

立法會
Legislative Council

LC Paper No. CB(1)1120/99-00
(These minutes have been
seen by the Administration)

Ref : CB1/PL/ITB/1

Legislative Council
Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 14 February 2000, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon MA Fung-kwok (Chairman)
Hon SIN Chung-kai (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Fred LI Wah-ming, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP
- Member attending** : Hon CHAN Kam-lam
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Prof Hon NG Ching-fai
Hon James TO Kun-sun
Hon Timothy FOK Tsun-ting, SBS, JP
- Public officers attending** : For Items IV & V
Mr K C KWONG
Secretary for Information Technology and
Broadcasting

Ms Eva CHENG
Deputy Secretary for Information Technology and
Broadcasting (1)

For Item IV

Mr S K WONG
Director-General of Telecommunications

For Item V

Mr Eddie MAK
Principal Assistant Secretary for Information
Technology and Broadcasting (A)

For Item VI

Miss Annie TAM
Deputy Secretary for Information Technology and
Broadcasting (3)

Mr M T WONG
Chief Engineer, Information Technology and
Broadcasting

For Item VII

Mrs Jessie TING
Deputy Secretary for Information Technology and
Broadcasting (2)

Mr Eddy CHAN
Commissioner for Television and Entertainment
Licensing

Miss Adeline WONG
Principal Assistant Secretary for Information
Technology & Broadcasting (B)

Mr John MAK
Senior Engineer (Special Effects), Television and
Entertainment Licensing Authority

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

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Mr Matthew LOO
Senior Assistant Secretary (1)7

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I. Confirmation of minutes of meetings and matters arising
(LC Paper Nos. CB(1)922/99-00, 957/99-00 and 963/99-00(01))

The minutes of the Panel meetings held on 13 December 1999 and 10 January 2000 were confirmed.

2. Members noted the Panel's list of follow-up actions.

II. Date and items for discussion for next meeting

3. Members noted that the item on "Registration of Internet domain names" originally scheduled for this meeting was deferred to the next regular meeting of the Panel to be held on 13 March 2000 at 2:30 pm.

4. Mr Howard YOUNG expressed concern about a growing world-wide trend of telecommunications and aviation services competing for limited radio frequencies and was keen to ensure that the Administration would not allocate frequencies to telecommunication services at the expense of aviation safety. In response, the Secretary for Information Technology and Broadcasting (SITB) undertook to provide an information paper on issues related to the allocation of radio frequencies for telecommunication and aviation purposes. As Mr YOUNG indicated that a world conference would be held in March 2000, the Panel agreed that the information paper should be provided well in advance of the next meeting for members' consideration.

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5. In response to the Chairman, SITB undertook to provide for members' consideration a report on the Y2K monitoring and co-ordinating arrangements for roll-over to the next critical date on 29 February 2000.

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III. Information papers issued since last meeting

(The Legislative Council Briefs (Ref: ITBB CR/7/4/10(99)III and ITBB(CR) 7/4/10(00)IV) and LC Paper No. CB(1)964/99-00)

6. Members noted the two Legislative Council Briefs (Ref: ITBB CR/7/4/10(99)III and ITBB(CR) 7/4/10(00)IV) and an information paper circulated vide LC Paper No. CB(1)964/99-00 which set out the recent licensing decisions by the Telecommunication Authority in respect of local fixed wireless Fixed Telecommunications Network Services (FTNS) licences, satellite-based and cable-based external FTNS licences, and the FTNS licence for the Hong Kong Cable Television Limited to provide telecommunications services over its network.

IV. Proposed merger of Cable & Wireless Hong Kong Telecom with Singapore Telecommunications

(LC Paper No. CB(1)953/99-00(02))

7. The Chairman said that this item had been included in the agenda in view of widespread public concerns over the proposed merger of the Cable & Wireless Hong Kong Telecom (C&WHKT) with Singapore Telecommunications (Singtel). In this connection, members also noted the latest development that Pacific Century CyberWorks (PCC) had also announced its acquisition plans.

Briefing by the Administration

8. SITB briefed members on the Government policy on telecommunications. In essence, Hong Kong did not have any foreign ownership restriction on telecommunication licensees. The licence conditions of the various telecommunications licences did not require prior consent of the Telecommunications Authority (TA) with regard to changes in the shareholding of the company holding the licence. However, TA's consent would be required if the merger involved the transfer of licences. In the absence of foreign ownership restriction, the key issues for the Administration were to maintain a level playing field and to ensure compliance of the merged entity under the regulatory regime.

9. On the proposed merger of C&WHKT with Singtel, SITB confirmed that both the Cable & Wireless Group and Singaporean Government had contacted the Hong Kong Government when the merger proposal was announced. The Administration had also explained its policy stance to the two parties. Meanwhile, as PCC had also announced its plan to take control of C&WHKT, the Administration would monitor the case and consider the detailed terms and conditions of the proposed merger when such were available to ensure that the regulatory requirements would be complied with.

Safeguards against anti-competitive conduct

10. Mr Howard YOUNG was concerned that despite issuing more licences to promote competition, the dominant telecommunication operator in Hong Kong might still merge with other operators to reinforce its dominant position in the market. In response, SITB advised that a dominant operator such as C&WHKT would be subject to more stringent regulatory controls such as price control, in particular over certain segments of the telecommunications market which were not yet fully competitive. SITB also referred members to the Telecommunication (Amendment) Bill 1999 and urged members to support its early enactment with a view to strengthening safeguards against anti-competitive conduct of licensees.

11. In response to Miss Emily LAU's enquiry about major provisions of the Bill to safeguard competition, SITB pointed out that the Bill mainly sought to enhance TA's powers for the promotion of fair competition and to codify the existing conditions in FTNS licences into legislation. For example, to assist TA in his investigation of breaches of the Telecommunication Ordinance (Cap. 106) or licence conditions, such as those related to anti-competitive conduct, TA would be empowered under the Bill to apply to a magistrate for an order to require information relevant to the alleged breach to be provided by a non-licensee. The Bill also proposed to increase the financial penalty to be imposed by TA to a maximum of \$1 million so as to achieve a deterrent effect. If TA considered it inadequate, he might also apply to the Court of First Instance to impose a penalty not exceeding 10% of the turnover of the licensee in the relevant market sector during the period of the breach, or \$10 million, whichever was higher.

12. Referring to the proposed acquisition by PCC, Mr Fred LI pointed out that the company was owned by Mr LI Tzar-kai whose family's business interests included mobile telephone networks and FTNS. If the proposed acquisition succeeded, Mr LI was concerned that the LI family would have a significant control in various segments of the telecommunications market which might eventually lead to market dominance. Miss Emily LAU shared similar concern and considered it not a healthy development. SITB noted members' concerns and assured members that the Administration would consider the detailed terms and conditions of the proposed merger when such were available and examine its possible impact to ensure that a level playing field was maintained in the telecommunications market.

13. As there was no restriction with regard to changes in the shareholding of the company holding the telecommunications licence, the Deputy Chairman was concerned that one company might acquire the controlling stake of all other existing licensees, thus monopolizing the market. He was also concerned that there were no anti-trust provisions under existing legislation.

14. In response, SITB commented that the scenario depicted by the Deputy Chairman would unlikely emerge. He nevertheless pointed out that a distinction must be drawn between changes in the shareholding of the licensee company which were permissible, versus the transfer of licences which required the TA's consent. SITB reiterated that despite its ownership, each licensee had to satisfy TA that it met in full various licence terms and conditions. Although they were separate entities, licensees could not reach an agreement which would undermine market competition. The recent investigation conducted by TA into the simultaneous price adjustments of a similar amount by several mobile phone licensees was an example of safeguard against anti-competitive conduct.

15. In response to members' enquiry on whether the Administration would further liberalize the telecommunications market, SITB advised that the Administration would review in due course the issue of more local FTNS licences operative from January 2003. He also informed members that the Administration had already introduced second generation mobile communication services and was establishing the licensing framework for third generation mobile communication services with a view to promoting a competitive telecommunications market. Meanwhile, five licences were also issued for the local fixed wireless networks in January 2000. Under the circumstances, SITB considered that there would be little opportunity for monopoly in the market.

Other considerations behind the proposed merger

16. The Chairman noted that the main shareholder of Singtel was the Singaporean Government and was concerned about the political implications, if any, on its proposed merger with C&WHKT. SITB responded that the Administration had been looking at the proposed merger as a commercial venture and based on existing information, the proposed merger was a commercial activity. The Hong Kong Government would see to it that any new, merged entity would operate on commercial principles.

17. The Chairman remarked that some foreign governments might issue statements on their position/concerns about major merger proposals which would affect the social and economic activities in their countries. He enquired whether the Hong Kong Government would consider issuing such statement for the proposed merger of C&WHKT and Singtel. In response, SITB reiterated that the Administration had already explained on different occasions its stance and policy on telecommunications since the proposed merger was announced.

18. Mr Fred LI sought the Administration's comments on reports alleging that the Mainland Authority had encouraged the proposed merger of

C&WHKT with PCC so as to forestall Singtel's entry into the Hong Kong market. SITB responded that there was no evidence suggesting such intervention. He also stressed that it was inappropriate to speculate on any political motives underlying the proposed merger which, as evidence so far suggested, was essentially a commercial activity.

19. Mr CHAN Kam-lam disagreed with views about market monopoly arising from and political motives underlying the proposed merger of C&WHKT with Singtel or PCC, and opined that these views were biased. He considered the strong reactions expressed on the proposed merger unhealthy and inconsistent with the principles of free economy of Hong Kong and was concerned that commercial issues should not be politicised.

V. Broadcasting Bill

(The Legislative Council Brief issued by the Information Technology and Broadcasting Bureau (Ref: ITBB(CR)9/19/1(00) Pt.7) issued on 28 January 2000)

20. With the aid of power-point presentation, the Principal Assistant Secretary for Information Technology and Broadcasting (A) briefed members on the proposed technology-neutral statutory framework for the licensing and regulation of broadcasting services. The Bill would seek to give effect to the policy decisions arising from the 1998 Review of Television Policy (the 1998 Review), which were made after two rounds of consultation with the industry and the community.

(Post-meeting note : The presentation materials tabled at the meeting were circulated to members vide LC Paper No. CB(1)984/99-00 on 15 February 2000.)

21. The Deputy Chairman was concerned that Members might not have sufficient time to scrutinize the Bill. He enquired whether the applications for new domestic pay TV licences being considered by the Administration would be affected if the Bill could not be enacted before the end of the current legislative term. In reply, SITB said that the applications would be processed in accordance with the existing legislation and licences would be granted on condition that adaptation would be made to the licences following the enactment of the Bill.

22. Miss Emily LAU shared the Deputy Chairman's concern about the legislative timetable of the Bill and asked about the views collected from the industry and the community during the consultation process. In this regard, SITB advised that the Administration had already briefed the Panel on the results of the consultation on the 1998 Review. Furthermore, a briefing was held on the same day when the Bill was gazetted and existing licensees had

expressed support to the proposals in the Bill. The Deputy Secretary for Information Technology and Broadcasting (1) (DS/ITB(1)) supplemented that the existing licensees were basically in support of the Bill which would remove certain existing regulatory restrictions. They had no objection to new competition provisions which were also applicable to them. As such, SITB anticipated that the Bill might be less controversial than the Telecommunication (Amendment) Bill 1999 currently being scrutinized by Members.

23. In response to Miss CHOY So-yuk's concerns about the licensing requirements, SITB explained that free or pay TV services intended or available for reception by over 5,000 specified premises, primarily targeting at Hong Kong audience, would be categorized as domestic services. In view of their pervasiveness and influence on the community, these types of services would come under either the Domestic Free TV services or Domestic Pay TV services the licences of which would be granted by the Chief Executive in Council on the recommendation of the Broadcasting Authority (BA). In determining whether a service was targeting Hong Kong, all licensees were also required, before providing a television programme service, to make an application to BA for a determination on whether or not the service would be considered as primarily targeting Hong Kong.

24. On languages and in particular, whether there should be more programmes in Putonghua, SITB advised that at present, the free domestic service providers were allowed to broadcast certain percentage of programmes in their English Channels in languages/dialects other than English outside prime time. The Administration had no plan to review the current arrangement for the time being. SITB also pointed out that as a result of a more liberalized and competitive market, it would be up to individual broadcasters to decide whether to broadcast programmes in different languages.

25. The Chairman noted that free-to-air satellite TV services uplinked from outside Hong Kong were not regarded as broadcasting services, but he was concerned that some of these programmes might not be suitable for broadcast in Hong Kong. SITB advised that those services currently allowed to be received and distributed to one specific premise by satellite master antenna television system without a licence would continue to be exempted from the application of the Bill. Nevertheless, if these services were received and distributed to two or more premises, they might come under the category of "Other Licensable" service proposed in the Bill.

26. Miss CHOY So-yuk was concerned about the application of the free competition provisions to certain trade practices such as exclusive contracts with artists. In response, SITB advised that the Bill would give general and specific powers to BA to enable it to enforce the competition provisions, including the powers to require a licensee and other persons to supply

information. As regards exclusive contracts with artists, SITB advised that while these arrangements were generally acceptable to the industry and would continue to be exempted from the Bill, the circumstances under which they might give rise to competition concerns would be spelt out more clearly in guidelines to be issued by BA. The guidelines would also set out how and in what circumstances BA would enforce the competition provisions.

27. Miss Emily LAU sought elaboration on the economic implications of the Bill as outlined in the Legislative Council Brief. SITB said that the Bill sought to provide a fair, predictable and business-friendly regulatory regime flexible enough to attract investment and stimulate the growth of related industries such as programme production which would create new employment opportunities. The actual economic gains resulting from the new regulatory regime would depend on the number of licences granted and the amount of investment. DS/ITB(1) added that some licences were expected to be granted in mid 2000, and their proposed investments ranged from tens to hundreds of millions of Hong Kong dollars.

28. The Chairman expressed concern about the impact on the technology-neutrality of the Bill if such services provided on the Internet were exempted from the application of the Bill. In response, SITB explained that the existing mode of operation on the Internet was different from broadcasting and its pervasiveness was not yet comparable to television programme services currently operating in Hong Kong and hence, this type of service would be exempted for the time being. If and when its pervasiveness and mode of operation drew much closer to broadcasting, consideration would be given to including the "broadcasting" services on the Internet under statutory regulation by way of amending the respective Schedules of the Bill through subsidiary legislation. Under the circumstances, the Bill should still be regarded as technology-neutral.

VI. Progress of the Cyberport project (LC Paper No. CB(1)953/99-00(03))

29. The Deputy Secretary for Information Technology and Broadcasting (3) (DS/ITB(3)) briefed members on the progress of the Cyberport project (the Project). She also informed members that to date, the number of companies which had registered interest in becoming tenants at the Cyberport had increased from 85 to 96, of which 66 were local companies and 30 were overseas companies.

30. Miss Emily LAU requested more details on the objections to the proposed roadworks, sewage submarine outfall and temporary jetties, and to the amendments to the Pokfulam Outline Zoning Plan. In response, DS/ITB(3) advised that seven objections to the proposed roadworks, sewage

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submarine outfall and temporary facilities for the Project were received. As the potential impacts of the Project on traffic, noise, air and water quality, sewage, ecology and landscape had been addressed in the traffic and environmental impact assessments conducted by the Administration, the grounds of the objections were considered not valid by the Executive Council. As regards the 14 objections to the amendments to the Pokfulam Outline Zoning Plan focussing on the impacts on the landscape, the grounds of objection were considered not valid by the Town Planning Board. Miss Emily LAU commented that the Administration only gave a short period of time for the community to raise their objections and the decisions to turn down these objections might have been made in haste. She therefore requested the Administration to provide a paper setting out in greater detail the objections received and the justifications for turning down these objections. DS/ITB(3) agreed to provide the information to the Panel after the meeting.

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31. Regarding Miss Emily LAU's concern about the alternative method of excavation by blasting for the majority of infrastructural works proposed by Carlyle International Limited (Carlyle), DS/ITB(3) explained that the approved Environmental Impact Assessment (EIA) Report had assumed that the conventional rock excavation method would be used for the works and therefore did not include any evaluation on the environmental impact of the alternative method of excavation by blasting. According to Carlyle, the proposed excavation by blasting would expedite the works period by three months and save about \$20 million. Carlyle would also bear the cost for the supplementary EIA study on the proposal which would be ready within this month. DS/ITB(3) assured members that if the study suggested that blasting should be pursued, the public would be consulted again. If the study confirmed that blasting should not be used, then, the rock excavation method would be adopted in the second half of 2000 as originally scheduled. This would not affect the progress of the Cyberport project.

32. In response to Miss Emily LAU's enquiry on whether the 15 multinational companies which had signed letters of intent to become anchor tenants were already established in Hong Kong, DS/ITB(3) advised that among these companies, she believed some, such as Softbank, Hikari Tsushin and CMGI did not have an office in Hong Kong. As regards the 96 companies which had registered interest in becoming tenants, 30 were overseas companies and some of them had not yet established any business in Hong Kong. The other 66 companies were local ones with offices in Hong Kong.

33. To enable members to better assess the attractiveness of the Cyberport in creating a strategic cluster of leading information technology and services companies, members requested the Administration to provide further details including the companies which had already/had not set up their offices in Hong Kong, the nature of their existing business and future business after becoming tenants of the Cyberport, and the sizes of their existing offices and new offices

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in the Cyberport. In response, DS/ITB(3) said that the Administration would try its best to provide the requested information. However, she pointed out that as some of the information was commercially sensitive, she would need to consult the companies concerned to see how much information could be released to the Panel.

34. In response to the Deputy Chairman, DS/ITB(3) advised members that the Administration was considering the institutional arrangement on selection of tenants and establishing admission criteria. Consideration might be given to setting up a special committee under the Hong Kong Cyberport Management Co. Ltd. (the Company) for these purposes. She also assured members that the admission criteria would be fair and the dual role of Pacific Century Group (PCG) as a tenant and main developer of the Project would be taken into account when establishing the criteria. As regards the board of directors of the Company, DS/ITB(3) confirmed that SITB and the Secretary for the Treasury had been appointed as the directors of the Company. Other board members would be appointed around mid-2000 upon grant of the development right of the Cyberport to PCG.

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35. On the Project Agreement with PCG, DS/ITB(3) advised that discussion between the Administration and PCG was under way. The Administration aimed to conclude the Agreement in mid 2000. She undertook to brief the Panel again on major provisions of the agreement signed with PCG.

VII. Entertainment Special Effects Bill

(The Legislative Council Brief issued by the Information Technology and Broadcasting Bureau (Ref: ITBB(CR)8/1/13(00) Pt.18) issued on 9 February 2000)

36. The Deputy Secretary for Information Technology and Broadcasting (2) (DS/ITB(2)) briefed members on the Entertainment Special Effects Bill which sought to establish a new regulatory framework to govern the use of dangerous goods for producing special effects in films, television programmes and theatrical performances. Under the proposed framework, a licensing authority, the Entertainment Special Effects Licensing Authority (the Authority), would be established to oversee the use of special effects materials in the production of entertainment special effects. A licensing system for special effects operators would also be set up and transitional arrangements would be in place to facilitate the migration of existing practitioners to the new regime.

37. The Chairman was concerned about the level of fees to be charged as he noted that the annual recurrent cost for the new regulatory regime was estimated at \$5 million and the fees charged would be set on a full-cost recovery basis. In this connection, DS/ITB(2) assured members that the new

system would streamline the licensing procedures which would keep administrative costs at reasonable levels. The Administration had also extended the validity period for movable store licences and special effects operator licences from one year to two years. This arrangement would help to reduce the financial burden on the licensees.

38. Miss CHOY So-yuk conveyed the industry's need for suitable locations for film shooting involving the production of special effects. In this connection, DS/ITB(2) advised that in future, the Authority, who would be the Commissioner for Television and Entertainment Licensing, would strike a balance between meeting the operational needs of the entertainment industry and protecting public safety in considering applications for discharge permits. She added that the Film Services Office (the Office) set up under the Television and Entertainment Licensing Authority had also been assisting the industry in exploring suitable shooting locations. An example was that the Office had succeeded in obtaining the Airport Authority's agreement to relax some of the restrictions on film shooting at the new airport at Chek Lap Kok.

39. As regards the legislative timetable, DS/ITB(2) advised that the Bill would be introduced into the Legislative Council for first and second readings on 23 February 2000.

40. The meeting ended at 4:25 pm.

Legislative Council Secretariat
9 March 2000