

**立法會**  
*Legislative Council*

LC Paper No. CB(1)2065/99-00  
(These minutes have been seen  
by the Administration and  
cleared by the Chairman)

Ref : CB1/BC/18/98/2

**Legislative Council**  
**Bills Committee on Telecommunication (Amendment) Bill 1999**

**Minutes of meeting**  
**held on Tuesday, 7 March 2000, at 8:30 am**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)  
Hon David CHU Yu-lin  
Hon Eric LI Ka-cheung, JP  
Hon Howard YOUNG, JP  
Hon Mrs Miriam LAU Kin-ye, JP
- Members absent** : Hon HO Sai-chu, SBS, JP  
Hon Fred LI Wah-ming, JP  
Hon MA Fung-kwok  
Dr Hon Philip WONG Yu-hong  
Hon YEUNG Yiu-chung  
Hon CHOY So-yuk
- Public officers attending** : Ms Eva CHENG, JP  
Deputy Secretary for Information Technology and  
Broadcasting
- Mr M H AU  
Senior Assistant Director of Telecommunications
- Miss Priscilla TO  
Assistant Secretary for Information Technology and  
Broadcasting

Mr Geoffrey FOX  
Senior Assistant Law Draftsman

**Clerk in attendance** : Miss Polly YEUNG  
Chief Assistant Secretary (1)3

**Staff in attendance** : Miss Connie FUNG  
Assistant Legal Adviser 3

Ms Anita SIT  
Senior Assistant Secretary (1)8

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## **I Confirmation of minutes of meeting and matters arising**

The minutes of the meeting held on 19 January 2000 (CB(1)1078/99-00) were confirmed without amendments.

2. Members noted that the Administration had provided a paper "Supplementary information to the Bills Committee on Predatory Pricing" (CB(1)1119/99-00(01) issued on 6 March 2000) in response to members' concerns raised at the meeting on 17 February 2000 when examining proposed section 7L.

## **II Meeting with the Administration**

### Clause-by-clause examination of the Bill

#### *Clause 24 - Section 37 Regulations*

3. The Deputy Secretary for Information Technology and Broadcasting (DS/ITB) advised that section 37(1)(h) and (i) was proposed to be repealed because the regulations referred to therein would be incorporated into the principal ordinance under proposed section 32K.

#### *Clause 25 - Proposed section 39A Remedies*

4. DS/ITB advised that having regard to the views of deputations and the legal adviser to the Bills Committee, the Administration would introduce a Committee Stage Amendment (CSA) to proposed section 39A to make it explicit that a person could only bring an action to seek remedies from a

licensee if he had sustained loss or damage as a result of a breach by the licensee concerned of the provisions on competition safeguards as specified in the section.

5. In reply to the Chairman's enquiry, the Administration confirmed that reduction in earnings directly caused by a breach of the provisions specified in proposed section 39A could be regarded as "loss or damage" referred to in the section. As the legal action to seek remedies under this section would be civil proceedings, the person seeking remedies would need to substantiate his claims and it would be up to the court to decide whether the claims were reasonable. As to whether the person seeking remedies would also have to prove that there was a breach of the relevant provision(s) by the licensee concerned, the Senior Assistant Law Draftsman (SALD) said that the person would be relieved from this burden if he brought an action to seek remedies after TA or the court had determined that there was a breach and, if the licensee appealed against TA/the court's determination, the appeal had been dismissed. In the absence of the aforesaid proof, the person bringing an action would need to prove that there was a breach on the part of the licensee apart from substantiating his claims for loss or damage caused by such breach.

6. On the rationale for the three-year limit for bringing an action to seek remedies under proposed section 39A(2), the Assistant Secretary for Information Technology and Broadcasting advised that a six-year limitation period was prescribed in the Limitation Ordinance (Cap. 347) for bringing civil actions. The Administration considered that six years might be too long in the context of the telecommunications sector, and had proposed a three-year limit instead having regard to comparable legislation of overseas jurisdictions, the usual duration of TA's investigation into a suspected breach and the estimated duration in case of a judicial review of TA's determination on a breach.

7. In reply to Mr Howard YOUNG's enquiry, the Senior Assistant Director, Office of the Telecommunications Authority (SAD/OFTA) advised that in a recent case of TA's determination on a breach, it had taken about one year for TA to collect evidence and to conduct the relevant proceedings, including receiving representations from the licensee concerned, before reaching a decision on the alleged breach. He also highlighted that proposed section 39A(2) provided that the three-year limit would commence from the time the breach was committed or the time a penalty in relation to the breach was imposed by TA or by the Court of First Instance, whichever was the later.

8. The Chairman enquired whether there was any time limit for the imposition of penalty by TA or by the Court of First Instance on a licensee committing a breach. In reply, SAD/OFTA advised that while no time limit was specified in the Ordinance or the Bill for TA's imposition of financial penalty, proposed section 36C(3B) provided a three-year time limit, commencing from the commission of the breach or the time the breach came to

the notice of TA, for TA to make an application to the Court of First Instance to impose a financial penalty exceeding the relevant limit specified under proposed section 36C(3).

9. In this connection, Mrs Miriam LAU enquired about the basis on which TA would determine the level of financial penalty under proposed section 36C(3) and whether there was any "record-clearing" arrangement in respect of the licensee's past breaches. In reply, DS/ITB confirmed that only if a licensee was found in breach of the same statutory provision or licence condition as that/those of the previous breach(es) would the current breach be regarded as a subsequent breach for the purpose of imposing the appropriate level of financial penalty. In other words, if a licensee was found in breach of a statutory provision or licence condition different from that/those of the previous breach(es), the current breach would be regarded as a breach for the first occasion. SAD/OFTA supplemented that whether a licensee had committed a breach for the first, second or any subsequent occasion was a matter of fact to be determined by TA having regard to all relevant factors, including the prevailing market circumstances of the previous and the current breaches.

10. Taking note of the Administration's explanation, Mrs Miriam LAU sought clarification on TA's discretion in respect of the level of financial penalties he might impose on a licensee in breach and the manner in which he would exercise such discretion. In response, SALD clarified that both the existing and the proposed section 36C(3) conferred on TA the discretion to determine the amount of financial penalties subject to the limits stipulated in the sections. For the sake of clarity, he suggested and DS/ITB agreed to consider whether CSAs should be introduced to specify that in exercising his discretion in determining the level of financial penalties, TA should take into account relevant factors including past breaches and the lapse of time between the present and past breaches.

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*(Post-meeting note: The Administration has proposed CSAs to proposed section 36C vide paper CB(1)1138/99-00 issued on 8 March 2000.)*

11. As regards records on breaches determined by TA, DS/ITB advised that as spelt out in the existing and the proposed section 36C, whenever TA determined that a licensee had committed a breach of a licence condition or statutory provision, TA should give notice to the licensee in writing to explain his determination/decision and the corresponding penalty. Hence, there was proper record kept by TA in this regard.

*Clause 26 - Schedule added**Licences which are not carrier licences within the meaning of section 2*

12. SAD/OFTA explained that the list of licences in the schedule were concerned with services and facilities the markets of which were relatively small. As the procedure for issuing a carrier licence was complicated, including the need for the Secretary for Information Technology and Broadcasting to prescribe by regulation the general conditions, validity period and the fees for grant and renewal for the licence upon consultation with the public, the Administration considered it inappropriate to include the licences listed in the schedule under the carrier licence category.

*Clause 27 - Consequential and miscellaneous amendments*

13. In reply to the Chairman, the Administration advised that since the modern usage of the terms "telecommunication" and "radiocommunication" were in the plural form, the Bill would replace these terms with "telecommunications" and "radiocommunications" respectively whenever the former terms appeared in the Ordinance.

*Schedule 1 - Consequential amendments**Television Ordinance**1. Grant of licences*

14. The Administration advised that the licences referred to in section 8(3) of the Television Ordinance were deemed to be granted under the Telecommunications Ordinance. The expression "by the Governor in Council" in section 8(3) of the Television Ordinance (Cap.52) should be repealed because it would become redundant and obsolete as the respective authorities responsible for granting and issuing the various types of licences were prescribed in proposed section 7 of the Bill. Moreover, proposed section 7 in the Bill provided that only exclusive licences would be granted by the Chief Executive in Council while the other licences would be issued by TA. The licences referred to in section 8(3) of the Television Ordinance might not be exclusive licences.

*Charges for Radiotelegrams Order**5. Repeal*

15. SAD/OFTA advised that the Charges for Radiotelegrams Order (Cap. 106 sub. leg.) had become redundant as there were relevant conditions in the Fixed Telecommunication Network Services licence governing charges for the radiotelegrams service. SAD/OFTA also confirmed that the repeal of the Order would not affect the provision of the service. He advised that according to the tariff schedules published by FTNS licensees, the service was provided

only by the Cable & Wireless HKT Limited (CWHKT) at present. As CWHKT was a dominant operator in the FTNS market, its tariffs for the radiotelegrams service were subject to TA's approval.

*Telecommunication (Closed Circuit Television Systems) Regulations*

6. *Repeal*

16. SAD/OFTA advised that the Telecommunication (Closed Circuit Television Systems) Regulations (Cap. 106 sub. leg.) had become redundant since all Closed Circuit Television Systems had already been brought under the licensing system of the Telecommunication Ordinance.

*Telecommunication (Cable and Wireless (Hong Kong) Limited) (Exemption from Licensing) Order*

7. *Repeal*

17. SAD/OFTA advised that the Telecommunication (Cable and Wireless (Hong Kong) Limited) (Exemption from Licensing) Order (Cap. 106 sub. leg.) granted exemption to the customers of CWHKT from the requirement of obtaining a licence for making connection to the network facilities provided by CWHKT. The Order had become redundant as CWHKT had become a FTNS licensee and an exemption order covering all the FTNS licensees and governing the same subject matter had been issued.

*Telephone Ordinance*

13. *Repeal*

18. SAD/OFTA advised that there were only two provisions in force under the Telephone Ordinance (Cap. 269) at present. These provisions were concerned with telephone numbers and tariffs. As there were proposed provisions on the numbering plan and tariffs in the Bill, the Telephone Ordinance should be repealed upon enactment of the Bill.

**III Any other business**

19. In reply to the Chairman, DS/ITB said that prior to the next meeting on 10 March 2000, the Administration would provide its response to the latest submission of CWHKT and that of the "build-operate-transfer" tunnel operators, as well as the Administration's proposed CSAs to the Bill.

20. The Chairman said that the Bills Committee would examine the CSAs proposed by the Administration at the next two meetings to be held on 10 and 15 March 2000 and would deliberate on the legal and constitutional issues arising from the Bill at the two meetings scheduled for 5 April 2000.

21. The meeting ended at 9:25 am.

Legislative Council Secretariat

22 September 2000