Bills Committee on Telecommunications (Amendment) Bill 2002

Summary of deputations' views and the Administration' s response

Issue	Organization/Individual	Concerns/Views	Administration' s Response
1. Sector-specific regulation on mergers and acquisitions (M&A) activities	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom, PCCW	♦ Disagrees with the proposal to expand sector-specific regulation to cover M&A. The telecommunications industry is already subject to comprehensive regulation to safeguard against anti-competitive conduct. Hong Kong would be the only jurisdiction to have sector-specific M&A regulation if the Bill is enacted. ♦ Singling out "carrier licensees" as the target of specific regulation is inappropriate in view of the convergence of all the innovative "information-based industries".	***Sector-specific regulation over M&A*** ♦ At present, there is no general competition law in Hong Kong. It is the Government's policy to adopt a sector-specific competition policy. For the telecommunications market, it is developing from a monopoly to a fully competitive one. In addition, the telecommunications sector is characterised by structural features which are not generally conducive to competition: high concentration levels, high barriers to entry because of high sunk costs and/or spectrum constraints, little potential for import competition and high levels of vertical integration. A sector-specific M&A regulation is necessary to prevent over-concentration of market power in a few operators. Consumers interest will be harmed if the level of competition in the market is reduced. It is therefore necessary to protect competition in the telecommunications market.
	Sunday	♦ Supports the objectives of the Bill and considers it necessary to ensure effective competition in the face of increasing likelihood of consolidation in the mobile service market. ♦ The Bill has not taken into account the damage to competition arising from	

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		vertical integration through the telecom industry. M&A outside the telecom industry may affect competition even though no ownership change has occurred between the mobile service companies themselves.	♦ The telecommunications market has already been subject to statutory competition safeguards under the Telecommunication (Amendment) Ordinance 2000 enacted by the LegCo. Under these first sector-specific statutory competition provisions, telecommunications licensees, as opposed to their counterparts in other sectors, are prohibited from engaging in anti-competitive conduct or abuse of dominant position.
	SmarTone	♦ Does not believe that the various structural features of the telecommunications industry as quoted by the Government are sufficient to justify the proposed Bill for sector-specific M&A regulation.	♦ Under the existing regulatory regime, there are already some regulation of M&A (e.g. transfer of licence, transfer of shares in a licence). Our proposal aims to address the present grey area where M&A takes place at holding company level, so as to introduce a transparent and explicit merger regulation regime.
	SmarTone, Telstra	♦ If M&A regulation is to be applied, it should be universal and not sector-specific.	
		♦ Does not see the need for sector-specific regulation as HK's mobile service market is already highly competitive.	♦ We recognise that many of the M&A do not raise regulatory concern. In fact, M&A are part of normal business activities and are economically beneficial to the society. Regulatory control will only be triggered if there is potential adverse effect on competition in the market.
	Consumer Council	♦ Supports a universal competition law.	
		♦ Agrees with the need for some industry-specific competition rules for the telecom industry.	

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	Professor XU Yan, Mr YEUNG Wai-sing (member of Eastern DC), TUG	♦ Support the Bill.	***Proposal for "carrier licensees" only / Convergence/Vertical integration*** ♦ The current proposal is to apply the M&A regulation to carrier licensees only because we are not aware of any current market factor such as high barrier to entry, high concentration level and scarcity of spectrum which may cause concern about possible over-concentration in the telecommunications market for non-carrier services. ♦ The jurisdiction of the Telecommunications Ordinance covers the telecommunications sector. Our Bill therefore aims to address competition concerns in the telecommunications sector. ♦ Our Bill will cover any M&A which may substantially lessen competition in a telecommunications market, including a M&A involving vertical integration Besides, telecommunications licensees are subject to regulation by the fair competition provisions (i.e. sections 7K and 7L of the Telecommunications Ordinance).
	The Law Society of Hong Kong	♦ Raises the issue of whether or not the scope of the Bill should be extended to deal with possible effect on competition of an ever-increasing overlap between the telecommunications and IT sectors as a result of "convergence".	

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2. Overseas regulatory practice for M&A	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom, SmarTone	♦ Overseas M&A regulatory regimes are administered by general competition regulators and not by a sector-specific regulator who lacks the specialist skills, experience and perspective required for competition matters. The administration of M&A regulatory regimes in overseas jurisdictions are currently being reviewed. ♦ In countries like US and Australia, the competition regulators which decide that a M & A is anti-competitive cannot act unilaterally and must prove their case before the court.	***Sector-specific regulator*** ♦ Hong Kong adopts the sector-specific approach where the industry regulator is appointed to administer the fair competition provisions (i.e. sections 7K – 7N of the Ordinance). In line with this approach and given that TA is the authority to regulate M&A under existing licence conditions, we propose that TA will also regulate M&A activities under the Bill. The decisions of the TA will be subject to review on merits by the Appeal Board. ♦ In countries which practise general competition law, e.g. the UK, the industry regulator (i.e. Oftel), due to its knowledge and expertise, also plays an important role and gives advice to the competition authority in regulating M&A activities in the telecommunications sector.
	Hutchison Telecom	♦ While other countries are considering relaxing regulatory controls to assist their telecommunications industry, Hong Kong acts to the contrary to add further regulatory burden to the industry	***Threshold***
	PCCW	♦ The Bill is inconsistent with global best practices. M&A in the telecom sector are dealt with by competition agencies/courts. e.g. in US, they are dealt with by the Department of Justice	♦ The criteria for triggering the Bill is whether the M&A will "substantially lessen competition" in a telecom market, as set out in the Bill. We will set out clearly in the guidelines what constitutes "substantially lessening competition" in a

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		and the Federal Trade Commission.	telecom market. This will give clear guidance to the industry and the investors.
	SmarTone	◆ It is common in overseas jurisdictions that the triggering point for seeking M&A approval is based on certain specific thresholds with regard to the size or significance of the transactions. e.g. the European Commission uses the merged entity's world-wide turnover as the threshold.	***Further regulatory burden*** ◆ Our proposal is a streamlined, ex post, regulatory measure which aims to regulate only M&A which may substantially lessen competition in a telecommunications market. We do not consider that it will impose undue regulatory burden on the licensee. ◆ Moreover, only M&A involving carrier licensees will be examined by the Authority. This has already provided an initial screening of M & A activities in the telecommunications sector. ◆ On PCCW's remark about other countries considering relaxing regulatory controls of the telecommunications industry, we understand that these relaxations are mainly on controls over prices and interconnection terms over the operators, and not M&A, as the market becomes more competitive.

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3. Ex-post regulatory regime	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom	♦ As TA's powers and discretion under the Bill to review M&A are so broad, licensees will feel even more compelled to obtain TA's prior approval to minimize the risk of unpredictable *ex post* outcomes. The proposed regulatory framework, although branded by the Administration as an ex post regime, will in effect operates as an ex ante one. This is demonstrated in the experience of overseas jurisdiction, such as in Australia, where a highly discretionary M&A regulation supposing to work ex post actually ends up operating ex ante.	♦ In formulating the proposal, we have reviewed merger and acquisition regulations in Australia, Canada, the European Community, the United Kingdom, Singapore and the United States. There is no universal rule as regards *ex ante* or *ex post* regulation adopted in these overseas jurisdictions. Some jurisdictions (e.g. EC, Canada and Singapore) require pre-notification/approval of changes in ownership or control. Some jurisdictions such as the UK and Australia, pre-notification is not mandatory although there is a formal or informal system for players in the industry to seek confirmation from the authorities prior to the transactions that the planned merger would not be in breach of the law.
	Consumer Council	♦ Accepts that mandating parties to seek prior approval is difficult to implement and may be a burden to the industry. ♦ TA should be given interim injunctive powers to prevent the continuation of M&A which raises regulatory concerns.	♦ We acknowledge that an *ex ante* regulation requiring pre-notification of ownership change may place an undue burden on the industry. On the suggestion of compulsory notification for transactions of a certain size, we believe that the vast majority of mergers pose no threat to competition. Our proposal is to adopt a minimal intervention approach by means of a transparent and efficient regulatory regime, which will facilitate the making of informed commercial decisions on merger and acquisition activities and

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	Professor XU Yan, Mr YEUNG Wai-sing (member of Eastern DC)	♦ Considers ex-post regulation by and large appropriate.	ensure efficient operation of the market. When in doubt, we have provided a formal channel in the Bill for consent to be sought on a voluntary basis, from the TA. This is in line with the practice of the UK and Australia.
	The Law Society of Hong Kong	♦ An ex-post regime may create uncertainty. Suggests that all large-scale transactions above a certain size be subject to mandatory pre-notification. This notification should be comprehensive and place the burden of supplying significant information directly on the parties. All other transactions, which are below the set threshold, should either be subject to the proposed voluntary ex-post regime or, preferably, subject to safe harbour treatment.	
4. Powers conferred on TA by the Bill	Hutchison Global, New World Telephone, Wharf New T&T, SmarTone	♦ The proposed power of TA under clause 3, proposed section 7P(1) of the Bill, to direct a licensee to take actions necessary to eliminate the anti-competitive effect of conduct is too broad and not subject to adequate checks and balances. ♦ The proposed powers to regulate market structure are unnecessary as the Telecommunications Ordinance (TO)	***Powers to investigate and make decisions*** ♦ Our proposed approach is in line with other investigation and decision making by the TA under the Telecommunications Ordinance, like interconnection and enforcement of competition safeguards under sections 7K to 7N. The TA will investigate any breaches of the Ordinance, afford a reasonable opportunity for the licensees concerned to make representation

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		already contain adequate provisions for the regulation of market conduct. TA may apply provisions under section 7 of TO for the regulation of anti-competitive practices in relation to M&A.	and then make a decision. Aggrieved licensees can appeal to the Telecommunications (Competition Provisions) Appeal Board. The TA's decisions may also be challenged through judicial review. We have built in sufficient checks and balances.
	Hutchison Telecom	♦ Rather than empowering TA to eliminate anti-competitive effect, it should suffice if the licensee takes the action TA considers necessary to avoid substantial lessening of competition.	♦ In drawing up our proposed approach, we have looked into the overseas practices. We note that overseas practice varies in this aspect:-
	PCCW	♦ The Bill gives excessive power to TA which would become the prosecutor, judge and jury as to whether a M&A transaction should proceed. There is no provision for TA to accept an undertaking by the licensee to take action to eliminate the perceived anti-competitive effects of the deal as an alternative to being subject to a formal direction. ♦ Recommends to follow the US/Australian model which places the burden on TA to prove its case against a particular M&A before the Appeal Board, and let the Board decides.	- Like TA in Hong Kong, the European Commission and the Singaporean regulatory authority has the power to investigate as well as to prohibit mergers and order divestiture. - In the UK, under the Enterprise Bill, the Competition Commission carries out detailed investigations and takes decisions (the Office of Fair Trading does the initial screening). - In Australia, US and Canada, the competition authorities carry out investigations but require approval from a court or other body to prohibit merger or order divestiture. This adds to the cost and complexity of the system for the TA and the parties involved. It requires a specialised

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	SmarTone	♦ The Bill proposes a framework in which TA has the powers to make the law (by issuing guidelines), to enforce the law, and to determine whether a licensee is in breach of the law. These unfettered powers are inconsistent with the rule of law of separation of powers.	court which can process cases quickly. We consider that this is not justified in a streamlined approach. It will be difficult to expect the courts to deal with economic issues associated with a merger expeditiously. Moreover, we propose that the Appeal Board would be the appeal channel against TA's decisions and directions.
	New World Mobility	♦ TA should not be both the policy maker and the ruling authority on competition. ♦ M & A regulation should be exercised by an independent body which can evaluate TA's and the merging parties' arguments.	***Acceptance of an undertaking by the licensee*** ♦ The provision of an undertaking could be one of the action that the TA directs the licensee to take in the notice under section 7P(1) or as a condition of consent under section 7P(6)(b)(ii).
5. Guidelines to be issued by TA on matters to be taken into account in deciding whether a particular M&A activity would substantially lessen competition in a telecommunications market	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom	♦ The draft guidelines attached to the Consultation Paper issued by the Administration in April 2002 set out an analytical framework in very general terms and placed excessive emphasis on market share and concentration ratios. If the final version of the guidelines remains unclear and incomplete, TA will have wider discretion in its interpretation and construction of the provisions of the	♦ Our proposal (i.e. setting out the test "substantially lessening competition" in the legislation, and supplementing the details in the guidelines) is in line with overseas practices. Guidelines serve the function of interpreting the law within the legislative boundary. Guidelines therefore mostly take the form as an administrative means to provide business with guidance on the approach the regulator will take in assessing mergers rather than in the form of a

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(Clause 2(a), proposed section 6D)		Bill. The Guidelines should be subsidiary legislation subject to scrutiny by LegCo.	subsidiary legislation. Such an approach is adopted in Australia, UK, EU, Singapore, USA and Canada.
	PCCW	♦ TA should provide the draft Guidelines to the Bills Committee and publish them for public consultation before the Bills Committee makes any decision on the Bill. Important matters such as whether joint ventures would fall within the Bill and whether non-compete covenants would be dealt with under the Bill should be addressed in the Guidelines.	♦ The Merger Guidelines attached to the Consultation Paper issued in April 2001 was intended to illustrate the framework based on which the TA will assess proposed M&A. The TA will have to carry out a full consultation pursuant to section 6D(2A) after the Bill is enacted. ***Joint Venture/Non-compete covenants*** ● The creation of a joint venture and the associated making of non-compete covenants will generally be caught by section 7K, if it involves anti-competitive conduct. Where the creation of such a joint venture involves acquiring beneficial ownership or control in a carrier licensee, this will be covered under the Bill. We will provide clear details in the guidelines.
	SmarTone	♦ Considers the Guidelines an essential and integral part of the proposed legislation. The Guidelines must be clear and specific enough to enable operators to make their own assessment of potential M&A transactions. The draft Guidelines should be released early for the Bills Committee's consideration. TA should not be given the power to change the Guidelines without approval of the LegCo.	***Continuity and Level of services*** ● Licensees are always subject to the licence condition of providing a service satisfactory to TA.

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	Sunday	♦ Essential that firm guidelines on how TA will implement the Bill be made available for industry consultation.	
	Telstra	♦ Guidelines should be subject to review by LegCo.	
	TUG	♦ Guidelines should address TUG's concern about the continuity and level of services caused as a result of M & A activities.	
6. The test of "substantially lessening competition" (Clause 3)	Hutchison Global, New World Telephone, Wharf New T&T	♦ The proposed competition test - "substantial lessening of competition" is inconsistent with the existing "dominance" test set out in TO and the relevant TA's statements.	***Competition Test*** ♦ The proposed test of "substantially lessening competition" is modelled on overseas legislation e.g. Australia, US and UK (as proposed in the Enterprise Bill). The competition test used for assessing M&A is distinguishable from the test used for assessing anti-competitive behaviour e.g. cartel and abuse of dominant position. For example, the UK Enterprise Bill proposes to use the competition test of "substantially lessening competition" for assessing the effect of a M&A on competition. The UK Competition Act, on the other hand, uses the competition test based on the "object or
	Telstra, Consumer Council	♦ The competition test under existing section 7K (i.e. substantially restricting competition) and proposed section 7P (i.e. substantially lessening competition) should be consistent.	

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	PCCW	♦ The test of "substantially lessening competition" is an extremely subjective test and gives TA a great deal of discretion in determining what M&A transactions should be prohibited. It is not sufficient to deal with this concept in the Guidelines and the Administration should conduct consultation on the definition of the concept.	effect of preventing, restricting or distorting competition" and the abuse of dominant position for assessing anti-competitive behaviour. ♦ We propose to follow the competition test commonly used in overseas jurisdictions so that international practices and jurisprudence can be used as references. The competition test for assessing M&A is therefore distinguished from the competition test used for assessing anti-competitive behaviour under sections 7K –7N. ***In the opinion of the TA*** ♦ The words "where the TA is in the opinion that" specify who is to take the decision under section 7P(1). The TA will issue guidelines on the relevant considerations in forming his opinion. Section 6A(3)(b) requires TA to provide reasons in writing for his decision which are subject to appeal and judicial review. Such reasons would form the basis for the appeal and judicial review. Thus there are sufficient safeguards in the legislation.
	SmarTone	♦ The use of subjective rather than objective test of "substantially lessening competition" will create regulatory uncertainty and make the proposed regulatory an ex ante rather than an ex post regime in practice.	
	Sunday	♦ Concerned about the absence of definition of the expression in the Bill. ♦ The Bill should provide for a mechanism to force disclosure of beneficial interest held by anonymous trusts and holding companies which may also lessen competition.	

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	Telstra	♦ There should be objective criteria for the test under proposed section 7P(1) and not just "in the opinion of TA". ♦ TA's power to issue notice under section 7P(1) should be limited to anti-competitive effect in Hong Kong and not overseas. Moreover, a M&A which "substantially lessens competition" may bring other benefits (e.g. acquisition of a failing carrier which is the only carrier in a particular market segment) and hence not necessarily be contrary to public interest. TA should only be permitted to issue a direction if it is in the public interest to do so. ♦ Proposed section 7P(12) too broad. The SFC Code on Takeovers and Mergers provides an appropriate reference point for determining when a change of control occurs.	♦ The same subjective test is used in the UK Enterprise Bill, whose test is whether the OFT "believes" there may be a substantial lessening of competition. In other jurisdictions there is no reference to the opinion of the regulator. ♦ The same subjective test is also used in other provisions of the Telecommunications Ordinance like section 7K (a licensee shall not engage in conduct which in the opinion of TA has anti-competitive effect) and section 7L (a licensee is in a dominant position when, in the opinion of TA, it is able to act without significant competitive constraint from its competitors and customers). ***Pro-competitive factor*** ♦ Pro-competitive factors e.g. efficiencies will be taken into account in the competition analysis for assessing the effect of a M&A on competition. There are also analysis of the pro-competitive factors in the M&A guidelines issued by the US and Australian authorities.
	The Law Society of Hong Kong	♦ The test of "substantially lessening competition" should include consideration of pro-competitive, countervailing factors. These factors should include efficiencies (or	

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		economies of scale) as a result of the merger.	***"Substantially Lessening Competition" may not be in the interests of the public***
	New World Mobility	♦ Concerned about the lack of a clear definition of the expression and the relevant test to be applied.	♦ We consider our proposal to allow TA to issue directions if there is a "substantially lessening of competition" is appropriate. It would be in the interest of the consumers/public to promote effective competition. The benefits that may arise from the two types of M&A suggested by Telstra (i.e. acquisition of a failing carrier which is the only service provider in a particular market segment, and improving HK's international competitiveness) are pro-competitive factors which TA will take into account in the competition analysis. There is no need to add in a public interest consideration.
7. Existing licence conditions which are covered by proposed section 7P	Telstra	♦ If proposed section 7P is enacted, all existing licence conditions which deal with changes in control should be void.	♦ After enactment, we shall seek amendment, by mutual consent, to carrier licence conditions which are covered by our Bill.
8. Need to specify in law a time limit within which TA must take a decision on a completed M&A, or	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom, PCCW	♦ At the pre-approval stage, there is no statutory timetable within which TA must assess a proposed merger or acquisition. There is also no back-stop date after which TA is no longer able to unwind or modify a merger or	♦ We will specify the time limits in the guidelines after consultation with the industry. There will be a no back-stop date set out in the guidelines. In making proposal on the time limits in the guidelines for consultation, we will make reference to time

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approve an application		acquisition. ♦ Statutory time limit must be established for both initiating and completing any investigation and assessment of M&A. As speed is of essence in these transactions, the period should be as short as possible.	limits adopted overseas.
	SmarTone	♦ Necessary to specify the time limit for TA to issue the direction for the licensee to take action to eliminate anti-competitive effect and the limit should be set as two weeks from the completion date of the M&A transaction. ♦ Suggests to set timeframe for TA to complete the approval procedures for M&A transactions.	
	Telstra	♦ Suggests to include a time limit of, say, 60 days in which TA may exercise his power under proposed section 7P(1). ● The Bill should set out clearly the procedures (including timeframe) to be followed by the applicant and TA for pre-approval of M & A.	
9. Recovery by TA of	Hutchison Global,	♦ Given that the licensees are already	♦ The Office of the Telecommunications

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costs and expenses (Clause 3, proposed section 7P(11))	New World Telephone, Wharf New T&T, Hutchison Telecom	charged very high licence fees for TA's administration work, it is improper to further grant unfettered rights to TA to incur costs for the review of M&A transactions and yet seek to recoup these from the relevant licensees.	Authority (OFTA) is operating as a trading fund with the financial objective that it shall be funded from the income generated from the services it provided. We are therefore legally bound to recover any costs incurred in providing a service, including administering the Bill. We note that Australian, UK and Canadian competition authorities all levy charges for processing M&A requests.
	PCCW Limited	♦ Recovery of cost and expenses by TA is not acceptable as TA will not add any staff for M&A regulation. Recommends that if any costs are to be recovered, this should be through a specific maximum fee which is laid down by law.	♦ Section 7P(11) under the Bill is modelled on existing section 36A(6) of the Telecommunications Ordinance for collecting fees for making determination on interconnection, which is based on a cost-recovery principle.
	SmarTone	♦ No need to recover cost from the licensees and should any cost be recovered, it should be in a form of fixed application fee.	♦ We will set the fees in a transparent manner based on cost-recovery principle
	Telstra	♦ Suggests that a fixed application fee to be chargeable under proposed section 7P(11).	
	New World Mobility	♦ Suggests a fixed fee be charged. The	

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		basis for a variable fee, if to be charged, should be set out in the Bill.	
10. TA's resources to deal with M&A matters	Hutchison Global, New World Telephone, Wharf New T&T, PCCW	♦ TA would better spend its efforts on improving the administration of the current regulatory regime rather than embarking on the new complex area of M&A regulation which involves legal and economic issues that TA may not have the necessary expertise and perspective to deal with as an industry specific regulator. In overseas jurisdictions, M&A regulation are taken up by public bodies with the considerable sector-wide competition expertise and resources.	♦ We disagree with the view. The TA has been enforcing the competition provisions in the Telecommunications Ordinance since the enactment of the Telecommunications (Amendment) Ordinance 2000. It has recruited the necessary economic and legal expertise to assist him to deliver his duties.
11. Definition of voting control and types of transaction affected (Clause 3, proposed section 7P(13))	Hutchison Global, New World Telephone, Wharf New T&T, Hutchison Telecom, PCCW, SmarTone PCCW	♦ The term "change of control" is defined broadly in clause 3 of the Bill to include a change of director or principal officer of the licensee or if a person becomes the beneficial owner or voting controller of 15% or more of the voting share in the licensee. This definition is inconsistent with the SFC Code on Takeovers and Mergers, and ignores the factual reality. ♦ Internal corporate restructuring within	***"15%" threshold*** ♦ We have set the threshold at 15% having regard to a number of existing laws : - Section 13A in Telecommunications Ordinance on the definition of "exercises control" of sound broadcast licensees; - Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation in the definitions for "Participation" and "Indirect Interest"

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		the same group of companies, where the control of a company within the group is not shared or transferred to third parties outside the group, should be excluded from the definition of "change of control".	related to "Connected Bidders" ◆ The threshold at 30% in the SFC Code on Takeover is for the protection of minority shareholders. We do not find it a relevant comparison. ***Principal officer/director***
	The Law Society of Hong Kong	◆ The Bill will apply not only to changes in control, but also any changes in ownership, if they have, or likely to have, anti-competition effect. This will bring even acquisitions of nominal share purchases or accretions not resulting in a change in control within the purview of the proposed merger control.	◆ The "principal officer" (e.g. Managing Director, Chairman of Board and Chief Executive Officer, or equivalent) and "director" may play a decisive role in the conduct of business of a corporation. Any change of principal officer or director may have a significant effect on the change of control. It is crucial to note that the TA will not be empowered to intervene in any change of "director" or "principal officer". The TA may intervene only if such a change would "substantially lessen competition". ***Corporate Restructuring*** ◆ The TA will not be empowered to intervene in an internal corporate restructuring if the restructuring will not have the effect of "substantially lessening competition", even if the restructure falls within the definition of "change in control".

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			Change in ownership ♦ Change in ownership is covered under section 7P(1)(b).
12. Jurisdiction of the Telecommunications (Competition Provisions) Appeal Board (Clause 6, proposed section 32L and 32 N)	Hutchison Global, New World Telephone, Wharf New T&T, PCCW	♦ It is crucial to provide the Appeal Board with the necessary powers to fully and effectively review TA's decisions, such as the power to suspend the decisions until the Board makes a final ruling on the merits of such decisions.	***Powers of Appeal Board*** ♦ The appeal board has the power to review the TA's decision "on merit" and not just on the point of law. ♦ We shall amend the Bill to include an amendment to section 32N such that an appeal to the Board will suspend the operation of the direction of the TA under section 7P(1) or a decision of the TA under section 7P(6)(a) or (b)(i) or (ii).
	SmarTone	♦ The lead time required for the appeal procedure will discourage aggrieved licensees from appealing. Moreover, the current appeal mechanism will shift the burden of proof to the merging entities. ♦ The effectiveness of the appeal mechanism is questionable since an appeal is not capable of suspending the operation of the appeal subject matter.	
	Telstra	♦ Appeals to the Appeal Board should not only be confined to those on points of law and the 14-day period within	

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		which an appeal must be lodged should be extended to 4 weeks.	
	New World Mobility	♦ TA's decision on M&A should be subject to appeal to the Appeal Board. ♦ If an independent ruling authority is established, the appeal process to the Appeal Board will not be required.	
13. Compliance obligations on carrier licensees	New World Mobility	♦ As transfer of control of ownership may occur a few levels above the licensees, the obligation to get clearance from the ruling body should rest with the seller and/or purchaser of the direct or indirect interest in a licensee. ♦ Considers that the meaning of "carrier licensee" should be included in the Bill.	♦ Our Bill provides a channel for carrier licensees to seek TA's prior consent on a voluntary basis. Taking into accounts the views of the submissions, we are seeking legal advice on the question of allowing a person who proposes to acquire ownership/control of a carrier licensee to apply for TA's consent. ¨ "Carrier licensee" is defined in the Telecommunications Ordinance.

Abbreviations : Hutchison Global Communications Limited (Hutchison Global)

New World Telephone Limited (New World Telephone)
Wharf New T & T Limited (Wharf New T & T)
Hutchison Telecommunications (HK) Limited (Hutchison Telecom)
PCCW Limited (PCCW)
SmarTone Mobile Communications Limited (SmarTone)
Telstra Corporation Limited (Telstra)
Hong Kong Telecommunication Users Group (TUG)

Council Business Division 1, Legislative Council Secretariat and
Commerce, Industry and Technology Bureau

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