertook to provide Board meeting attendance record of those directors reappointed to the Board of Directors of HKIRC.

Freedom of expression

25. Mr LEE Wing-tat enquired about the measures in place to ensure freedom of expression in domain name registration in Hong Kong. In response, PSCED(CT) highlighted that the new MOU would place an explicit duty on HKIRC to uphold freedom of expression. HKIRC would be required to publish its policies concerning the governance and operations of the company, as well as its policies and procedures relating to the approval of domain names, conditions of use of domain names, cancellation of registration for breach of the conditions of use. The company would also be required to maintain efficient and effective complaints

handling and dispute resolution processes.

26. Ms Cyd HO noted from the paragraph 12 of the Administration's paper (Annex to letter dated 27 April 2009 of LC Paper No. CB(1)1784/08-09(06)) that the processes for nomination and selection of individuals to serve on CAP required the approval of at least 75% of the directors of HKIRC. She sought clarification on whether all proposals as well as policy and operational matters were also subject to the same 75% rule. She was concerned that the four Government-appointed directors which made up 50% of the Board membership, would be able to veto any proposals which were not acceptable to the Administration. She called on the Administration and HKIRC to consider lowering the 75% approval requirement to 50% and to post the voting record and minutes of meetings of the Board and CAP on the website of HKIRC for public information.

27. In response, GCIO said that the HKIRC was expected to operate independently of the Government. The Board of the company, in consultation with CAP and stakeholders, would have maximum freedom in determining the company policies and procedures including the standing orders, voting arrangements, and the publication of minutes of meetings. However, the company would be required by MOU to uphold the rights of individuals and businesses to freedom of expression, and ensure a high degree of transparency and openness in its operation, for example, by publishing its policies, procedures and terms of reference on its website. Interested stakeholders could raise their concerns with CAP for issues to be addressed by the Board.

28. On the formation of CAP, GCIO said that given the concerns expressed that the Government-appointed directors should not dominate the decision-making process, the 75% approval requirement was proposed to ensure that the appointment of CAP and the processes for nomination and selection of individuals would have widespread support amongst directors, both elected and appointed. He further clarified that the four Directors, though appointed by the Government, were not representatives of the Government. All Board members, whether elected or appointed, had a duty to exercise independent judgment and to act in good faith in the best interest of HKIRC and of the whole community. The Administration would relay Ms HO's view to HKIRC Board for consideration.

Admin

29. Ms Emily LAU opined that it was unusual that 50% of the HKIRC's Directors were appointed by the Administration. She also sought verification whether the company's strategic policies had to be approved by the Administration under the new MOU. In reply, GCIO said that whilst HKIRC was a private company independent of the Government, it was designated by the Government to exercise a public function in administering and managing ".hk" domain names which was a public resource. It was not unprecedented for the Government to appoint directors to agencies and non-government organizations with businesses that involved public interest. Having regard to the nature of the domain names as a public resource, the Government had a duty to make proper arrangements for the management of ".hk" domain names.

Admin

30. As regards the Government's relationship with HKIRC, GCIO reiterated that the company was independent of the Administration and had the freedom to formulate its own policies in consultation with CAP, taking into account the views of relevant stakeholders. The draft MOU in its present form was only an outline to facilitate consultation and discussion on the key elements and principles. The Administration and HKIRC had yet to finalize the text of MOU. The public and the stakeholders would have an opportunity to comment on the specific drafting before it was finalized. At the Panel's request, the Administration undertook to provide the text of the draft MOU, once finalized, to the Panel for information and comments.

31. The Chairman referred to the views expressed by some deputations that the fees charged by HKIRC was too high, and the news previously reported that ".hk" was the most dangerous domain in the world. He asked whether the situation had changed and what measures HKIRC had put in place to improve the situation.

32. Mr Jonathan SHEA, the Chief Executive Officer of HKIRC advised that the Board had decided to review the domain name registration and renewal fees. On the number of ".hk" domain names used for phishing and spamvertising, he said that statistics showed a drop of 99%, from 200 cases per month to less than 4 cases per month which was much better than the world average. This was achieved through close collaboration with the Hong Kong Computer Emergency Response Team Coordination Centre, the Hong Kong Productivity Council, the Hong Kong Police, and OFTA as well as through better exchange of intelligence with overseas anti-phishing organizations which enabled quicker flow of information and speedy action on detecting and suspending names used for phishing and spamming. In addition, application procedures were tightened to prevent fraudulent use of domain names. Applicants of suspicious applications would be required to provide more information to prove their identities. These measures had proved effective in preventing cyber criminals in registering ".hk" for fraudulent use.

33. The Chairman enquired about the criteria used as basis for refusing new domain applications. He said that the drawing up of objective criteria was important to ensure that the rights of individuals and businesses to freedom of expression would not be unduly curtailed by the tightening of application procedures.

34. Mr Jonathan SHEA replied that the criteria used were those commonly recognized by other country code domain name registries and Internet security professionals as reliable indicators in detecting suspicious applications. These included problem in making credit card payment, inability to provide business registration and identity card numbers to prove the applicant's identity. He said that HKIRC had put in place an objection handling mechanism/complaint handling process to handle all customer complaints about services and policies, as well as disputes and objections against actions and decisions made by HKIRC in relation to disapproval of new domain applications, suspension and cancellation of domain

name registrations, reserved domain names, etc. Any aggrieved applicant could raise objection through the objection handling mechanism/complaint handling process in place. As regards disputes related to holding right of domain names, a complainant might submit a complaint to a dispute resolution service provider from among those approved by HKIRC (currently, the Hong Kong International Arbitration Centre) to conduct arbitration proceedings for resolution of disputes. The complainant might also seek the adjudication by the court of HKSAR for resolution. At members' request, the Administration undertook to provide after the meeting detailed information on the objection handling mechanism/complaint handling process currently in place.

(Post-meeting note: The information provided by the Administration in respect of paragraphs 24 and 34 was issued to members vide LC Paper No. CB(1)2251/08-09 on 13 July 2009.)

VII. Any other business

35. There being no other business, the meeting ended at 4:07 pm.

Council Business Division 1
Legislative Council Secretariat
7 October 2009