

立法會
Legislative Council

LC Paper No. CB(1) 850/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

**Bills Committee on
Telecommunications (Amendment) Bill 2002**

**Meeting on
Tuesday, 7 January 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
- Members absent** : Hon CHAN Kwok-keung
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok, JP
- Public officers attending** : Ms Eva CHENG, JP
Deputy Secretary for Commerce, Industry and
Technology
(Information Technology and Broadcasting)
- Miss Linda SO
Assistant Secretary for Commerce, Industry and
Technology
(Information Technology and Broadcasting)
- Mr M H AU, JP
Deputy Director-General
of Telecommunications
- Mr Edward WHITEHORN
Head, Competition Affairs Branch, Office of the
Telecommunications Authority

Mr Michael LAM
Senior Government Counsel, Department of Justice

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

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

I Confirmation of minutes

- LC Paper No. CB(1)567/02-03 - Minutes of fifth meeting on 3 December 2002
- LC Paper No. CB(1)583/02-03 - Minutes of sixth meeting on 12 December 2002

The minutes of the 5th and 6th meetings on 3 and 12 December 2002 respectively were confirmed.

II Meeting with the Administration

- LC Paper No. CB(1)597/02-03(01) - Information paper on "Explanatory Note on the Guidelines on the Competition Analysis of Mergers and Acquisitions in Telecommunications Markets" provided by the Administration
- LC Paper No. CB(3)593/01-02 - The Bill
- LC Paper No. CB(1)2256/01-02(03) - Marked-up copy of the Bill
- LC Paper No. CB(1)187/02-03(01) - Summary of deputations' views and the Administration's response
- LC Paper No. CB(1)625/02-03(01) - Information note on issues relating to the Guidelines on the Competition Analysis of Mergers and Acquisitions in Telecommunications Markets prepared by the legislative Council Secretariat

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Way forward

3. The Chairman suggested and members agreed to invite written views on the key proposals in the “Guidelines on matters to be taken into account in deciding whether a particular merger and acquisition activity would substantially lessen competition in a telecommunications market” (M&A Guidelines) from:

- (a) local wireline-based FTNS licensees;
- (b) local wireless FTNS licensees;
- (c) the local FTNS licensee over the cable network of Hong Kong Cable Television Ltd;
- (d) mobile carrier licensees;
- (e) Consumer Council;
- (f) Other organizations/individuals which had previously given views to the Bills Committee.

A general notice inviting submissions from interested parties on the same subject would also be posted on the Council's Website.

4. Members also agreed that if the parties so wished, they could attend the next meeting of the Bills Committee to be held on 21 January 2003 at 8:30 am to present their views on the subject.

Date of next meeting

5. Members noted that the next meeting of the Bills Committee would be held on Tuesday, 21 January 2003 at 8:30 am.

(Post-meeting note: At the written request of a number of operators and with the concurrence of the Chairman, the next meeting had been rescheduled to be held on Thursday, 27 February 2003 at 2:30 pm.)

III Any other business

6. There being no other business, the meeting ended at 10:20 am.

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
on Tuesday, 7 January 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 000148	Chairman	Introductory remarks and confirmation of minutes of meetings on 3 and 12 December 2002	
000149 - 003200	Administration	Power-point presentation introducing the key matters that should be addressed in the M&A Guidelines.	
003201 - 004122	Mr Howard YOUNG Administration	(a) Applicability of the policy objectives of the Bill to the telecommunications market in Hong Kong as some considered that sufficient operators and competition already existed. (b) The need to delineate functional markets such as business or residential fixed line services. (c) Time required for issuing a direction under proposed section 7P(1). (d) A proposed M&A could proceed pending TA's decision under proposed section 7P(5), though at the parties' own risk.	
004123 - 004727	Chairman Mr YEUNG Yiu-chung Administration	(a) A change in beneficial ownership or voting control resulting in holding less than 15% of the voting shares in a carrier licensee <u>or</u> a combined market share of less than 15% for an M&A would unlikely trigger TA's investigation for an M&A. (b) Rationale of setting the threshold of change in control at 15% of the voting shares.	
004728 - 005612	Ms Emily LAU Administration Mr Howard YOUNG Chairman	(a) Checks and balances on TA's power. (b) The need for TA to intervene if an M&A would remove a vigorous and effective competitor. (c) Consumers' views. (d) Whether there would be regulatory	

		concern if the acquirer of a carrier licensee was not from the telecommunications industry.	
005613 - 010728	Mr Eric LI Administration	(a) The need to provide certainty for M&A activities. (b) Whether the number of market players should be indicated in the M&A Guidelines. (c) Certain M&A activities might be pro-competition.	
010729 - 011146	Ms Emily LAU Administration Chairman	(a) The industry's input to the key proposals in the M&A Guidelines. (b) Current proposals in line with practices overseas.	
011147 - 011737	Dr David CHU Administration Chairman	(a) Whether it was an appropriate timing to introduce the present Bill as some opined that the telecommunications industry now needed consolidation. (b) Dr CHU's view that the Bill should be anti-monopoly and not pro-competition.	
011738 - 012226	Mr Eric LI Administration Chairman	(a) Mr Eric LI declared his interest as an independent, non-executive director of SmarTone Telecommunications Holdings Ltd. (b) The question on whether it was justified to raise the combined market shares after completing an M&A from the current proposed 15% to 30%.	
012227 - 012513	Ms Emily LAU	Upheld a pro-competition regulatory regime and urged expeditious scrutiny of the Bill.	
012514 - 013045	Mr Howard YOUNG Administration	Comparison of market share thresholds proposed in the M&A Guidelines and those in overseas jurisdictions.	
013046 - 013124	Chairman Dr David CHU	Timing of the Bill.	
013125 - 013747	Chairman Administration	(a) The company in ultimate control of the combined market shares of its subsidiaries exceeding the thresholds would be subject to TA's investigation under the Bill. (b) The need to separate the mobile and fixed line service markets. (c) Appellants could refer to decided cases on M&A in overseas jurisdictions when making submissions to the Telecommunications (Competition	

		Provisions) Appeal Board in appeal hearings.	
013748 - 014645	Chairman Ms Emily LAU Administration Mr Eric LI Mr Howard YOUNG	(a) <u>Members</u> agreed to invite written views on the key proposals in the M&A Guidelines from interested parties. A general notice inviting submissions on the same subject would also be posted on the Council's Website. (b) If the parties so wished, they could attend the next meeting of the Bills Committee to be held on 21 January 2003 at 8:30 am.	

Council Business Division 1
Legislative Council Secretariat
5 February 2003