

# 立法會 *Legislative Council*

LC Paper No. CB(1)2079/03-04  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/ITB/1

## **Panel on Information Technology and Broadcasting**

**Minutes of meeting**  
**held on Monday, 19 April 2004, at 8:30 am**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon SIN Chung-kai (Chairman)  
Hon Howard YOUNG, SBS, JP (Deputy Chairman)  
Dr Hon David CHU Yu-lin, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon MA Fung-kwok, JP

**Members absent** : Dr Hon Eric LI Ka-cheung, GBS, JP  
Hon CHAN Kwok-keung, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon YEUNG Yiu-chung, BBS  
Dr Hon LAW Chi-kwong, JP

**Public officers attending** : Agenda Item IV, V and VI  
  
Mrs Marion LAI, JP  
Deputy Secretary for Commerce, Industry and  
Technology (Communications and Technology)

### Agenda Item V and VI

Mr Tony LI  
Principal Assistant Secretary for Commerce, Industry  
and Technology (Communications and Technology)  
(E)

Agenda Item IV

Mr Eddie CHEUNG

Principal Assistant Secretary for Commerce, Industry  
and Technology (Communications and Technology)  
(A)

Ms Mimi LEE

Principal Assistant Secretary for Education and  
Manpower (Quality Education)

Mr LO Man-fai

Senior Education Officer (Educational Television)  
Education and Manpower Bureau

Agenda Item V

Mr K S WONG

Assistant Director of Telecommunications

Agenda Item VI

Ms Gracie FOO

Deputy Director-General of Telecommunications

Mr Edward WHITEHORN

Head, Competition Affairs Branch  
Office of the Telecommunications Authority

Ms Jenny CHUNG

Head, Legal Support  
Office of the Telecommunications Authority

Mr Peter MACMILLAN

Principal Regulatory Affairs Manager (Competition)  
Office of the Telecommunications Authority

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

**Staff in attendance** : Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Debbie YAU

Senior Council Secretary (1)1

Ms Sharon CHAN  
Legislative Assistant (1)6

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**I Confirmation of minutes and matters arising**

LC Paper No. CB(1)1448/03-04 -- Minutes of the Panel meeting  
on 25 February 2004

The minutes of the Panel meeting on 25 February 2004 were confirmed.

**II Date and items for discussion for next meeting**

LC Paper No. CB(1)1507/03-04(01) -- List of outstanding items for  
discussion

LC Paper No. CB(1)1507/03-04(02) -- List of follow-up actions

2. Members agreed to discuss the following items proposed by the  
Administration at the next Panel meeting on 10 May 2004:

- (a) Proposed merger of the Information Technology Services  
Department and certain functions of the Communications and  
Technology Branch of the Commerce, Industry and Technology  
Bureau and the proposed creation of a Chief Information Officer  
post in the Government; and
- (b) Review on IT Easy Link services.

**III Papers issued since last meeting**

LC Paper No. CB(1)1349/03-04 -- Second Consultation on  
Licensing of Mobile  
Services on Expiry of  
Existing Licences for Second  
Generation Mobile Services  
provided by the  
Administration (English  
version only)

- |                              |   |
|------------------------------|---|
| LC Paper No. CB(1)1400/03-04 | -- Letter dated 13 March 2004 from the "Anti-Pornographic & Violence Media Campaign" (Chinese version only) |
| LC Paper No. CB(1)1440/03-04 | -- Letter dated 26 February 2004 from Lovells (English version only)  |

3. Members noted the above information papers issued since last meeting.

**IV Issues relating to the development of Radio Television Hong Kong**

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|----------------------------------|--|
| LC Paper No. CB(1)1507/03-04(03) | -- Information paper provided by the Administration  |
| LC Paper No. CB(1)1509/03-04     | -- Information note on issues relating to Radio Television Hong Kong prepared by the Secretariat                               |
| LC Paper No. CB(1)1216/03-04(01) | -- Previous submission from Radio Television Hong Kong on Digital Terrestrial Broadcasting in Hong Kong (English version only) |
| LC Paper No. CB(1)1507/03-04(04) | -- Extract of Hansard for Council meeting on 18 February 2004 (Motion debate on Broadcasting Policy)                           |
| LC Paper No. CB(3)518/03-04      | -- The Administration's progress report in response to the motion carried at the Council meeting on 18 February 2004           |

4. The Chairman informed members that this item had been included on the agenda following the Panel's visit to Radio Television Hong Kong (RTHK) on 13 January 2004. Members had agreed that specific issues relating to RTHK's accommodation needs, programme content licensing as well as the development of school educational television (ETV) service should be further considered by the Panel. The Chairman said that as the aforesaid issues were related to RTHK,

he had requested the Commerce, Industry and Technology Bureau (CITB) via the Secretariat to include representatives from RTHK in the attendance of government representatives. CITB replied that after discussing with RTHK, both of them agreed that attendance by CITB and the Education and Manpower Bureau (EMB) would be adequate for discussion of this item. Members noted that the invitation letters dated 10 March 2004 and 14 April 2004 issued by the Secretariat to CITB and the latter's written reply were tabled at the meeting.

#### Accommodation needs

5. Referring to the overcrowded conditions she had observed during the Panel's visit to RTHK on 13 January 2004, Ms Emily LAU was concerned about the way forward for the proposed Broadcasting House. Ms LAU noted from the background brief prepared by the Secretariat that according to the information made available to the Public Works Subcommittee in January 2003, the proposed project was originally scheduled to commence in the third quarter of 2003 for completion in the second quarter of 2008. Subsequently, the schedule of accommodation for the proposed Broadcasting House had been reviewed and scaled down. Noting from the Secretariat's background brief that as revealed in RTHK's publication, the latest proposed net operational floor area for the new building had been reduced from 26 500m<sup>2</sup> to about 18 000m<sup>2</sup>, Ms LAU sought explanation on the background and reasons for the reduction. She also enquired if the reduction was due to changes in staffing establishment and if yes, she sought relevant information on staffing establishment, as well as the estimated cost of the project.

6. In response, DSCIT(CT) advised that currently, RTHK's broadcasting headquarters were accommodated in three separate buildings on Broadcast Drive in Kowloon. RTHK's proposal was to reprovise all its facilities and offices to a new, purpose-built building at Tseung Kwan O Area 86 since most facilities in the existing headquarters, which were built some 30 years ago, were outdated. DSCIT(CT) pointed out that the net operational floor area of the proposed Broadcasting House had been revised having regard to a number of factors such as changes in operational needs and reduction in staff. Referring to the Controlling Officer's Report in the Estimates for the year ending 31 March 2005, she informed members that there were 621 posts on the permanent establishment of RTHK as at 31 March 2004, as compared to 670 posts in 2001. It was expected that the number of posts would be further reduced to 579 in 2005. Nevertheless, as requested by members, DSCIT(CT) would provide the Panel with further information on the background and reasons for the reduction in proposed net operational floor area for the proposed Broadcasting House.

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7. On the estimated cost of the proposed project, DSCIT(CT) advised that the estimated cost for RTHK's reprovise project was about \$1.3 billion. As the estimated cost would be reviewed and revised according to the actual project scope and the price levels of the days, DSCIT(CT) said that a revised estimate would be worked out in due course when the way forward for the project was confirmed. In this connection, Ms Emily LAU queried why the Administration

had not provided information on how the original estimated cost of \$1.3 billion would be adjusted, given that the proposed net operational floor area for the proposed new building had already been reduced. She stressed that the Administration should make available the information in full, including any variations arising from changing requirements, for members' consideration at the meeting. Mr Albert CHAN shared Ms LAU's view. He considered it strange that the estimated cost of a proposed capital works project had not been revised in the light of changes in accommodation requirements. He was also gravely concerned that the proposed project might have been shelved for political reasons.

8. Responding to members' concern about the time-table for taking forward the project, DSCIT(CT) said that no firm time-table could be provided at this stage. However, CITB recognized RTHK's accommodation needs and would follow the established procedures to apply for the necessary resource to take forward the project in due course.

9. Recalling that on some past occasions, the Administration had indicated the possibility of making available prime sites for sale with a view to alleviating the current fiscal problem, the Chairman asked if the site currently occupied by RTHK at Broadcast Drive would be put up for sale if RTHK was reprovisioned to the proposed Broadcasting House in Tseung Kwan O. In reply, DSCIT(CT) said that if the proposed reprovisioning was taken forward and the existing site on Broadcast Drive was vacated by RTHK, the Administration would certainly consider different options for using the site.

#### School Educational Television Service

10. On the delivery mode, Mr Howard YOUNG agreed that school ETV service should not be delivered through live TV broadcast because it was very inflexible to require students to view the programmes at fixed time-slots. He enquired about the timing in phasing out live broadcast of school ETV service.

11. In response, the Principal Assistant Secretary for Education and Manpower (Quality Education) (PASEM(QE)) explained that according to a survey conducted by the EMB in May 2003, among the teachers using school ETV programmes, only about 2% and 19% of secondary and primary schools respectively relied on live broadcasts. In response to feedback from teachers, EMB had been distributing secondary school ETV programmes on video compact discs (VCDs) and stopped live broadcast to secondary school since September 2003. On the advice of the Standing Committee on the Development of the ETV Service, live TV broadcast of ETV programmes for primary schools was maintained for the time being but would be subject to review. At present, ETV programmes for primary schools were also available on VCDs and on the Internet. As more and more schools were using the VCDs provided by EMB for greater flexibility and easier access, EMB envisaged that live broadcasts of school ETV service would eventually be phased out but no time-table had been set.

12. Mr Howard YOUNG enquired about the source of funding for producing VCDs of ETV programmes. In reply, PASEM(QE) said that EMB was the responsible policy and resource bureau for school ETV service while RTHK was the production agent. EMB had been reviewing with RTHK on ways to enhance the cost-effectiveness of ETV productions including outsourcing such productions to the private sector.

13. Ms Emily LAU declared that she was a member of the Public Accounts Committee (PAC). She noted that to enhance cost-effectiveness, EMB would implement measures to help reduce the number of staff in its school ETV team from 22 to 13. She enquired about the progress of outsourcing production work as recommended by PAC.

14. In response, PASEM(QE) stressed that EMB was keen to follow up PAC's recommendations. In fact, some production companies had offered to produce ETV programmes for EMB. However, she pointed out that as members were aware, the outsourcing of production work had staffing implications on RTHK, in particular the staff currently working in the ETV section of RTHK. As such, the progress of outsourcing of productions had been slow and the Administration had not been able to achieve the target of 25% outsourcing in 2003-04. PASEM(QE) further informed members that RTHK was looking into various ways to address the potential staffing problem as a result of outsourcing. In this regard, Ms Emily LAU urged that under the principle of "big market and small government", the Government should not compete with the private sector for business opportunities. Nevertheless, she agreed that the relevant bureaux and government departments should take measures and where practicable, provide incentives, to address the concerns of the staff of RTHK about their employment prospect following implementation of outsourcing.

15. On the question of viewing rate, PASEM(QE) advised that about 70% of primary school students viewed ETV programmes. She however cautioned that the high percentage could not be taken to imply that ETV programme alone would provide effective education. Other factors such as the use of information technology (IT) and teaching methodology etc were also very important in leading to effective and quality education. Nevertheless, to enable ETV programmes to become more appealing to students, EMB was considering to supplement the programmes with interactive, multi-media content distributed on VCDs or via the Internet.

16. Noting that RTHK's estimated financial provision for the programme area of "School ETV Production" in 2004-05 was \$42 million, Mr MA Fung-kwok sought information on the production cost per episode. Having regard to members' concerns about the cost-effectiveness of school ETV service, Mr MA was concerned about the Administration's view on the viability of the ETV service *per se*.

17. In response, PASEM(QE) pointed out that the number of hours of output of ETV programmes planned for 2004-05 was about 50 and the cost of production per hour was about \$840,000. Unlike other productions of RTHK, which normally lasted for one or half an hour, each episode of ETV programmes lasted for about 15 minutes which inevitably led to higher hourly cost of production. PASEM(QE) stressed that all along, both EMB and RTHK had been striving to contain and lower the cost of ETV productions.

18. Mr MA Fung-kwok commented that the level of production cost for ETV programmes was unduly high and remarked that consideration should be given to commercializing ETV productions. In response, PASEM(QE) remarked that although ETV programme service had all along been delivered free of charge, to widen the access of such service to the community, EMB was looking at ways to sell VCDs at a reasonable price. She added that ETV programmes could also be marketed to publishers or IT educational content producers which might edit or re-package the programmes into final educational products for sale. While licensing the ETV programme content would generate income, PASEM(QE) pointed out that when appropriating the income among government departments, it was necessary to take into consideration that the Government as a whole, not RTHK alone, owned the intellectual property right of the ETV programmes.

#### Content Licensing

19. Noting that the annual fees generated by licensing the content produced by RTHK in the past five years ranged from \$1.64 million to \$6.9 million, Mr MA Fung-kwok considered the levels of income very low, given that RTHK's programmes were of high quality and the current market demand for quality content was great. Noting that RTHK incurred an extra direct cost of about \$600,000 annually in the process of licensing its content, not to mention the indirect costs incurred, Mr MA considered that the return on content licensing was very poor. He sought further information on the breakdown of licence fee received by RTHK by programme category per hour. He further remarked that even an average industry operator could have raised income much above the annual fees currently generated. He urged the Administration to re-consider the marketing strategy in commercializing RTHK's productions.

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20. In response, DSCIT(CT) pointed out that the average production cost per hour of RTHK's television programmes was about \$380,000. She agreed to provide the information requested by Mr MA after the meeting.

21. Mr MA Fung-kwok noted that under the present arrangement, the cost incurred in the process of content licensing would be borne by the department concerned while the licence fees thus generated must be returned to the general revenue of the Government. He considered that this would discourage government departments from implementing commercialization projects. Mr MA urged the Administration to explore other options such as contracting out the process of content licensing through open tender so that government departments



like RTHK would not be required to absorb the cost incurred in the process.

22. The Chairman agreed with Mr MA that under the existing arrangement, there was no incentive for RTHK to embark on any commercialization project. Citing recent examples that the BBC had licensed the distribution of its documentaries and a local film-maker had converted its quality productions into digital video discs for sale, the Chairman was very concerned that in the face of a serious deficit problem, the Administration should be more proactive in exploring options to raise revenue, such as by commercializing the high-quality programmes in RTHK's archive.

23. Ms Emily LAU echoed the views of the Chairman and Mr MA. She pointed out that the Administration should study members' views and actively explore ways to generate revenue before considering the options to increase tax or introduce new tax. She noticed that the issue of content licensing had been discussed at various forums for some years and urged the Administration to come up with concrete proposals on the way forward for members' consideration without further delay. Mr Albert CHAN was concerned whether the delay in commercialization was due to political consideration since certain popular RTHK programmes on current affairs had satirized the Government and its senior officials.

24. In response, DSCIT(CT) explained that content licensing involved complex issues. The Financial Services and the Treasury Bureau (FSTB) had exchanged views with members on the subject of commercialization of government productions and services at the Panel on Financial Affairs meeting on 15 January 2004. The Administration had yet to make a decision due to the need to resolve issues such as intellectual property rights of the programmes, whether and how the cost and income of the project should be appropriated between the centre and the department concerned in compliance with the Public Finance Ordinance (PCO) (Cap 2). RTHK and FSTB were also in the course of discussing the feasibility for RTHK to recover the costs incurred in its production work but no decision on the way forward had yet been reached.

25. On concerns about intellectual property rights, Mr MA Fung-kowk did not subscribe to the Administration's explanation. He highlighted that the commercial value of the quality productions in RTHK's archive would be increased if they became more popular through proactive marketing. The Chairman pointed out that further delay in implementing commercialization projects might curtail the commercial value of these productions.

26. In this connection, the Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) (A) recapped the background and informed members that about two years ago, CITB had discussed with RTHK the feasibility of commercializing RTHK's productions. CITB also encouraged RTHK to set up a business development unit to undertake relevant marketing and sales activities. On Mr MA's earlier suggestion to contract out the process of content licensing, the Administration had in fact

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explored this option. In parallel, RTHK had been preparing the tendering documents for related work such as content licensing and marketing of its programme archive. For example, RTHK had attempted to collaborate with the private sector in commercializing its popular programmes *Under the Lion Rock*. Separately, CITB was examining in conjunction with FSTB possible options in dealing with the income derived from content licensing, such as the feasibility of establishing a development fund to support RTHK's production of high-quality programmes.

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27. The Chairman suggested and members agreed that the subject of content licensing of RTHK's productions should be further considered by the Panel. They also agreed to invite the relevant bureaux (including CITB, FSTB and possibly EMB) and RTHK to revert to the Panel in June 2004 on the way forward. The Chairman requested the Administration to provide further information on content licensing of RTHK's productions that had been undertaken in the past, difficulties which had been encountered, issues requiring consideration and the proposed way forward. Having regard to PASEM(QE)'s explanation earlier on about the possibility of commercializing ETV programmes, the Chairman said that the Administration should also provide information on this aspect.

**V Labelling Scheme for hand-held mobile phones**

LC Paper No. CB(1)1507/03-04(05) -- Information paper provided by the Administration

LC Paper No. CB(1)1538/03-04(01) -- Extract of Hansard for Council meeting on 14 May 2003 (Oral question on the subject)

28. At the invitation of the Chairman, the Assistant Director of Telecommunications (AD/Tel) updated members on the progress of the labelling scheme for hand-held mobile phones. He reported that with effect from 1 April 2003, the Office of the Telecommunications Authority (OFTA) introduced a voluntary certification scheme for, among others, mobile phones. Under the scheme, mobile phone manufacturers and dealers might choose to submit their mobile phones for certification before these mobile phones were marketed and sold in Hong Kong. After the mobile phones were certified, they might also choose to affix the OFTA's authorized label to the certified mobile phones. The standards and specifications prescribed by the Telecommunications Authority (TA), included, inter alia, safety standards on radiofrequency radiation in terms of the Specific Absorption Rate (S.A.R.) limits. In consultation with the Department of Health, OFTA had adopted the S.A.R. limits as recommended by two international bodies in the certification of mobile phones. On the result of the implementation of the scheme since 1 April 2003, OFTA had certified 205 models of mobile phones as at end March 2004. Out of these models, about 52 had been affixed with OFTA's prescribed label. AD/Tel said that market forces

appeared to be working well and suppliers were gradually joining the voluntary certification scheme to attract customers.

29. In reply to the Chairman, AD/Tel said that about 200 to 300 new models of mobile phones were marketed in Hong Kong each year. However, OFTA had not kept statistics on the percentage of new models that had been certified.

30. Mr Albert CHAN was concerned about the policy considerations underlying the scheme. As manufacturers of inferior quality mobile phones would probably choose not to affix OFTA's authorized labels to such phones, consumers would not be able to differentiate mobile phones of higher quality from those of a lower quality if the labelling scheme was voluntary in nature. Mr CHAN opined that as a regulatory measure to protect consumers, the scheme should be made mandatory to facilitate consumers to make informed choices. While noting the possible burden imposed on mobile phone manufacturers and dealers, especially those small and medium enterprises, if the scheme was made mandatory, Mr CHAN did not consider that the financial and administrative burden incurred would be unbearable for them. At Mr CHAN's suggestion, the Chairman advised that the Panel should invite the Consumer Council (CC) to provide its views on the scheme.

*(Post-meeting note: The Secretariat has written to CC on 20 April 2004 to invite its view on the scheme. The comments received from CC have been circulated to members on 6 May 2004 vide LC Paper No CB(1)1734/03-04(01).)*

31. AD/Tel highlighted that the compulsory requirement for hand-held mobile phones to comply with the S.A.R. limit had already safeguarded consumers' interest. The voluntary certification and labelling scheme was a step forward to facilitate consumers in choosing their mobile phones and to assist phone manufacturers and dealers in promoting their products. He confirmed that the decision to implement the certification scheme on a voluntary basis was made in consideration that there was already a compulsory requirement for compliance with the S.A.R. limit.

## **VI Telecommunications Authority Guidelines: Mergers and Acquisitions in Hong Kong Telecommunications Markets**

LC Paper No. CB(1)1507/03-04(06) -- Information paper provided by the Administration

LC Paper No. CB(1)370/03-04 -- Minutes of Information Technology and Broadcasting Panel meeting on 23 October 2003

- LC Paper No. CB(1)670/03-04(01) -- Summary of deputation's views on the consultation paper on draft merger guidelines for Hong Kong telecommunications markets and the Administration's response thereto
- LC Paper No. CB(1)1565/03-04(01) -- Power-point presentation material provided by the Administration  
(tabled and subsequently issued on 20 April 2004)
- LC Paper No. CB(1)1565/03-04(02) -- Letter dated 17 April 2004 from Hutchison Telecommunications (Hong Kong) Limited (English version only)  
(tabled and subsequently issued on 20 April 2004)
- LC Paper No. CB(1)1565/03-04(03) -- Letter dated 15 April 2004 and power-point presentation material from PCCW (English version only)  
(tabled and subsequently issued on 20 April 2004)

32. With the aid of power-point presentation, DSCIT(CT) and the Deputy Director-General of Telecommunications (DDG/Tel) briefed the Panel on the outcome of the second round consultation of the Telecommunications Authority Guidelines: Mergers and Acquisitions in Hong Kong Telecommunications Market (the Guidelines). DSCIT(CT) recapped the objectives of the Telecommunications (Amendment) Ordinance 2003 (the 2003 Ordinance) and the various safeguards in regulating merger and acquisition (M&A) activities in the telecommunications market. She stressed that the 2003 Ordinance had already struck a balance between protecting consumer interests and providing certainty to the industry in M&A matters.

33. DDG/Tel highlighted the key issues in the second round consultation. On "safe harbour", while there was general support for a safe harbour mechanism, there was no consensus as to which safe harbour measures should be used. As such, TA had chosen to use both the traditional Herfindahl-Hirschman Index (HHI) and the combined market share (CR4) ratio, which were commonly applied in overseas jurisdiction, concurrently. This approach had the effect of increasing the size of the "safe harbour" over the use of just one measure while at the same time ensuring that Hong Kong applied internationally recognized standards. As regard various issues relating to the burden and standard of proof, DDG/Tel confirmed that on one hand, the burden of proving that there was a substantial lessening of competition rested with TA. On the other hand, it would be for the parties claiming that there was no substantial lessening of competition to substantiate their claim. If TA rejected the claim, he would be

required to give reasons. To address the industry's concerns, the Administration would make textual improvements to the Guidelines to put matters beyond doubt. DDG/Tel informed members that CC and the Telecoms Users Group had urged for early commencement of the 2003 Ordinance. It was the Administration's plan to issue the finalized guidelines as soon as practicable and to gazette the Commencement Notice for the 2003 Ordinance in May 2004.

34. Mr Howard YOUNG expressed his support for the Guidelines. He recalled that considerable amendments had been made to the proposed provisions on M&As under the Telecommunications (Amendment) Bill 2002 in response to the industry's concerns. As such, Mr YOUNG said that he would not support further relaxation such as adopting a modified HHI index as proposed by the industry. He also agreed that the 2003 Ordinance should commence operation as early as possible.

35. Mr Albert CHAN expressed his support for regulating M&A activities in Hong Kong's telecommunications market so as to safeguard competition and consumers' interest. He enquired if there was a standard method in calculating post-M&A market shares. He was also concerned about the procedures, if any, and the appeal mechanism in place to deal with disputes between TA and the transacting parties over such calculation.

36. In response, DDG/Tel said that it was advisable for the transacting parties to ascertain with OFTA the assessment of post-M&A market shares before proceeding with the proposed M&A. In addition to market share, there were other factors under the 2003 Ordinance which TA must take into account in determining whether a completed or proposed M&A had, or was likely to have, the effect of substantially lessening competition in a telecommunications market. On the formal appeal channel, DDG/Tel said that a carrier licensee or an interested person aggrieved by an opinion, determination, direction or decision of TA relating to an M&A could appeal to the Telecommunications (Competition Provisions) Appeal Board under section 32N of the Telecommunications Ordinance (TO) (Cap 106).

37. Mr Albert CHAN pointed out that it might be possible for an operator to gain a substantial market share in a district by completing an M&A. He was concerned that such an M&A, which would likely lessen competition substantially at the district level, might not be subject to TA's regulatory review if the resulting post-M&A market share at the territory-wide level was below the threshold requiring TA's intervention. Mr Howard YOUNG however did not consider it necessary to examine the post-M&A market share down to the district level, given that the telecommunications market in Hong Kong was already very small. In response, DDG/Tel said that in general, an M&A analysis would take into account geographical factors when considering market shares. However, such consideration might not be applicable in Hong Kong given its small size. Nevertheless, the Administration took note of members' concern.

38. Members noted that in its submission, PCCW-HKT Telephone Limited (PCCW) considered that there might be a drafting error because the existing definition of "carrier licensee" under section 2 of the TO appeared to be broader than the intended coverage of just fixed and mobile carriers under the 2003 Ordinance and the Guidelines. PCCW questioned whether the existing definition also included External Telecommunications Service (ETS) and Public Non-Exclusive Telecommunications Service (PNETS) licensees.

39. On the scope of "carrier licensee", DDG/Tel clarified that "carrier licensee" referred to the holder of a carrier licence. Under section 2 of TO, a carrier licence meant a *"licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between ... locations ... such locations being separated by unleased Government land"*. Fixed and mobile carriers fell within the ambit of the existing definition of "carrier licensee". Telecommunications operators such as Internet Service Providers or ETS providers did not establish or maintain any network across unleased Government land. Instead, they had to rely on networks operated by carrier licensees to provide their services. They were licensed as PNETS licensees under section 7 of TO. DDG/Tel further recapped that the existing definitions had been in force since the enactment of the Telecommunications (Amendment) Ordinance 2000. In reply to the Chairman, the Assistant Legal Adviser 3 (ALA3) said that she agreed with the Administration's clarification on the scope of "carrier licensee" as defined under TO.

40. Members also noted the submission of Hutchison Telecommunications (Hong Kong) Limited (Hutchison) that in relation to an operator's strategic behavior creating barrier to entry, the relevant merger guidelines adopted by the regulators in the United States, European Union, United Kingdom and Australia only referred to that of an incumbent operator. No reference in relation to first-movers as appeared in the Guidelines could be found in these overseas guidelines.

41. As regards first mover advantage, the Head of the Competition Affairs Branch, OFTA pointed out that while it was one of the factors which TA might take into account in assessing the competition effect of an M&A, it did not necessarily mean that there would be a first-mover advantage in any particular market. For example, at present, no company had a first-mover advantage in the mobile service market in Hong Kong. Some first-movers might enjoy strategic advantages over new entrants and create a barrier to entry to a market. Other first-movers might share technical advantages which made them more competitive in the market. At the Chairman's request, the Head of the Competition Affairs Branch, OFTA undertook to confirm whether first mover advantage was one of the factors for consideration in the M&A guidelines issued by the regulators in other jurisdictions.

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42. Summing up, the Chairman requested the Administration to provide a detailed written response to the submissions of PCCW and Hutchison tabled at

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ALA3 the meeting. He also invited ALA3 to provide her comments, where necessary, on the Administration's response. The Chairman further proposed that the Panel would consider the written response at its next meeting on 10 May 2004, before the Administration tabled the Commencement Notice for the 2003 Ordinance at the Council. Members agreed.

**VII Any other business**

43. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1  
Legislative Council Secretariat  
9 June 2004