

立法會
Legislative Council

LC Paper No. CB(1)1312/09-10
(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, 11 January 2010, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Dr Hon Samson TAM Wai-ho, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public officers attending : Agenda item IV

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, JP
Director-General of Telecommunications

Mr HA Yung-kuen
Deputy Director-General of Telecommunications

Agenda item V

Mrs Rita LAU, JP
Secretary for Commerce and Economic Development

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

Agenda item VI

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, JP
Director-General of Telecommunications

Mr HA Yung-kuen
Deputy Director-General of Telecommunications

- Attendance by invitation** : Agenda item VI
Consumer Council
Ms Connie LAU
Chief Executive
Ms Sana LAI
Head, Complaints & Advice Division
Communications Association of Hong Kong
Dr Hubert CHAN
Chairman
- Clerk in attendance** : Ms YUE Tin-po
Chief Council Secretary (1)3
- Staff in attendance** : Mr Bonny LOO
Assistant Legal Advisor 3
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)799/09-10 -- Minutes of meeting held on 9 November 2009)
- The minutes of the meeting held on 9 November 2009 were confirmed.
- II. Information paper issued since the last meeting**
(LC Paper No. CB(1)738/09-10(01) -- Administration's response dated 18 December 2009 to the submission from Taxi and Public Light Bus Concern Group as set out in LC Paper No. CB(1)664/09-10(02))
(Chinese version only)

2. Members noted that the above paper had been issued for the Panel's information.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)821/09-10(01) -- List of outstanding items for discussion

LC Paper No. CB(1)821/09-10(02) -- List of follow-up actions

LC Paper No. CB(1)877/09-10(01) -- Letter dated 11 January 2010 from *(tabled at the meeting and subsequently issued on 13 January 2010)* Hon Emily LAU on suggested items for discussion (Chinese version only))

3. Members noted that the next regular Panel meeting would be held on 8 February 2010 at 2:30 pm to discuss the following items:

(a) Review of telephone directory enquiry service; and

(b) Spectrum Utilization Fee.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, agenda item (b) was subsequently replaced by the "Annual report on Cyberport".)

4. The Chairman referred to Ms Emily LAU's letter dated 11 January (LC Paper No. CB(1)877/09-10(01) tabled at the meeting) on suggested items for discussion, and invited members' comments. Members discussed Ms LAU's suggestion of the Panel Chairman moving a motion on Public service broadcasting (PSB) and the future of Radio Television Hong Kong (RTHK) in the Legislative Council (LegCo). Noting that the Administration would report the findings to the Panel after careful consideration of all the views received during the consultation process in relation to PSB and the future of RTHK, Mr LAU Kong-wah said that individual members instead of the Panel might move a motion on the matter at the LegCo meeting. In this connection, the Chairman requested the Administration to expedite the collation of submissions and views received, and brief the Panel on the outcome of the public consultation as soon as practicable. As regards the mid-term review of the domestic free television programme service licences, the Permanent Secretary for Commerce and Industry (Communications and Technology) (PSCED(CT)) said that the Broadcasting Authority (BA) would submit its recommendations to the Chief Executive in Council after completion of the review. The Administration would report the latest development to the Panel in April 2010. Members urged the Administration to report the progress to the Panel as soon as possible.

5. Ms Emily LAU enquired about the action taken in relation to the complaint of unfair competition lodged by the Asia Television Limited against Television Broadcasts Limited. PSCED(CT) advised that the BA was now seeking further information from the two licencees concerned and would investigate the complaint in accordance with the Broadcasting Authority Ordinance (Cap. 391) (BAO). At the Panel's request, the Administration would provide an update on the progress of the investigation in due course.

IV. Making available radio spectrum in the 850 MHz, 900 MHz and 2 GHz bands for public mobile services

(LC Paper No. CB(1)821/09-10(03) -- Administration's paper on public consultation on the assignment of the available frequency spectrum in the 850 MHz, 900 MHz and 2 GHz bands for public mobile services

LC Paper No. CB(1)821/09-10(04) -- Consultation paper on assignment of the available frequency spectrum in the 850 MHz, 900 MHz and 2 GHz bands dated 20 November 2009
(English version only)

LC Paper No. CB(1)821/09-10(05) -- Press release on public auctioning of frequency spectrum in the 850 MHz, 900 MHz and 2 GHz bands issued on 20 November 2009

LC Paper No. CB(1)847/09-10(01) -- Administration's paper on public consultation on the assignment of the available frequency spectrum in the 850 MHz, 900 MHz and 2 GHz bands for public mobile services (power-point presentation materials)
(tabled at the meeting and subsequently issued via email on 12 January 2010)

Presentation by the Administration

6. With the aid of power-point presentation, the Director-General of Telecommunications (DG of T) briefed members on the consultation exercise launched by the Office of the Telecommunications Authority (OFTA) on 20 November 2009 concerning the assignment of the available frequency spectrum in the 850 MHz band, 900 MHz band and 2 GHz band for public mobile services. Details of the proposals were set out in the Administration's paper (LC Paper No. CB(1)821/09-10(03)) and power-point material (LC Paper No.

CB(1)847/09-10(01)). DG of T said that the consultation would end on 20 January 2010. Should the TA decide to proceed with the auction of spectrum, action would be initiated to make necessary amendments to the relevant subsidiary legislation to enable the release of the spectrum by auction and with payment of the Spectrum Utilization Fee (SUF). The auction of the frequency spectrum was tentatively planned to take place in the last quarter of 2010.

Discussion

Quality and coverage of mobile telephony services in country parks and remote areas

7. Mr CHAN Kam-lam supported the Administration's proposal to increase the supply of radio spectrum to enable the expansion of mobile telephony services and further service development in Hong Kong. He was of the view that apart from bringing in competition to provide users with more choices, the Administration should seek to improve the coverage in country parks and remote areas by making it compulsory for the successful bidders, be it incumbent mobile network operators (MNOs) or new entrants, to provide 100% coverage in these areas. He said that such a requirement was technically feasible and in the public interest. On the proposed network and service rollout obligation, Mr CHAN considered the requirement on the successful bidder to provide a minimum coverage of 50% of the population within five years from the issue of the licence too conservative. Given the significant growth of mobile telephony services in Hong Kong in recent years, with a market penetration reaching 170% as of August 2009, he said that MNOs should be required to provide 100% coverage to prevent spectrum hoarding and ensure the timely provision of advanced telecommunications services for the benefit of the public. Mr LAU Kong-wah shared a similar view. He said that public interests should take precedence over commercial interests and urged the Administration to provide incentives for MNOs to improve coverage in country parks and remote areas.

8. In response, DG of T said that more than 90% of the popular hiking trails were currently covered by different networks of MNOs. In view of the relatively large geographical area of the countryside, and the reception difficulties of certain remote areas, DG of T said that there would be practical difficulties in requiring every MNO to provide 100% coverage in all country parks and remote areas. To protect consumer interests, and in order not to unduly dampen investment sentiments, the proposed requirement of 50% coverage within five years was considered reasonable and acceptable. The same requirement had been imposed for the 3G spectrum licensed in October 2001 and the 2.5/2.6 GHz band licensed in March 2009. She said that under normal circumstances, it would be in the interests of the MNOs to roll out their networks as soon as practicable so as to extend their service coverage and increase their market share. Past experience showed that in most cases, MNOs had been able to provide nearly universal coverage within five years. She therefore did not anticipate any major problems for the incumbent MNOs and new entrants to provide near-100% coverage within five years. DG of T highlighted that the Government had all along been

encouraging MNOs to improve their service coverage in country parks and remote areas. To this end, a number of measures had been introduced to facilitate the installation of base stations in country parks and remote areas, including allowing the use of existing government hilltop sites and subletting Government land at nominal rental. In fact, the Secretary for Commerce and Economic Development had decided to waive SUF for the use of radio spectrum to serve solely country parks and prescribed remote areas. Similar to the case of radio spectrum in the 1800 MHz Band, the use of radio spectrum in the 900 MHz band solely for the provision of public mobile services in country parks and prescribed remote areas would not be subject to SUF.

9. Mr LAU Kong-wah noted that while more than 90% of the popular hiking trails were covered by mobile networks, not all country parks and hiking trails (particularly those less frequently used tracks) were covered by every MNO. As such, mobile phone users might have difficulty in calling for help in case of emergencies if the location was not covered by the mobile network being used.

10. In response, the Deputy Director-General of Telecommunications (DDG of T) advised that irrespective of which mobile network was used, mobile phone users could call for help in emergencies by dialing "112". Mr LAU Kong-wah observed that members of the public were more used to calling "999" in emergencies and enquired whether it was technically feasible for all calls to "999" be forwarded to "112". DDG of T replied that the forwarding arrangement was not technically feasible. He advised that while "999" was used for emergency calls in Hong Kong and the United Kingdom, different numbers were used in different jurisdictions and "112" was commonly adopted by member states of the European Union. PSCED(CT) advised that calls to "112" were automatically directed to the emergency call centre. He highlighted that "112" was for emergencies in country parks and "999" which Hong Kong citizens were familiar with would remain the standard number for general emergencies.

11. Ms Emily LAU asked about the number of calls that had been made to "112" so far. She urged the Administration to step up publicity to increase the public's awareness of the emergency number "112" used in country parks. DG of T noted Ms LAU's suggestion and said that no records had been kept for the number of calls made to "112".

Maximizing the utilization of frequency spectrum

12. Mrs Regina IP enquired about the amount of public revenue generated by the release of frequency spectrum. In view of the intense competition in the current telecommunications market, she expressed concern as to whether MNOs, in order to increase their competitive edge and maximize profits, would withhold re-investment for service improvement or resort to undesirable sales practices which would not be in public interest. She also enquired about the measures in place to tackle anti-competitive conduct and abuse of market dominance. In this connection, Ms Emily LAU sought information on the standard and quality of Hong Kong mobile phone services as compared with that of the neighbouring

countries and trade partners.

13. In response, DG of T said that the auction of 4G spectrum in 2009 had brought a revenue in the region of \$1,500 million. Apart from revenue, the release of additional spectrum to allow for the expansion of services was critical to the industry's development and enabled members of the public to enjoy the most advanced telecommunications services in Hong Kong. As spectrum was a scarce public resource, assignment by auction was considered an appropriate market means to reflect the economic value of the frequency spectrum as well as a fair, transparent, objective and economically efficient means to determine to whom the spectrum should be assigned. Competition matters such as anti-competitive conduct, discriminative practices as well as abuse of a dominant market position were presently regulated under the Telecommunications Ordinance (Cap. 106) (TO). The Administration would take actions as appropriate to enforce the relevant competition provisions. DG of T said that under the licence conditions, licence holders were required, among other things, to ensure the provision of service to the satisfaction of their customers. While consumers themselves would monitor quality and standard of services provided, the Administration would also keep a close watch on market situation and development for the protection of consumer interests. She said that Hong Kong's broadband access was on a par with the advanced economies and a recent study in the United Kingdom had ranked Hong Kong the third in the world. At members' request, the Administration undertook to provide detailed information on the study and the parameters for measurement deployed in the study.

Admin

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1277/09-10(01) on 1 March 2010.)

14. Referring to the current radio spectrum utilization, Mr WONG Ting-kwong enquired about the amount of assigned frequency that was currently unused, and the validity period of the frequency assignment. In response, DG of T said that while the Administration had been encouraging operators to maximize the use of the frequency spectrum assigned to them, the utilization would largely depend on technology development and the business investment plans of individual network operators. DDG of T informed the meeting that all available spectrum in the 90 MHz band auctioned in January 2009 were not yet put to use, pending the commercial availability of the next generation mobile equipment. A total of 20 MHz (5 MHz per the four operators) auctioned in 2001 was unused, pending the maturation of the Time Division-Synchronous Code Division Multiple Access standard championed by the Mainland. He advised that the validity period of the proposed frequency assignment in the 850 MHz band, 900 MHz band and 2 GHz band would last for 15 years with a roll-out obligation to provide a minimum coverage of 50% of the population within five years from the issue of the licence. The same requirement had also been imposed in the auction of 3G radio spectrum in 2001 and the radio spectrum in the 2.3 GHz and 2.5/2/6 GHz in January 2009.

Reception of signals at locations near border areas

15. Mr LAU Kong-wah said that some members of the public had relayed to him that the signals of local mobile phone networks were weak at some locations near border areas such as Sha Tau Kok, and mobile phones at these locations were often connected to the networks on the Mainland. He enquired what measures were in place to further improve the quality of local networks and the reception of signals at these locations.

16. In response, DDG of T said that with the inherent propagation characteristics of radio waves, as well as the close proximity of Hong Kong, Shenzhen and Zhuhai, it was inevitable that the coverage of mobile networks of Hong Kong and the Mainland would overlap in certain locations, especially along the border. In fact, economies sharing common borders faced similar problems and overspill signals could not be avoided completely. Regular tests and measurements of radio signals had been conducted jointly with the mainland authorities and the MNOs along the border and in remote areas in order to monitor the overspill signals. Follow-up actions where necessary would be taken as appropriate. Publicity was launched to alert users to check the display of their mobile phone first before they used their phones near the border or in remote areas. If their mobile phones indicated that they were connected to a mainland network, users could select their Hong Kong network through "manual network selection".

Summing up

17. The Chairman urged the Administration to take note of members' views and come up with measures to provide sufficient incentives for operators to improve the coverage and quality of their mobile phone services, particularly in country parks, remote and border areas.

V. Establishment of the unified regulator for the electronic communications sector

(LC Paper No. CB(1)821/09-10(06) -- Administration's paper on establishment of the unified regulator for the electronic communications sector

LC Paper No. CB(1)821/09-10(07) -- Paper on establishment of the proposed Communications Authority prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)847/09-10(02) -- Administration's paper on proposed establishment of the Communications Authority (power-point presentation materials))
(*tabled at the meeting and subsequently issued via email on 12 January 2010*)

Presentation by the Administration

18. At the invitation of the Chairman, the Secretary for Commerce and Economic Development (SCED) briefed members on the proposed setting up of a unified regulator, the Communications Authority (CA), to provide an effective, efficient, and well-coordinated regulation of a converging electronic communications sector. She said that the drafting of the Communications Authority Bill (CA Bill) had been more complicated than expected, as it involved preparation of a number of necessary consequential amendments to the existing Broadcasting Ordinance (Cap. 562) (BO) and TO. More time had been taken than expected to seek legal advice and comments from concerned parties. The Administration was close to finalizing the CA Bill and planned to introduce it into LegCo within the 2009-2010 legislative session.

19. The Deputy Secretary for Commerce and Industry (DSCED) then gave a power-point presentation on the background and the latest progress of the Administration's proposal, including the key arrangements for the merger of the BA and the Telecommunications Authority (TA); the proposed staged approach in building up the institution of the CA and the public mission of the CA.

Discussion

Powers of the Communications Authority and the appointment of members

20. Mr LEE Wing-tat noted that the proposed CA would comprise seven members: a non-official Chairman, four non-official members, one official member appointed by the Chief Executive (CE), and the Director-General of the executive department as an ex-officio member. Given its expanded remit with jurisdiction over the broadcasting and telecommunications sectors, Mr LEE expressed concern that the power vested on the proposed seven-member CA was too wide. He urged the Administration to consider increasing the membership of the CA (the non-official members in particular) to deal with the increased workload due to the consolidation of responsibility over the entire electronic communications sector. He enquired about the criteria for appointing members to the CA and said that members should be drawn from various professional/community sectors and stakeholder groups including those held opposing views to the Government.

21. Mrs Regina IP and Mr WONG Yuk-man shared Mr LEE Wing-tat's concern about the wide power of the proposed CA. Mr WONG Yuk-man said that the public should monitor closely the appointment mechanism and criteria to ensure that appointments to the CA were made in a fair, open and transparent manner and that the Board of the CA should possess the requisite expertise to understand and

deal with the complicated issues in the communications sectors. Ms Cyd HO said that in appointing members to the CA, care must be taken to ensure impartiality and guard against conflict of interests so as to enhance public confidence in the CA and maintain its credibility.

22. In response, SCED highlighted that while the CA would assume the existing statutory powers and functions of the BA and the TA in handling broadcasting and telecommunications licensing matters upon the enactment of the Communications Authority Ordinance (CA Ordinance), the CE in Council would remain the licensing authority. Pending a review to rationalize the BO and the TO after the establishment of the CA, there would be no immediate changes to the existing regulatory and licensing arrangements for broadcasting and telecommunications under the two ordinances. She said that a lean structure of seven members would ensure that views from different perspectives could be considered without compromising efficiency in the decision-making and approval process. Moreover, the consolidation of licensing and regulatory functions, the requisite experience and expertise in one single organization was expected to bring about streamlined practices, operational synergy and efficiency. She said that there were suggestions that the non-official chairperson of the Board should work full time in order to provide effective leadership and oversight. Committees would be set up to assist and advise the CA in discharging its functions and responsibilities. On the appointment of CA members, she highlighted that appointment would be made on the basis of the merit of the individual concerned, taking into account the candidate's ability, expertise, and experience and should be free from political considerations. Responding to Ms Emily LAU's enquiry whether the Administration would consider suggestion received during the consultation that the appointment of CA members should be endorsed by the LegCo, SCED said that the Administration was not inclined to adopt the suggestion which was unprecedented.

23. Mr LAU Kong-wah said that to achieve operational synergy and to ensure continuity and a smooth transition, it was important that some currently serving members would be appointed to the CA. He opined that the proposed Chinese title of the CA could not fully reflect its functions, and suggested that the Administration should come up with a more appropriate Chinese title that would encompass CA's responsibilities. SCED noted Mr LAU's suggestions. She said that the Administration would give further thoughts to the Chinese title and invited members' suggestion. In response to Mr LAU's enquiry about the committees to be set up under the CA, SCED said that the Administration attached great importance to public participation. Committees (such as the complaints committee) and advisory groups similar to those currently set up under the BA would be formed to involve industry representatives and members of the public in the decision-making process.

24. Ms Cyd HO sought elaboration on the policy purview of the new CA. She expressed concern that the licensing and regulatory regime might be used by the Administration to curb free flow of information and curtail freedom of speech. She also enquired about the future working relationship between the CA and Radio

Television Hong Kong (RTHK). In this connection, Ms Emily LAU asked how the Administration proposed to materialize the public mission of the CA to promote competition, innovation and investment in the communications market and to uphold freedom of expression.

25. In response, SCED assured members that the Administration was committed to upholding the principles of freedom of speech and publication which were core social values and basic human rights guaranteed by law. She said that there was no pre-censorship requirements in Hong Kong. The BA, in discharging its function to safeguard proper standards of television and radio programme contents, had promulgated the codes of practice on television and radio programme standards in accordance with prevailing community standards. She said that the Administration was now close to finalizing the CA Bill and would brief members on the structure of the CA, its purview and public mission as well as the related transition arrangements in the context of the legislative process in due course. As regards RTHK, she said that under the Memorandum of Understanding signed among RTHK, the policy Bureau and the BA, RTHK undertook to comply with the relevant codes of practice on programme standards issued by the BA and be answerable to any breaches of the codes. Such an arrangement had functioned effectively in the past and it was intended that a similar arrangement would be made between RTHK and the new CA.

26. Mr LEE Wing-tat enquired whether the Administration would regulate television and radio broadcasts on the Internet. In response, SCED said that only the maintenance and operation of broadcasting services involving the assignment of frequency spectrum was presently subject to a licensing and regulatory regime. Internet broadcasting was not defined as broadcasting services and therefore was not subject to licensing requirement. She said that being mindful of the community expectation to safeguard freedom of expression and promote free flow of information, the Administration had no intention at the present stage to regulate Internet broadcasting.

Staged Approach

27. Mrs Regina IP enquired about the structure of the CA and the key institutional arrangements for the amalgamation of the BA and the TA. In response, SCED explained that the OFTA and the Broadcasting Division of the Television and Entertainment Licensing Authority (TELA) would be merged into a new government department named the Office of the Communications Authority (OFCA) operating as a trading fund. The OFCA, headed by the Director-General (a public officer ranked at D6), would be the executive arm of the CA. In order not to undermine the immediate objective of urgently creating a unified regulator to meet the challenges of an increasingly converging environment, a staged approach was proposed whereby the new unified regulator would be set up as soon as possible to enforce the existing BO and TO and administer all the matters which currently fell under the purview of the BA and TA. In the second stage, the CA together with the Administration would carry out a comprehensive review of the existing regulatory regimes and prepare for a new comprehensive CA Bill to update,

rationalize and replace the existing TO and BO.

28. Mr WONG Yuk-man criticized the staged approach proposed by the Administration as illogical and putting the cart before the horse. He was of the view that the relevant ordinances should be reviewed and revamped prior to setting up the CA, in particular the TO which he considered draconian and outdated. Referring to the Administration's proposal for the CA to review and rationalize the BO and TO together with the Administration, he questioned why the public and the industry stakeholders would not be involved in the review. Mr Ronny TONG shared a similar view and said that the relevant ordinances should be reviewed and rationalized before the establishment of the CA.

29. In response, SCED said that while it was desirable to enshrine the unified regulatory framework in a piece of comprehensive legislation, this would however require a protracted and comprehensive review of the TO, BO and the BAO. That would in turn hold up the early establishment of the CA. Instead of embarking on a major fundamental and ambitious review of the ordinances with a view to consolidating them into a single piece of legislation with extensive rationalization, updating and amendment, the Administration considered it expedient to set up the CA as soon as possible through the structural merger of the TA and BA. SCED highlighted that the advantage of the staged approach was that it would enable the CA to be established and function as soon as possible to deal with market convergence that was already taking place, to provide input in the review of the provisions of the TO and BO, and to have ownership of the strengthened regime that would eventually emerged. The new CA would also be tasked to review and rationalize the ordinances together with the Administration in consultation with the industries concerned, the public and the LegCo. As regards consultation, she assured members that the operation of the CA would be highly transparent, and that in accordance with the established procedures, the public, the industries and the LegCo would be consulted in the legislative process.

Consolidation of competition provisions

30. Mr LEE Wing-tat enquired about the regulation of competition matters in respect of the telecommunications and broadcasting sectors upon the establishment of CA. Mr Ronny TONG expressed concern about the grey area and the overlaps that might arise in handling licensing matters and enforcing competition provisions.

31. In response, SCED said that the scope currently covered by the competition provisions in the telecommunications and the broadcasting sectors were different, so were the appeal mechanisms. The existing institutional arrangements of having two dissimilar competition regimes might become untenable when cross-sectoral anti-competitive practices arose as a result of further convergence in the communications market. To facilitate the CA to deal with complicated cross-sectoral competition issues and provide a one-stop-shop for resolving other regulatory issues in a convergent environment, the two separate competition regimes set out respectively under the TO and BO would be rationalized. To ensure consistency, the two separate appeal mechanisms would also be rationalized

so that one single appellate body would be vested with the responsibility on competition matters for the entire electronic communications sector. On Mr Ronny TONG's concern about overlaps, SCED said that upon the enactment of the CA Ordinance, the CA would take over the existing powers and functions of the TA and BA, both of which would be abolished. The competition provisions in the TO and the BO would be repealed and the relevant provisions would be consolidated into one single set of competition provisions applicable to the whole electronic communications sector under the proposed Competition Bill. Consequential amendments to the relevant ordinances would be made to synchronize with the progress of the legislative process and facilitate a smooth transition.

VI. Chargeable mobile content services delivered via Short Messaging Services

(LC Paper No. CB(1)821/09-10(08) -- Administration's paper on chargeable mobile content services delivered via Short Messaging Services

LC Paper No. CB(1)821/09-10(09) -- Relevant newspaper cuttings

LC Paper No. CB(1)847/09-10(03) -- Administration's paper on chargeable mobile content services (power-point presentation materials))
(*tabled at the meeting and subsequently issued via email on 12 January 2010*)

Presentation by the Administration

32. At the invitation of the Chairman, PSCED(CT) and Dr Hubert CHAN, Chairman of the Communications Association of Hong Kong (Chairman/CAHK), briefed the Panel on the billing disputes in connection with chargeable mobile content services (MCS) provided through Short Messaging Services (SMS) and the action that had been taken by OFTA to address the problem. Members noted that the CAHK had promulgated a voluntary industry Code of Practice (CoP) on 11 January 2010 to improve the transparency about charging information and arrangements for MCS. Content providers (CPs) were required, among other things, to indicate prominently the chargeable nature of the services and at what time such charges would start to trigger, provide clear charging information, obtain clear consent from user before service provision, set out clearly straightforward arrangements for unsubscribing or deregistering from the services, and ensure that any MCS related billing dispute between a customer and a CP should not affect other telecommunications services subscribed by the concerned customer with the MNO.

Discussion*Follow-up action taken by OFTA*

33. Mr CHEUNG Man-kwong said that despite having received 96 complaints about billing disputes in connection with chargeable MCS in 2009, OFTA had not taken positive steps to address the problem until the Consumer Council (CC) published its report on 15 December 2009. He considered that OFTA, in failing to act promptly, had not effectively discharged its functions to safeguard consumer interests. Sharing a similar view, Mr LEE Wing-tat said that OFTA should have acted in the first place to protect consumers from the costly message traps.

34. In response, PSCED(CT) and DG of T disagreed that OFTA had failed to discharge its functions in due diligence. DG of T said that the Administration attached great importance to safeguarding consumer interests, and that OFTA had followed up on the complaints received. By the time CC published its report in mid-December 2009, more than half of the complaints received up to that date had already been satisfactorily resolved by the MNOs. She gave an account on the actions taken in response to the complaints on MCS-related billing disputes. In brief, OFTA had written to MNOs on 4 November 2009 to draw their attention to the problem and explore what measures could be taken to improve the system, in particular, whether an alert or warning could be inserted in each SMS message containing chargeable content. On 20 November 2009, OFTA issued a consumer alert to advise the consumers on necessary precautionary measures to avoid possible billing disputes and unnecessary financial loss due to subscription to and consumption of MCS. OFTA had met with MNOs on 26 November to pursue the matter. At a meeting between OFTA and senior level representatives of MNOs on 16 December 2009, a consensus was reached to develop a voluntary industry CoP for improving transparency of charging information of chargeable MCS. Following the joint effort with the MNOs in the last few weeks, the CoP was promulgated by the CAHK on 11 January 2010. She highlighted that it took time to work out and finalize the CoP in view of the complicated legal matters involved and the need to set out duties and procedures for respective parties involved in the implementation of the CoP.

35. Ms Emily LAU noted that the Chief Executive and SCED had publicly voiced their concern about the sharp rise in the incidents of charging disputes in connection with MCS. She queried why these were not mentioned in the chronological account provided by the Administration.

36. In response to Mr LAU Kong-wah's enquiry about the settlement arrangements for the billing disputes, DG of T advised that most of the cases were resolved by partial waiver of payment.

37. Ms Connie LAU, Chief Executive Officer of CC (CEO/CC) said that of the 646 complaints received in 2009, about 560 cases involved charging disputes. Majority of the cases were settled by a 20% to 30% discount in payment. She undertook to provide an analysis of the settlement arrangements in respect of the

complaints received by CC about billing disputes in connection with MCS provided through SMS. Upon members' enquiry, she advised that CC had received 66 complaint cases related to MCS billing disputes following the publication of its report on 15 December 2009 up till the end of December 2009. Some of the cases were incidents that occurred before the publication of the report.

The industry Code of Practice

38. Mr LEE Wing-tat said that the voluntary CoP seemed to be toothless and doubted whether the self-regulatory approach would be effective in resolving the problem as the MNOs and the CPs had common financial interests. He questioned why the Administration had not considered regulating the conduct of MNOs and CPs for consumer protection by way of legislation.

39. In response, PSCED(CT) said that regulation through legislation involved a lengthy legislative process. The introduction of a voluntary CoP, on the other hand, was the quickest way to put in place a workable mechanism to address public concern in a pragmatic way. He assured members that the Administration would closely monitor the implementation of the CoP and assess its effectiveness. If problems persisted after the CoP had been implemented, the Administration would consider whether or not there was a case to pursue legislative amendments for consumer protection.

40. Mr WONG Yuk-man criticized the Administration for its slow response and failure to catch up with the rapidly developing technologies and advanced communications services. He said that OFTA, mindful not to affect the development of the industry, had been too lenient to the big financial conglomerates. As such, consumers were often helpless in the midst of disputes as the voluntary CoP had no legal backing.

41. In response, PSCED(CT) said that care must be taken to strike a proper balance between protecting the interests of consumers and maintaining the legitimate interests of commercial investments as well as allowing room for the healthy development of the industry. DG of T added that misleading sales practices were regulated under section 7M of TO. In 2009, about 40 cases had been handled. In 2008, one case of breach resulted in financial penalty of \$220,000.

42. Mr Andrew LEUNG sought elaboration on the enforcement of the CoP and invited CC's representative to comment on the CoP and ways to enhance its effectiveness. In reply, DG of T and Chairman/CAHK said that an Administrative Agency (AA) would be set up, among other things, to draw up detailed procedures and assessment criteria for evaluating CPs' compliance with the CoP. The AA would conduct regular compliance checks and investigation of any suspected breaches of the CoP. Network operators could make contractual arrangements for the delivery of MCS and fee collection services only with those CPs that had obtained a Letter of Positive Assessment from the AA. In the case of non-compliance, the CPs had to suspend their service pending rectification to be

made within 24 hours. Failure to make rectifications or repeated non-compliance might result in the termination of the service of the CP on the mobile operators' platform.

43. Citing a case in which a consumer reported receiving 80 messages each costing \$5 within an hour, CEO/CC said that it was important to specify clearly how to provide would-be consumers with clear charging information in an easily understood way. To avoid charging disputes over big bills, she suggested that subscribers should be allowed to set a cap on charges and be notified when the cap was exceeded. In the event of a termination of service, the MNO should help in resolving billing disputes between customers and third party CPs and take an active coordinating role to ensure that the charging disputes would not affect the normal mobile phone services of the subscriber concerned. On the effectiveness of the CoP, she said that as the industry code was voluntary, its success would depend on whether the AA and the MNOs would strictly enforce the provisions. Suggestion was made that regular reviews be conducted to monitor the implementation and assess the effectiveness of the CoP. She said that more information should be provided on the establishment of the AA, including its composition and membership. She also raised concern on how to plug the loophole of a non-complying CP continuing to operate under a new name. At members' request, CEO/CC undertook to provide a written submission on CC's views on the CoP and suggestions on ways to enhance the effectiveness of enforcement. Mr Andrew LEUNG thanked CEO/CC for the suggestions and said that CC should be represented in the AA.

CC

(Post-meeting note: CC's written response was circulated to members vide LC Paper No. CB(1)1206/09-10(01) on 23 February 2010.)

44. Mr LAU Kong-wah noted the common market practice of a respective 30% and 70% revenue split between MNOs and CPs in respect of each chargeable message. He called on Chairman/CAHK to relay members' concern to the MNOs and CPs and urge them to refrain from sending misleading and tricky SMS that would clock up big bills for consumers, some of whom were youngsters and elderly people. He suggested that the issue be revisited in six months' time to review the progress of implementation and the effectiveness of the CoP.

45. In reply, Chairman/CAHK explained that chargeable content services were often provided by third party CPs delivered on the networks of the MNOs. Most of these third party CPs might not have a direct billing relationship with their target customers and relied on the readily available billing mechanism which the MNO had with the customers. The usual arrangement was for CPs to enter into a commercial contract with the MNOs for using MNOs' network and the MNOs to collect usage fee on behalf of CPs. On average, CPs paid MNOs 30% of what they received for each chargeable message.

Summing up

46. The Chairman requested the Administration to take note of members' concerns and report the progress of implementation and the effectiveness of CoP in 6 months' time.

VII. Any other business

47. There being no other business, the meeting ended at 5:08 pm.

Council Business Division 1
Legislative Council Secretariat
5 March 2010