

立法會
Legislative Council

LC Paper No. CB(1)1438/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/11/01/2

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

**Meeting on
Wednesday, 19 March 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon SIN Chung-kai (Chairman)
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Hon Fred LI Wah-ming, JP
Hon YEUNG Yiu-chung, BBS
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP

**Public officers
Attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry
Technology
(Information Technology and Broadcasting)

Ms Gracie FOO
Principal Assistant 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

Ms Sharon CHAN
Legislative Assistant 6

Action

I Confirmation of minutes

LC Paper No. CB(1)1120/02-03 - Minutes of 8th meeting on 27
February 2003

The minutes of 8th meeting on 27 February 2003 were confirmed.

II Meeting with the Administration

Meeting with the Administration

LC Paper No. CB(1)1168/02-03(01) -- Administration's proposed
(*tabled and subsequently circulated to* Committee Stage Amendments and
members on 20.3.2003) other improvements

LC Paper No. CB(1)1125/02-03(01) -- Summary of deputations' views on
key proposals in the M&A
Guidelines and Administration's
response

- 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)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 (revised)
- LC Paper No. CB(1)1168/02-03(02) -- Supplementary submission from Telstra International
(tabled and subsequently circulated to members on 20.3.2003)

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

Issues which required follow-up actions/consideration by the Administration

3. At the request of members, the Administration agreed:
- (a) to provide information on cases of how overseas authorities interpreted "substantially lessening competition" when assessing the effect of merger and acquisition (M&A) activities in a telecommunications market; and
 - (b) to study the submission of Telstra International tabled by Mr Howard YOUNG at the meeting and provide a response as appropriate.
4. Ms Emily LAU also remarked that the Administration might need to revisit the current sector-specific competition law policy (vis-a-vis the adoption of a general competition law) in view of the concern about sector specific competition law raised by the World Trade Organization and the adoption of general competition law by Singapore as mentioned by the Telstra International at the last Bills Committee meeting.

Way forward

Admin

5. Since members did not have the opportunity to peruse the Administration's paper "Administration's proposed Committee Stage Amendments and other improvements" (LC Paper No. CB(1)1168/02-03(01)) which was received very shortly before the meeting, members agreed to revisit key proposals in the paper at the next meeting. The Chairman also invited Assistant Legal Adviser 3 (ALA3) to study the proposed Committee Stage Amendments (CSAs) and other legal issues.

6. Members also agreed that deputations be invited to provide further views, if any, in writing on the Administration's latest response (LC Paper No. CB(1)1168/02-03(01)). Members authorized the Chairman to decide, subject to deputations' further views, whether to receive oral representations by the deputations at the next meeting of the Bills Committee to be held on 4 April 2003 at 10:45 am.

(Post-meeting note: On the instruction of the Chairman, all deputations which had previously submitted views to the Bills Committee had been invited to provide written submission if they had further comments on LC Paper No. CB(1)1168/02-03(01) and to indicate whether they would wish to attend the next meeting of the Bills Committee to present views.)

Date of next meeting

7. Members noted that the next meeting of the Bills Committee would be held on Friday, 4 April 2003 at 10:45 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 Wednesday, 30 April 2003 at 8:30 am)

III Any other business

8. There being no other business, the meeting ended at 11:50 am.

Appendix

**Proceedings of the meeting of the
Bills Committee on Telecommunications (Amendment) Bill 2002
Meeting on Wednesday, 19 March 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000228	Chairman	Introductory remarks and confirmation of minutes of meeting held on 27 February 2003.	
000229 - 001751	Chairman Administration	The Administration introduced the paper (LC Paper No. CB(1) 1168/02-03(01)).	
001752 - 003127	Mr Abraham SHEK Chairman Administration Mr Howard YOUNG	<p>(1) Members noted that LC Paper No. CB(1) 1168/02-03(01) was received very shortly before the meeting and agreed to study key proposals in the paper in greater detail at the next meeting.</p> <p>(2) Difference between the tests of "substantially lessening competition" under proposed section 7P and "substantially restricting competition" under sections 7K, 7L and 7N of the Telecommunications Ordinance and the tests adopted by overseas regulatory bodies.</p> <p>(3) Need to ensure a consistent and objective threshold for the criterion of "substantially" to avoid it being subject to arbitrary interpretation by the Telecommunications Authority (TA).</p> <p>(4) The Administration proposed to introduce CSAs to specify a list of factors which TA must take into account in determining whether a completed or proposed merger and acquisition (M&A) had, or was likely to have, the</p>	<p>(1) ALA3 to study the proposed CSAs and other legal issues.</p> <p>(2) The Administration to provide information on cases of how overseas authorities interpreted "substantially lessening competition" when assessing the effect of merger and acquisition (M&A) activities in a telecommunications market.</p>

		<p>effect of "substantially lessening competition" in a telecommunications market.</p> <p>(5) The qualitative aspect of "substantially lessening competition" in the telecommunications market when assessing M&As.</p>	
003128-004206	Mr Howard YOUNG Administration	<p>(1) Whether it was more appropriate for a board comprising several members, instead of TA as a single individual, to act as the reviewing authority for M&A activities in the telecommunications market.</p> <p>(2) Checks and balances on TA's power (Administration's paper LC Paper No. CB(1)1125/02-03(01) - issue no. 11) and the proposed CSAs to enhance checks and balances (paragraphs 11 to 17 of LC Paper No. CB(1)1168/02-03(01)).</p> <p>(3) The appropriateness of setting the threshold of a change in control at more than 15% of the voting shares in the licensee as a triggering point for TA's intervention, given the relatively small scale of Hong Kong's telecommunications market.</p>	
004207 - 005302	Ms Emily LAU Administration	<p>(1) The industry and other parties were welcomed to provide further comments, if any, on the Administration's latest response (LC paper No. CB(1)1168/02-03(01)).</p> <p>(2) Whilst supporting the Bill in principle, Ms Emily LAU also called for the introduction of a universal competition law.</p> <p>(3) The M&A Guidelines would set out the details on the application of the factors (proposed to be listed in a Schedule to the Bill)</p>	<p>The Administration to study the submission of Telstra International tabled by Mr Howard YOUNG at the meeting and provide a response as appropriate.</p>

		<p>for determining whether a completed or proposed M&A had, or was likely to have, the effect of substantially lessening competition in a telecommunications market.</p> <p>(4) Representations received by TA under proposed section 7P would be made open unless they contained sensitive information and TA decided otherwise.</p> <p>(5) An informal channel for TA's prior advice in M&A activities would be provided for parties concerned under the M&A Guidelines. Advice would be given on a confidential and non-committal basis.</p> <p>(6) A CSA would be introduced to expand the consultation requirement for TA to give all carrier licensees in the telecommunications market, and the acquirer of the carrier licensee concerned a reasonable opportunity to make representations to TA under proposed section 7P.</p>	
005302 - 005536	Mr Abraham SHEK Administration	The industry and other parties were welcomed to provide further comments, if any, on the Administration's paper (LC paper No. CB(1)1168/02-03(01)), in particular the part concerning enhancing checks and balances.	
005537 - 010124	Chairman Ms Emily LAU Mr Abraham SHEK	<p>(1) Members agreed to revisit key proposals in the Administration's paper (LC Paper No. CB(1) 1168/02-03(01)) at the next meeting.</p> <p>(2) Members also agreed that deputations be invited to provide further views, if any, in writing on the Administration's latest response (LC Paper No.</p>	

		CB(1)1168/02-03(01). (3) Members authorized the Chairman to decide, subject to deputations' further views, whether to receive oral representations by the deputations at the next meeting of the Bills Committee to be held on 4 April 2003 at 10:45 am.	
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Council Business Division 1
Legislative Council Secretariat
14 April 2003