

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

**Administration's Proposed
Committee Stage Amendments and Other Improvements**

I. Introduction

During previous Bills Committee meetings, we have explained to Members and the deputations our proposal of regulating merger and acquisition (M&A) in the telecommunications market in Hong Kong. Under our proposal, the Telecommunications (Amendment) Bill 2002 (the Bill) empowers the Telecommunications Authority (TA) to regulate M&A which has, or is likely to have, the effect of substantially lessening competition in a telecommunications market. The TA will issue detailed Guidelines on how he may administer the Bill to provide practical guidance to the industry and investors. Under section 6D(2A) of the Bill, he must consult the affected persons before issuing the Guidelines. In December 2002, we issued the “Explanatory Note on the Guidelines on the Competition Analysis of Mergers and Acquisitions in Telecommunications Market” (Explanatory Note) to explain key matters which we propose to specify in the draft Guidelines.

2. Our objectives of introducing the Bill, and the Guidelines, are to promote effective competition in the telecommunications market, and to provide a clear and comprehensive framework for regulating M&A. Over the years, regulation of M&A has been done through licence conditions. However, there is grey area in the regulatory framework particularly with respect to M&A at holding company level. Our proposal is therefore a necessary and important step to implement our pro-competition framework, and to provide clarity and transparency in the regulation of M&A.

3. Members and the deputations in general support the objective of promoting effective competition. Some advocate the setting up of an over-arching competition law. Others support the current sector-specific competition framework, but seek more clarity in the Bill as well as the

Guidelines. We note the request for improvement to our proposed regulatory framework as set out in the Bill and the Explanatory Note. Having duly considered the views of Members and the deputations, we would like to propose committee stage amendments (CSAs) to the Bill, and improvements to the draft Guidelines as set out below. A copy of the CSAs in revision mode to the Bill to facilitate Members' easy perusal is attached at Annex. Our objectives are to provide greater certainty to the industry and investors, and to enhance checks and balances of the process for regulating M&A.

II. CSAs

Providing Certainty to the Industry and Investors

4. Under the existing Bill, we adopt an *ex post* regulatory regime whereby TA conducts regulatory review after an M&A is completed. This approach is adopted in response to industry's views expressed during the consultation in April 2001. Alternatively, there is a channel for a carrier licensee to make an application to TA for prior consent to a proposed M&A on a voluntary basis. Any consent given will be binding on TA. After a careful review, we propose to introduce three sets of CSAs to take on board the deputations' suggestions to enhance certainty in our proposed framework.

Back-stop date

5. For a completed M&A, we have proposed in the Explanatory Note to set out in the draft Guidelines a back-stop date of 3 months beyond which TA is not empowered to start investigation. This is an important timeline to an M&A whose carrier licensee concerned has not sought prior consent, and will limit TA's power to start investigation into a completed M&A after the stipulated timeline of 3 months. The proposed back-stop date is shorter than those adopted in other jurisdictions with an *ex post* regime like UK (4 months) and Australia (3 years).

6. Noting the importance of the back-stop date to the industry and investors in undertaking an M&A, we accede to the deputations' request to specify the back-stop date of 3 months in the Bill in addition to the draft Guidelines.

Application for Prior Consent

7. For a proposed M&A, we note that besides the carrier licensee concerned, an acquirer may also wish to apply for prior consent from TA. This will give certainty to the acquirer before it proceeds with the M&A, especially for situations like hostile takeovers. Hence, we propose to introduce CSAs to expand the channel for application for prior consent to an acquirer. With the CSAs, both the carrier licensee concerned and the acquirer may submit the applications under section 7P(5) of the Bill.

Factors for consideration

8. In the light of the deputations' suggestion, we propose to introduce CSAs to specify a list of factors which TA must take into account in determining whether a completed or proposed M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market. The factors will include, but not be limited to:-

- (a) the height of barriers to entry to the telecommunications market;
- (b) the level of market concentration in the telecommunications market;
- (c) the degree of countervailing power in the telecommunications market;
- (d) the likelihood that the M&A would result in the acquirer or the carrier licensee being able to significantly and substantially increase prices or profit margins;

- (e) the dynamic characteristics of the telecommunications market, including growth, innovation and product differentiation;
- (f) the likelihood that the M&A would result in the removal from the market of a vigorous and effective competitor;
- (g) the extent to which effective competition remains or would remain in the telecommunications market after the M&A;
- (h) the nature and extent of vertical integration in the telecommunications market; and
- (i) the actual and potential level of import competition in the telecommunications market.

The above factors were set out in the Explanatory Note, and the deputations did not express any objection on requiring TA to consider these factors in assessing the competition effect of an M&A.

9. Given the rapid change in market conditions and technological advancement in the telecommunications market, the list should not be an exhaustive one so as to ensure that TA will not be prevented from considering any other new and relevant factors in the future. This is similar to overseas practices like Australia where only an inclusive list of factors is provided in the legislation.

10. With the CSAs, the industry and investors will be assured of the factors which TA must take into account in assessing the competition effect of an M&A. The TA will specify the detailed application of these factors in the draft Guidelines.

Enhancing Checks and Balances

11. Our proposal has built in sufficient checks and balances to ensure fair enforcement of the statutory provisions -

- (a) Before making a decision on the competition effect of an M&A (regardless of whether it is a completed M&A or an application for prior consent to a proposed M&A) after investigation, the TA is statutorily obliged to give a reasonable opportunity to the carrier licensee concerned to make representations.
- (b) After duly considering the representations, he must set out his decisions with reasons in writing under section 6A(3)(b) of the Telecommunications Ordinance. Such reasons will form the basis for appeal or judicial review.
- (c) There is an appeal channel to the Telecommunications (Competition Provisions) Appeal Board (in addition to judicial review). The Appeal Board is allowed to review the merits of the appeal case and is empowered to uphold, vary or quash the TA's decisions.

The above safeguards are the same as those for the existing fair competition provisions under sections 7K to 7N of the Telecommunications Ordinance.

12. Members and the deputations express concern on the appropriateness for the TA (vis-a-via a commission) to administer the Bill. As we explained at previous Bills Committee meetings, TA is the appropriate authority to regulate M&A in the telecommunications market under our sector-specific competition regime. The key is to have adequate checks and balances. To address Members' and the deputations' concern, we are prepared to improve our proposal by providing enhanced checks and balances.

Consultation Requirement

13. We propose to expand the consultation requirement for TA to give a reasonable opportunity to the carrier licensee concerned as mentioned in paragraph 11(a) to include all carrier licensees in the telecommunications market, and the acquirer of the carrier licensee

concerned. This will oblige TA to consider representations of all the carrier licensees, who are the forerunners in the market, and the acquirer who has a direct interest in the M&A in order to ensure fair enforcement of the Bill. This expanded arrangement will be supplemented by other improvements in procedural matters in the draft Guidelines as set out in paragraphs 20 to 22 below.

Appeal Mechanism

14. An efficient appeal mechanism provides effective checks on TA's power in administering the Bill. We therefore propose the following CSAs to improve the original proposal on appeal mechanism as set out in paragraph 11(c) above.

15. Firstly, we suggest to expand the scope of person who may make an appeal to the Telecommunications (Competition Provisions) Appeal Board. Apart from the carrier licensees, an acquirer of the relevant carrier licensee concerned may also lodge an appeal to the Telecommunications (Competition Provisions) Appeal Board. Under the improved proposal, all carrier licensees and the acquirer concerned will be able to give representations to TA, have their representations duly considered, and make an appeal if they are aggrieved.

16. Secondly, we propose to expand the scope of subject matters that can be appealed against. Under the existing Bill, if TA decides after investigation that a completed M&A has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, he may issue a *direction* to the carrier licensee concerned to direct it to take such actions as necessary to rectify the anti-competitive effect. This direction can be appealed against to the Telecommunications (Competition Provisions) Appeal Board. However, if TA decides after investigation that a completed M&A does not, or is not likely to, have such effect, this decision, which does not involve a direction, cannot be appealed against. Noting Members' and the deputations' concerns, we agree to expand the scope of appeal subject matters to include all TA's

published *decisions, opinions and directions* after investigation ^{Note 1}
(please see paragraph 20 and 21 below).

17. Thirdly, we will take on board the industry's suggestion to suspend TA's published opinions, directions or decisions once an appeal is lodged to the Telecommunications (Competition Provisions) Appeal Board. This is an important and effective check on TA's power as the said opinions, directions or decisions will be automatically suspended if an aggrieved party makes an appeal. We will propose a CSA to amend section 32N(3) of the Telecommunications Ordinance to this effect.

Minor CSAs

18. We propose to introduce minor CSAs to :-

- (a) amend clause 1 of the Bill to commence upon gazettal of the Bill those sections empowering TA to conduct consultation on and issue guidelines. The other sections of the Bill will take effect on a date to be appointed by TA when or after he has issued the Guidelines. This is to address Members' comment that after enactment of the Bill, the Guidelines should be ready (after industry consultation) before the Bill commences operation.
- (b) amend 7P(1), 7P(6)(b)(ii) and 7P(8)(b) to make textual amendments in the light of the advice of the Assistant Legal Adviser of the Legislative Council.

^{Note 1} It should be worth pointing out that M&As are normal business activities which frequently happen. Many of them do not raise any regulatory concern as to trigger any investigation or publication of any decision, direction or opinion. Otherwise, the M&A regulatory regime will cause unnecessary impediment to normal business transactions. Accordingly, these cases will not trigger any decision making process as to give rise to any opinion, direction or decision that is published or subject to appeal to the Telecommunications (Competition Provisions) Appeal Board. If a member of the public considers that a particular M&A should be investigated and considers that TA has not fulfilled his statutory duty, there would be the recourse for him to apply to court for an order of mandamus if he is not satisfied with the reply given by the TA for not initiating the investigation.

III. Improvements to TA's Guidelines

19. Other than CSAs, we also propose improvements on procedural matters which will be specified in TA's draft Guidelines. Again, the objectives are to provide greater certainty to the industry and investors, and to enhance checks and balances of the relevant process.

Clear, Transparent and Detailed Procedures

20. We will specify clear, transparent and detailed procedures in TA's draft Guidelines for the industry to follow. In particular, to enhance transparency, we will make any investigation by the TA public, whether it is an investigation into a completed M&A, or an investigation into a proposed M&A upon receipt of an application for prior consent.

21. The TA envisages that he will publish a notice on the OFTA website giving brief details of the M&A or the proposed M&A and inviting representation by a specified deadline. Anyone interested may submit their views in response to the notice. TA is obliged to consider their views if they are relevant considerations. Under section 6A(3)(a) of the Telecommunications Ordinance, TA is obliged to form an opinion or make a determination/direction/decision only on reasonable grounds and having regard to relevant considerations. After considering all the representations and comments, he will publish any directions, decisions and opinions, with reasons, on OFTA website. The industry and investors will be consulted on the detailed procedures after TA has issued the draft Guidelines.

22. We believe that the above procedures would ensure sufficient transparency and fulfil the due process requirement. We do not consider it necessary nor appropriate to conduct public hearings, as some deputations suggest. As explained at the Bills Committee meetings, some information on M&A matters may be confidential and not suitable for disclosure in a public hearing. Indeed, other than the Federal Communications Commission, we are not aware of any major

jurisdictions holding public hearings^{Note 2} for processing applications for approval of M&As.

Informal Channel for Advice

23. For a proposed M&A, the Bill has already provided a *formal* channel to seek TA's prior consent on a voluntary basis. Any investigation by TA when processing the request will be made public under our improved proposals in paragraphs 20 and 21 above. Some deputations, however, suggest that informal briefings would also be useful.

24. We appreciate the need for informal advice in some M&As. Indeed, overseas jurisdictions like UK also provide for an informal channel for parties concerned to seek prior advice. As such, we will create an *informal* channel for parties concerned to seek TA's prior advice on a confidential and non-committal basis, in addition to the formal channel provided for in the Bill. Any advice given under the informal channel should not be binding on TA, nor prejudice TA's duties and powers under the Bill. Unlike the formal channel for prior consent, this channel will be conducted in a flexible and light-handed manner to facilitate the M&A concerned, and subject to separate procedures to be specified in TA's draft Guidelines. The availability of both a formal and informal channel will provide flexibility to the industry and investors to decide on the best way to seek TA's consent or advice according to their individual needs.

IV. Conclusion

25. We have carefully considered Members and the deputations' views and taken on board suggestions on improvements as appropriate. We believe that our improved proposed regulatory framework will promote effective competition in the telecommunications market, and assist the industry and investors to make informed decisions on M&A

^{Note 2} Other than court proceedings.

matters. It will provide certainty to the industry and investors concerned, and proper checks and balances on TA's power.

26. Subject to Members' comments, we will finalize the CSAs. The TA will issue the draft Guidelines for consultation in accordance with the statutory provisions after enactment of the Bill.

Commerce, Industry and Technology Bureau
18 March 2003

A BILL

To

Amend the Telecommunications Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2002.

~~(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice published in the Gazette.~~

~~(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.~~

~~(3) Sections 3, 4, 5, 6 and 7 shall come into operation on a day to be appointed by the Telecommunications Authority by notice published in the Gazette.~~

1A. Interpretation

~~Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended, in the definition of "carrier licence", by repealing "the Schedule" and substituting "Schedule 1".~~

2. Guidelines

Section 6D ~~of the Telecommunications Ordinance (Cap. 106)~~ is amended –

~~(a) in subsection (2), by adding –~~

~~“(aa) specifying the matters that he shall take into account before forming an opinion under section 7P(1) or (6)(a) or (b);”;~~

(a) in subsection (2) –

(i) by repealing "就以下事項發出指引" and substituting "發出";

(ii) in paragraph (a), by repealing everything after "方式" and substituting "(包括發牌準則以及他擬考慮的其他有關事宜)的指引";

(iii) by adding –

"(aa) subject to subsection (2A), specifying the matters, including but not limited to those listed in Schedule 2, that he shall take into account before forming any opinion under section 7P(1) or (6)(a) or (b).";

(iv) in paragraph (b) –

(A) by adding "關於" before "第 14(6)(a)條";

(B) by repealing everything after "問題" and substituting "的指引，但該指引的發出須受第(3)款的規限。";

(b) by adding –

"(2A) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2)(aa), carry out such consultation as is reasonable in all the circumstances of the case with persons who may be affected by the operation of section 7P."

2A. Issue of licenses

Section 7(4) is amended by repealing "the Schedule" and substituting "Schedule 1".

3. Section added

The following is added –

"7P. Power of Authority to regulate changes in control exercised over carrier licensees, etc.

~~(1) Where the Authority is of the opinion that any change occurring after the commencement of this section in –~~

- ~~(a) the control exercised over a carrier licensee;~~
- ~~(b) the beneficial ownership of any of the voting shares in a carrier licensee; or~~
- ~~(c) the voting control of any of the voting shares in a carrier licensee;~~

~~has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may, by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate any such anti-competitive effect.~~

(1) Where, after the commencement of this section, there is a change in –

- (a) the control exercised over a carrier licensee;
- (b) the beneficial ownership of any of the voting shares in a carrier licensee; or
- (c) the voting control of any of the voting shares in a carrier licensee.

the Authority may –

~~(d) subject to subsection (1A), conduct such investigation as the Authority considers necessary to enable him to form an opinion as to whether or not the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market; and~~

~~(e) (where the Authority, after conducting such investigation, forms an opinion that the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market) by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate or avoid any such anti-competitive effect.~~

~~(1A) An investigation under subsection (1)(d) may only be begun within 3 months after the change occurs or within 3 months after the Authority knows, or ought reasonably to have known of, the change, as the case may be.~~

(2) The Authority shall, before ~~forming an opinion and issuing a direction forming any opinion or issuing any direction~~ under subsection (1) –

(a) give ~~the carrier licensee concerned~~ all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made ~~by the licensee~~ under paragraph (a).

(3) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (1)~~(e)~~, the action may include the procuring of modifications to –

- (a) the control exercised over the licensee;
- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(4) A carrier licensee served with a notice under subsection (1)(e) shall comply with the direction in the notice.

(5) Where there is a proposed change in –

- (a) the control exercised over a carrier licensee;
- (b) the beneficial ownership of any of the voting shares in a carrier licensee; or
- (c) the voting control of any of the voting shares in a carrier licensee,

the licensee or any interested person may apply in writing to the Authority for consent to the proposed change.

(6) Where the Authority, on receiving an application under subsection (5) –

- (a) ~~is of the forms an~~ opinion that the proposed change would not have, or not be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to give consent; or
- (b) ~~is of the forms an~~ opinion that the proposed change would have, or be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to –

- (i) refuse to give consent; or
- (ii) give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate or avoid any such anti-competitive effect.

(7) The Authority shall, before ~~forming an opinion under subsection (6)(b) and (if applicable) issuing a direction under subsection (6)(b)(ii)~~ forming any opinion, making any decision or issuing any direction under subsection (6) –

- (a) give ~~the carrier licensee concerned~~ all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and
- (b) consider the representations, if any, made ~~by the licensee~~ under paragraph (a).

(8) The Authority shall, by notice in writing served on ~~the carrier licensee concerned, inform the licensee~~ the carrier licensee referred to in subsection (5) and (where an interested person makes an application under that subsection) the interested person, inform the licensee and (if applicable) the person of –

- (a) the decision made under subsection (6)(a) or (b)(i) or (ii);
- (b) ~~in the case of~~ where a decision is made under subsection (6)(b)(ii), the action that the Authority directs the licensee to take.

(9) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (6)(b)(ii), the action may include the procuring of modifications to –

- (a) the control exercised over the licensee;

- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(10) Where a proposed change referred to in subsection (5) takes effect –

- (a) pursuant to the consent given by the Authority under subsection (6)(a); or
- (b) pursuant to the consent given, and in compliance with the direction issued, by the Authority under subsection (6)(b)(ii),

the Authority shall not issue a direction ~~in respect of the change~~ under subsection (1) (e) in respect of the change.

(11) The amount of any costs or expenses incurred by the Authority –

- (a) in making a decision under subsection (6)(a) or (b)(i) or (ii); or
- (b) in relation to the processing of an application made under subsection (5),

is recoverable as a debt due to the Authority from ~~the carrier licensee concerned~~ the carrier licensee, or the interested person, who makes the application under subsection (5).

(11A) The Authority shall publish –

- (a) where he forms any opinion or issues any direction under subsection (1), the opinion or direction; or

(b) where he forms any opinion, makes any decision or issues any direction under subsection (6), the opinion, decision or direction.

in such manner as he considers appropriate.

(12) For the purposes of subsections (1)(a) and (5)(a), there is a change in the control exercised over a carrier licensee if –

- (a) a person becomes a director or principal officer of the licensee;
- (b) a person becomes the beneficial owner of more than 15% of the voting shares in the licensee;
- (c) a person becomes a voting controller of more than 15% of the voting shares in the licensee; or
- (d) a person otherwise acquires the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.

(13) In this section –

"interested person" (有利害關係的人) means –

(a) in relation to a change referred to in subsection (1), a person who –

(i) does any of the acts referred to in subsection (12)(a), (b), (c) or (d) in relation to the carrier licensee concerned;

(ii) becomes the beneficial owner of the voting shares concerned; or

(iii) becomes the voting controller of the voting shares concerned;

(b) in relation to a proposed change referred to in subsection (5), a person who proposes to –

(i) do any of the acts referred to in subsection (12)(a), (b), (c) or (d) in relation to the carrier licensee concerned;

(ii) become the beneficial owner of the voting shares concerned; or

(iii) become the voting controller of the voting shares concerned;

"principal officer" (主要高級人員), in relation to a carrier licensee, means –

(a) the managing director of the licensee;

(b) the chief executive officer of the licensee;

(c) the chairman of the board of directors of the licensee; or

(d) any other person who, in respect of the licensee, performs functions similar to those performed by a person referred to in paragraph (a), (b) or (c);

"voting control" (表決控制權) means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a carrier licensee –

(a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;

- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a chargor of voting shares in a carrier licensee unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor under the charge of an intention to exercise the right to vote attaching to such voting shares;

"voting controller" (表決控權人) means a person who either alone or with one or more other persons holds voting control;

"voting shares" (有表決權股份) means shares in the carrier licensee which entitle the registered owner of such shares to vote at meetings of shareholders of the licensee.

(14) For the purposes of this section, the fact that the particular voting share or shares in relation to which a person is a voting controller cannot be identified is immaterial."

4. Part heading amended

The heading to Part VC is amended by repealing "AND 7N" and substituting ", 7N AND 7P".

5. Interpretation

Section 32L is amended –

- (a) in the definition of "appeal", by adding "~~or (1A)~~ ", (1A), (1B) or (1C)" after "32N(1)";
- (b) by repealing the definition of "appeal subject matter" and substituting –

"appeal subject matter" (標的事項) –

- (a) in relation to an appeal under section 32N(1), means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) –
 - (i) to the extent to which it relates to section 7K, 7L, 7M or 7N or any licence condition relating to any such section; and
 - (ii) which is the subject of the appeal;

~~(b) — in relation to an appeal under section 32N(1A), means a direction of the Authority issued under section 7P(1) or a decision of the Authority made under section 7P(6)(a) or (b)(i) or (ii);"~~

(b) in relation to an appeal under section 32N(1A), (1B) or (1C), means an opinion, direction or decision of the Authority published under section 7P(11A);".

6. Appeals to Appeal Board

Section 32N is amended ~~by adding~~ –

~~"(1A) Any carrier licensee aggrieved by a direction of the Authority issued under section 7P(1) or a decision of the Authority made under section 7P(6)(a) or (b)(i) or (ii) may appeal to the Appeal Board against the direction or decision (and whether or not the direction or decision was issued or made in respect of the licensee)."~~

(a) by adding –

"(1A) Any carrier licensee aggrieved by an opinion, direction or decision of the Authority published under section 7P(11A) may appeal to the Appeal Board against the opinion, direction or decision (and whether or not the opinion, direction or decision was formed, issued or made in respect of the licensee).

(1B) Any person who –

(a) is, in relation to a change referred to in section 7P(1), an interested person within the meaning of paragraph (a) of the definition of "interested person" in section 7P(13); and

(b) is aggrieved by an opinion or direction of the Authority published under section 7P(11A)(a) in respect of the change,
may appeal to the Appeal Board against the opinion or direction.

(1C) Any person who –

(a) is, in relation to a proposed change referred to in section 7P(5), an interested person within the meaning of paragraph (b) of the definition of "interested person" in section 7P(13);
and

(b) is aggrieved by an opinion, decision or direction of the Authority published under section 7P(11A)(b) in respect of the proposed change,

may appeal to the Appeal Board against the opinion, decision or direction.";

(b) in subsection (3), by adding "subsection (1A), (1B) or (1C) or" before "section 36C".

7. Procedure and powers of Appeal Board, etc.

Section 32O(2) is amended by repealing the full stop and substituting ", or before the opinion, direction or decision referred to in section 32N(1A), (1B) or (1C) was formed, issued or made, as the case may be.".

**8. Licences which are not carrier licences
within the meaning of section 2**

The Schedule is renumbered as Schedule 1.

9. Schedule 2 added

The following is added –

"SCHEDULE 2 [s. 6D(2)]

MATTERS TO BE TAKEN INTO ACCOUNT BY AUTHORITY

1. The height of barriers to entry to a telecommunications market.
2. The level of market concentration in a telecommunications market.
3. The degree of countervailing power in a telecommunications market.
4. The likelihood that the change would result in the carrier licensee or interested person being able to significantly and substantially increase prices or profit margins.
5. The dynamic characteristics of a telecommunications market, including growth, innovation and product differentiation.
6. The likelihood that the change would result in the removal from a telecommunications market of a vigorous and effective competitor.
7. The extent to which effective competition remains or would remain in a telecommunications market after the change.
8. The nature and extent of vertical integration in a telecommunications market.
9. The actual and potential level of import competition in a telecommunications market."