

立法會
Legislative Council

LC Paper No. CB(4)507/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 13 January 2014, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon WONG Yuk-man (Chairman)
Dr Hon Elizabeth QUAT, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Member absent : Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public officers attending : Agenda item IV

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mr Ambrose HO, SC, JP
Chairman, Communications Authority

Dr Anthony Seeto
Member, Communications Authority

Miss Eliza LEE, JP
Director-General of Communications
Office of the Communications Authority

Mr Danny LAU
Deputy Director-General of Communications
(Telecommunications)
Office of the Communications Authority

Mr Chaucer LEUNG
Assistant Director (Regulatory)
Office of the Communications Authority

Agenda item V

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology) A

Mr Ambrose HO, SC, JP
Chairman, Communications Authority

Dr Anthony Seeto
Member, Communications Authority

Miss Eliza LEE, JP
Director-General of Communications
Office of the Communications Authority

Mr Vincent LIU, JP
Deputy Director-General of Communications
(Broadcasting)
Office of the Communications Authority

Mr Danny LAU
Deputy Director-General of Communications
(Telecommunications)
Office of the Communications Authority

Mr Tony LI
Assistant Director (Support)
Office of the Communications Authority

Mr C K CHENG
Chief Telecommunications Engineer
(Development)
Office of the Communications Authority

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Joey LO
Senior Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)2

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(4)270/13-14 -- Minutes of meeting held on 8 November

LC Paper No. CB(4)274/13-14 -- Minutes of meeting held on 11 November 2013)

The minutes of the meetings held on 8 and 11 November 2013 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that no paper had been issued since the last meeting held on 9 December 2013.

III. Date of next meeting and items for discussion

(LC Paper No. CB(4)272/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(4)272/13-14(02) -- List of follow-up actions

LC Paper No. CB(4)280/13-14(01) -- Letter from Hon Charles Peter MOK dated 18 December 2013 on public consultation on the review of the regulation of editorial programmes and personal view programmes

LC Paper No. CB(4)280/13-14(02) -- Letter from Hon Charles Peter MOK dated 3 January 2014 on issues relating to the application to the Communications Authority regarding the proposed acquisition of CSL

New World Mobility Limited by
HKT Limited

LC Paper No. CB(4)294/13-14(01) -- Letter from Hon Claudia MO dated 8 January 2014 on issues relating to the sharing of use of transmitting stations for the provision of mobile television services)

Special meeting for policy briefing on 28 January 2014

3. The Chairman reminded members that a special meeting would be held on 28 January 2014 at 8:30 am to receive a briefing by the Secretary for Commerce and Economic Development on relevant policy initiatives featuring in the Chief Executive's 2014 Policy Address.

Regular meeting on 10 February 2014

4. Members noted that the next regular Panel meeting would be held on Monday, 10 February 2014 at 2:30 pm to discuss the following items:

- (a) Public consultation on the review of the regulation of editorial programmes and personal views programmes; and
- (b) Update on the work of the Create Hong Kong.

Issues relating to proposed acquisition of CSL New World Mobility Limited by HKT Limited

5. Referring to his letter of 3 January 2014 (LC Paper No. CB(4)280/13-14(02)) on the issues relating to the proposed acquisition of CSL New World Mobility Limited by HKT Limited, Mr Charles Peter MOK proposed that the matter be discussed at the next regular Panel meeting. The Panel noted that the Communications Authority ("CA") had issued a public consultation paper on 23 December 2013 inviting representations from all carrier licensees under the Telecommunications Ordinance ("TO") (Cap. 106) and any interested person on the proposed acquisition on or before 24 January 2014. The Chairman suggested and members agreed that while the Panel would not pursue the matter at this stage, members might raise questions on the matter at the special meeting on 28 January 2014.

Issues relating to the sharing of use of transmitting stations for the provision of mobile television services

6. Referring to her letter of 8 January 2014 (LC Paper No. CB(4) 294/13-14(01)) on the issues relating to the sharing of use of transmitting stations for the provision of mobile television services between Television Broadcasting Limited and Hong Kong Television Network Limited, Ms Claudia MO proposed that the matter be discussed at the next regular Panel meeting. The Panel noted that the CA considered it inappropriate to intervene in or follow up the matter for the time being as the parties concerned were about to engage in commercial negotiations on the arrangements. Under section 36AA of the TO, in the event that a reasonable period of time had lapsed and no agreement had been reached, the CA may intervene by offering the parties mediation, or making a determination on the terms and conditions of the agreement in sharing the facilities. In this connection, the Chairman instructed the Secretariat to write to the CA requesting a written response on when and how it would intervene in the matter if the parties concerned could not reach an agreement within a reasonable time on the terms and conditions for the shared use of radiocommunication facilities.

(Post-meeting note: The CA's written response was issued to members vide LC Paper No. CB(4)355/13-14(01) on 30 January 2014.)

IV. Arrangements for the frequency spectrum in the 1.9 – 2.2 GHz Band upon expiry of the existing frequency assignments for 3G mobile services

(LC Paper No. CB(4)272/13-14(03) -- Administration's paper on the arrangements for the frequency spectrum in the 1.9 – 2.2 GHz Band upon expiry of the existing frequency assignments for the provision of 3G mobile services and the spectrum utilisation Fee

LC Paper No. CB(4)152/13-14(01) -- Press release dated 15 November 2013 regarding the decision of the Communications Authority

("CA") on the 3G spectrum re-assignment arrangements and the considerations of the Secretary of Commerce and Economic Development ("SCED") on the relevant spectrum utilisation fee

LC Paper No. CB(4)152/13-14(02) -- Joint statement dated 15 November 2013 regarding the decision of the CA on the 3G spectrum re-assignment arrangements and the considerations of the SCED on the relevant spectrum utilisation fee

LC Paper No. CB(4)152/13-14(03) -- Consultancy report regarding the quantitative assessment on the service quality of adopting a hybrid approach for 3G spectrum re-assignment

LC Paper No. CB(4)152/13-14(04) -- Executive summary of the consultancy Report

LC Paper No. CB(4)174/13-14(01) -- Letter from Hon Claudia MO dated 18 November 2013 on issues relating to the arrangements for the frequency spectrum in the 1.9-2.2 GHz Band upon expiry of the existing frequency assignments for the provision of third generation mobile services and the spectrum utilization fee

LC Paper No. CB(4) 272/13-14(04) -- Paper on issues relating to the arrangements for the frequency spectrum in the 1.9 – 2.2 GHz Band upon

expiry of the existing frequency assignments for the provision of third generation mobile services and the spectrum utilization fee prepared by the Legislative Council Secretariat (background brief))

Presentation by the Administration

7. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Communications and Technology) ("PSCED(CT)") briefed members on the arrangements for the frequency spectrum in the 1.9 - 2.2 GHz Band ("3G Spectrum") upon expiry of the existing frequency assignments for the provision of 3G mobile services and the spectrum utilization fee ("SUF"). Assistant Director (Regulatory), Office of the Communications Authority then gave a power-point presentation on the subject. Details of the briefing and presentation were set out in the papers provided by the Administration (LC Paper No. CB(4)272/13-14(03) and the Office of the Communications Authority ("OFCA") (LC Paper No. CB(4)292/13-14(01)).

8. PSCED(CT) advised that having carefully considered the submissions received in public consultation and the findings of a study commissioned by the Government, the Communications Authority ("CA") decided to adopt a hybrid administratively-assigned cum market-based approach ("the hybrid approach") on frequency assignments. Under the hybrid approach, the incumbent 3G operators would be offered a right of first refusal for assignment of two-thirds of the paired 3G Spectrum ("RFR Spectrum"). Should any of the incumbent 3G operators decided not to exercise the right of first refusal, the spectrum thus becoming available would be pooled together with the remaining one-third of the paired 3G Spectrum and re-assigned through auction (known collectively as "Re-auctioned Spectrum").

Discussion

Public consultation

9. Ms Claudia MO was of the view that the CA had rushed to the decision that the 3G Spectrum should be re-assigned by adopting the hybrid approach upon expiry of the existing assignments in October 2016 without

first undertaking proper consultation with the Panel, the stakeholders and the public. She expressed deep regret on the CA's decision. Mr CHAN Chi-chuen shared a similar view. In this regard, Mr WONG Ting-kwong enquired about the consultation exercises carried out by the Administration on the matter.

10. Director-General of Communications ("DGC") advised that the CA and the Administration had jointly conducted two rounds of public consultation during the period from March 2012 to April 2013 on the issues relating to the arrangements for re-assignment of the 3G Spectrum upon expiry of the existing assignments and the associated SUF. The consultation was kicked off in end March 2012, with the issuance of the first public consultation paper jointly by the former Telecommunications Authority and the Secretary for Commerce and Economic Development ("SCED") to solicit the views and comments of the telecommunications industry and other affected persons on the three options proposed for re-assignment of the 3G Spectrum, namely, the administratively-assigned approach, the full-fledged market-based approach and a hybrid of the two, as well as on related issues.

11. DGC further advised that having carefully considered the views and comments received in the first round consultation, the CA and the SCED jointly issued the second public consultation paper in December 2012 to seek views further on the proposed hybrid approach for spectrum re-assignment and the methods for setting the SUF of the spectrum. In the course of the second consultation, the Administration had briefed the Panel on the subject on 4 February 2013. The Panel also invited representatives of the telecommunications industry and other interested parties to express their views at its meeting held on 27 March 2013. In the two rounds of consultation, which lasted for seven months in length, ample opportunities had been given to the telecommunications industry and other interested parties to give their views and comments. The decision announced by the CA in November 2013 was made after a thorough consultation exercise spanning over 19 months and there was no question of the CA rushing into a decision in respect to the 3G spectrum re-assignment exercise.

12. Mr NG Leung-sing declared that he was an independent non-executive director of Smartone Telecommunications Holdings Limited, the holding company of Smartone Mobile communications Limited which was one of the four incumbent 3G operators. Referring to the difference in opinion between the Administration and its consultant in relation to the study on the domestic free television market, Mr NG expressed concern about the independence and reliability of the consultancy report on frequency assignments.

13. DGC advised that the consultant commissioned by the Government had worked in total independence from the Administration and had communicated directly with the existing mobile network operators ("MNOs") on commercially sensitive information without any involvement of the Administration. As per the agreement with the MNOs, such information had been completely destroyed by the consultant within one month after the release of the findings of the consultancy report.

Impact of the hybrid option on service quality and service charges

14. Mr Charles Peter MOK remarked that as borne out by objective facts, the CA and the Administration did conduct public consultation on issues relating to the 3G spectrum re-assignment before coming to their respective decisions. He enquired about the mitigation measures to be undertaken by the MNOs to cope with any service degradation that might ensue from a reduction in the 3G spectrum holding. Deputy Director-General of Communications (Telecommunications) advised that mobile data were delivered on both the 3G and 4G networks. Notwithstanding that all MNOs had rolled out their 4G networks, the 4G services were still under-utilized at present. While the 3G networks were congested at busy districts during busy hours, there existed ample capacity for mobile data services for serving these locations through the deployment of the 4G spectrum held by the MNOs. The 3G network congestion problem was particularly acute along the MTR lines during busy hours, as the 200 MHz of spectrum in the 2.3 GHz and 2.5/2.6 GHz bands released to the market for the provision of 4G services since 2009 had yet to be deployed by the MNOs. MNOs had refarmed only a small amount of spectrum in the 1800 MHz band for the provision of 4G services within the MTR areas. This meant that the heavy demand for data services along the MTR lines during busy hours was being met primarily by the 3G network capacity, thereby contributing significantly to the congestion problem. To mitigate the problem, it was understood from the MNOs and the MTR Corporation that they had recently entered into agreements for expanding their 4G networks into the new MTR West Island Line. The principles in the agreements could be applied for MNOs to expand their 4G networks into the existing MTR lines.

15. Mr CHAN Chi-chuen and Mr Christopher CHEUNG expressed concern about possible impact on service degradation and pressure on service fee increase that might ensue from a reduction in the spectrum holding as pointed out by the MNO's consultancy study.

16. DGC advised that in commercial reality, in order for any MNOs which had a smaller 3G Spectrum holding than before to stay competitive, it

might well need to consider further refarming 2G spectrum to provide 3G services and postponing the refarming of spectrum currently deployed for 3G services to 4G, such that more spectrum, and hence more capacity would be available for the provision of its 3G services. The MNOs might also employ various strategies to maximize customer retention, including actively encouraging 3G customers to take up 4G services, through, for example, price promotion, integrated data plans and handset subsidization. On SUF, the Administration was of the view that there existed no direct relationship between the levels of SUF and service charges. Ever since the first spectrum auction in Hong Kong conducted in 2001, another six spectrum auctions for provision of mobile services had been conducted, and the level of SUF had been on a general upward trend. Nevertheless, mobile service charges in Hong Kong remained highly affordable and competitive by international standards.

17. DGC added that as a matter of fact, the SUF of all the mobile spectrum (572 MHz) paid by the MNOs accounted for only about 3% of their average total annual operating cost. As for the Re-auctioned Spectrum which was 39.2 MHz in total, if all the incumbent 3G operators exercised the right of first refusal to be re-assigned the RFR Spectrum, it only represented 7% of the total mobile spectrum assigned and the SUF contributed to only about 0.5% of their total annual operating cost. Against this background, the Administration did not subscribe to the allegation of the incumbent 3G operators that the SUF for the Re-auctioned Spectrum they would need to pay for under the hybrid approach would lead to price increase.

Determination of the spectrum utilization fee

18. In response to Mr Paul TSE's enquiry about the determination of reserve price of the Re-auctioned Spectrum and the price cap of \$86 million per MHz of the RFR Spectrum, PSCED(CT) advised that in determining the reserve price of the Re-auctioned Spectrum at \$48 million per MHz, reference was made to the levels of the SUF of the spectrum as determined by the auctions conducted previously. In order to address the concern of the incumbent 3G operators over the lack of certainty of the SUF of the RFR Spectrum, the Administration agreed that a cap should be placed on the SUF of the RFR Spectrum. Having considered the lower limit of the SUF for the 15-year period for the RFR Spectrum (the lower limit of the per MHz SUF of \$66 million was derived from the actual fee payable by the MNOs for using the 3G Spectrum in 2015/16), the estimated market price of the 3G spectrum, and other factors including providing a level playing field for MNOs and the successful bidders of the Re-auctioned Spectrum, the SCED considered it appropriate to set the level of the cap at \$86 million per MHz.

Proposed acquisition of CSL New World Mobility Limited by HKT Limited

19. Mr Charles Peter MOK and Mr SIN Chung-kai noted that the CA was carrying out a public consultation on the proposed acquisition of CSL New World Mobility Limited ("CSL") by HKT Limited ("HKT"). These members enquired about the possible impact of the proposed acquisition on the arrangement of the 3G Spectrum and the competitive environment of the telecommunications market.

20. DGC advised that the proposed acquisition constituted "a change in relation to a carrier licensee" under section 7P of the Telecommunications Ordinance ("TO") (Cap. 106), which regulated merger and acquisition activities involving a carrier licensee. Section 7P(6) of the TO allowed a carrier licensee to seek prior consent of the CA to the transaction and set out the test for the CA's consideration of a merger or acquisition (whether the proposed change would have the effect of substantially lessening competition in the telecommunications market). In this regard, HKT was seeking the CA's prior consent under section 7P(7) of the TO to its proposed acquisition of CSL.

21. DGC further advised that the processing and handling of the section 7P application, a public consultation exercise on which was still ongoing, was separate and distinct from the CA's decision on the arrangements for the 3G Spectrum, which had been made and announced to the public in mid November 2013. . The CA would in accordance with the legislative requirements under the TO take into account the competition analysis of OFCA and the views received in the public consultation in making the decision on the section 7P application.

Political agenda

22. Ms Claudia MO and Mr Ronny TONG expressed concern that the proposed spectrum arrangement under the hybrid option would help state-owned China Mobile Hong Kong Limited ("CMHK"), which had not been assigned with any 3G Spectrum, to secure greater market access, thereby influencing the local telecommunications industry. In this regard, Mr TONG enquired if the CA had been subject to any political pressure on its decision to adopt the hybrid option and put one-third of the 3G Spectrum to re-auction.

23. Chairman of the Communications Authority ("C of CA") advised in the negative and pointed out that according to the Radio Spectrum Policy Framework ("Spectrum Policy Framework") promulgated by the Government in April 2007, a market-based approach would be used as the

guiding principle in spectrum management wherever the CA considered that there were likely to be competing demands from providers of non-Government services, unless there were overriding public policy reasons to do otherwise.

24. C of CA added that after careful consideration, the CA had concluded that there were competing demands for the 3G spectrum and accordingly a market-based approach should be adopted for its re-assignment. Nevertheless, the CA was conscious of the possible adverse impact of re-auctioning all the 3G spectrum on the continuity and quality of mobile services. As such, the CA had decided that there was overriding public policy reason for the CA to deviate from the full-fledged market-based approach and go for the hybrid option. In response to Mr Ronny TONG's concern that the spectrum put up for auction in this exercise might be taken up by a single operator which would have a stifling effect on competition, C of CA advised that the exercise aimed at inter-alia providing an opportunity for new entrants to enter the market, rather than serving the interest of any particular operator, be it new comer or incumbent. The question of over-concentration of spectrum in a particular operator would not arise as a spectrum cap of 2 x 20 MHz (or four frequency slots) of the 3G Spectrum would be imposed on any successful bidder in the upcoming spectrum auction. .

25. The Chairman expressed support for the proposed re-assignment arrangement which would have the effect of introducing more competition in the telecommunications market. He added that the radio spectrum for mobile services was a scarce public resource which should be prudently assigned and should not be indefinitely occupied by the existing operators .

Other issues

26. Referring to Ms Claudia MO's letter on 18 November 2013 regarding her proposed motion to demand that the CA should withdraw its decision on auctioning parts of the 3G Spectrum and consult the Panel first before making its decision on the re-assignment, the Chairman considered that the matter could be dealt with by the Panel as it was directly related to the agenda item under discussion. The motion proposed by Ms MO would be proceeded with if agreed by a majority of the members voting. Of the 12 members present, 5 members agreed to deal with the motion and 7 members disagreed to do so. The Chairman informed the meeting that the motion would not be proceeded with.

V. Issues relating to the unequal sharing of the Multiple Frequency Network for digital terrestrial television services by Asia Television Limited and Television Broadcasts Limited

(LC Paper No. CB(4)272/13-14(05) -- Administration's paper on unequal sharing of the Multiple Frequency Network for digital terrestrial television services by Asia Television Limited and Television Broadcasts Limited

LC Paper No. CB(4)173/13-14(01) -- Letter from Hon Charles Peter MOK dated 13 November 2013 on issues relating to the unequal sharing of the Multiple Frequency Network for digital terrestrial television services by Asia Television Limited and Television Broadcasts Limited)

27. At the invitation of the Chairman, Deputy Director-General of Communications (Broadcasting) ("DDGC(B)") briefed members on the decision of the Communications Authority ("CA") regarding the joint application of Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB") for an unequal sharing of the transmission capacity in the multiple frequency network ("MFN") for digital terrestrial television ("DTT") services. Details of the briefing were set out in the paper provided by the Administration (LC Paper No. CB(4)272/13-14(05)).

Discussion

The CA's consideration of the licence contravention and the application for licence amendments

28. Ms Claudia MO noted that in March 2013, the Office of the Communications Authority ("OFCA") found that the transmission capacity in the MFN had been unequally shared between ATV and TVB in a regular monitoring of the DTT broadcast network. After careful consideration of

OFCA's findings, the CA came to the conclusion that ATV and TVB had failed to comply with SC 3.2 and Schedule 2(A)(ii) of their FCLs, by unequally sharing the capacity in the MFN without obtaining the prior approval of the CA. The CA imposed a financial penalty of HK\$200,000 each on both ATV and TVB for the contravention. Ms MO considered it inappropriate for the CA to have allowed ATV and TVB to formalize the unequal sharing arrangement on the MFN through licence amendments after sanctioning ATV and TVB for contravention of the license requirement on equal sharing of MFN transmission capacity. She opined that the surplus transmission capacity should have been reallocated to Hong Kong Television Network which had not been granted an approval-in-principle for a domestic free television programme service licence.

29. Chairman of the Communications Authority (C of CA) advised that the sanction imposed on ATV and TVB for the licence contravention arising from their failure to seek the CA's prior approval for the sharing arrangement on the MFN should be treated separately from their application for amending the relevant licence condition of their Fixed Carrier Licences ("FCLs") so as to formalize the existing sharing arrangement on the MFN. There was no justification for the CA to reject the application simply on the ground that ATV and TVB had been sanctioned for their breach of the relevant licence conditions.

30. C of CA further advised that under section 32G(1) of the Telecommunications Ordinance ("TO") (Cap.106), it was the CA's statutory duty to promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong. Given ATV's confirmation that it would continue to broadcast its channels in standard-definition ("SD") format until November 2015, the 1.5 Mbps transmission capacity in the MFN, which would be insufficient for the broadcasting of a standalone television channel, would continue to be left idle if the application was not approved. Moreover, if TVB were to return to the original equal sharing arrangement as specified in its FCL, broadcasting of the Jade or Pearl channel would need to revert to SD format in place of high-definition format. This reinstatement would run counter to the interest of the viewing public.

The CA's decision and sanction on the breach of licence requirements

31. Mr Charles Peter MOK considered the unequal sharing of the transmission capacity in the MFN by ATV and TVB without the CA's prior approval a very serious contravention of the licence conditions of the two licensees. In this regard, he opined that the sanctions imposed on the two licensees were too lenient to have any deterrent effect. Mr MOK further enquired if the licensees were found to have breached other provisions under

the TO or the Broadcasting Ordinance ("BO") (Cap. 562). Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr Paul TSE and Mr YIU Si-wing shared a similar view and opined that the CA should consider imposing heavier penalties on the licensees, including non-renewal of licence. Mr TSE further opined that in order to have any deterrent effect, the financial penalty imposed should commensurate with the value of the transaction involved.

32. C of CA advised that the CA took a serious view on the unequal sharing of the transmission capacity in the MFN by ATV and TVB without the CA's prior approval. Having considered all relevant facts of the case, the CA reached a final decision that ATV's and TVB's failure to equally share the MFN transmission capacity was a breach of the licence conditions under Special Condition 3.2 and Schedule 2(A)(ii) of the FCLs.

33. C of CA added that the CA considered the breach a serious one and had imposed a financial penalty of \$200,000 each on both ATV and TVB for the contravention. This was the maximum level of penalty which could be imposed for the first occasion of breach under section 36C of the TO. The CA might impose a financial penalty of \$500,000 for the second occasion on which a penalty was so imposed, and \$1,000,000 for any subsequent occasion on which a penalty was so imposed. Where the CA considered that a financial penalty under the existing provisions of the TO would not be adequate for a breach, it could make an application to the Court of First Instance under subsection (3B)(b) for the imposition of a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, or \$10,000,000, whichever was the higher.

34. C of CA advised that in the present case, the CA did not find ATV and TVB were in breach of other provisions under the TO or the BO. The Administration would look into the question on the adequacy of the sanctions under the TO and the BO, in the overall review of the two Ordinances in due course. In any event, past performance of free TV licensees, including records of non-compliance with statutory requirements and licence conditions, would be taken into account when the CA considered the applications for licence renewal.

35. Director-General of Communications ("DGC") added that in processing the licence renewal applications submitted by ATV and TVB, there would be a 2-month public consultation exercise starting from early February 2014 during which time the CA would inter-alia conduct public hearings to solicit views from the public on the performance of the two licensees. The CA proposed to brief the Panel on the progress of the matter in March 2014 and consult Members' views. In response to Mr Paul TSE's

enquiry about the value of the transaction between ATV and TVB, DGC advised that although the transaction value was known to the CA, the CA was not authorized under the TO to disclose such commercially sensitive information.

Spectrum trading

36. Mr SIN Chung-kai considered that the introduction of competition would be beneficial to the healthy development of the free TV market. He also considered that the Administration should put the TV spectrum to auction when considering the renewal of the existing free TV licences. In this regard, he enquired about the Administration's policy on spectrum trading.

37. Permanent Secretary for Commerce and Economic Development (Communications and Technology) ("PSCED(CT)") advised that the Spectrum Policy Framework promulgated by the Government in 2007 made clear that it was the policy inclination to introduce spectrum trading in Hong Kong in the long term, subject to a feasibility study on the implementation issues which involved complicated matters and was thus time-consuming. One prerequisite of spectrum trading would be the existence of ample supply of spectrum in the market for the development of a secondary spectrum market. Such a prerequisite did not exist at present. As such, spectrum trading was unlikely to be introduced in Hong Kong in the short term. Nevertheless, the Administration would continue to study the feasibility of spectrum trading and report to the Panel at an opportune time.

VI. Any other business

38. There being no other business, the meeting ended at 4:27 pm.