

立法會
Legislative Council

LC Paper No. CB(1)2108 /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, 10 May 2004, at 2:30 pm
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 Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon MA Fung-kwok, JP

Non-member attending : Hon Fred LI Wah-ming, 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
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip

Public officers attending : Agenda Item IV

Mr Francis HO, JP
Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mrs Betty FUNG, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Stephen MAK
Deputy Director of Information Technology Services

Agenda Item V

Miss Adeline WONG
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)

Mr Daniel LAI
Member of IT Easy Link Steering Committee

Agenda Item VI

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Ms Gracie FOO
Deputy Director-General of Telecommunications

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

Ms Jenny CHUNG
Head, Legal Support
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

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1661/03-04 -- Minutes of the Panel meeting
on 8 March 2004

The minutes of the Panel meeting on 8 March 2004 were confirmed.

II Date and items for discussion for next meeting

LC Paper No. CB(1)1713/03-04(01) -- List of outstanding items for
discussion

LC Paper No. CB(1)1713/03-04(02) -- List of follow-up actions

2. Members agreed to discuss the following items which had been proposed after discussion with the Administration at the next panel meeting to be held on 14 June 2004:

- (a) Licensing and distribution of the content produced by Radio Television Hong Kong; and
- (b) Issues related to the regulation of pornographic and violent materials transmitted through the mass media.

III Papers issued since last meeting

3. Members noted that no paper had been issued since last meeting.

IV 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

LC Paper No. CB(1)1713/03-04(03) -- Information paper provided
by the Administration

4. At the invitation of the Chairman, the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT(CT)) briefed members on the outcome of the review of the Government institutional structure for delivering the information technology (IT) function and the Administration's proposal for a strengthened and streamlined institutional arrangement. The Administration proposed that, with effect from 1 July 2004, the Information Technology Services Department (ITSD) should be merged with the IT-related divisions of the Communications and Technology Branch (CTB) of the Commerce, Industry and Technology Bureau (CITB) to form a new,

integrated entity within CITB responsible for IT-related policy and operational matters. The Administration also proposed to create a one-rank departmental post of Government Chief Information Officer (GCIO) at D6 to head the new entity, namely, the Office of the Government Chief Information Officer (OGCIO), to be offset by the deletion of the Director of Information Technology Services (DITS) post at D5.

5. PSCIT(CT) remarked that the GCIO would assume responsibilities for policy, strategy and execution of IT programmes and initiatives within the Government and the community. The demand on the GCIO to champion for and drive forward IT development in Hong Kong required that the person should be an advocate, leader, strategist, educator and a good manager of resources and programmes. As such, the Administration would need to ensure a wide source of candidates, local or overseas, for this key position and fill the post in an open manner on the basis of the merits of the most suitable candidate. This explained why the proposed GCIO was a one-rank grade, instead of one being tied to the existing Analyst/Programmer (AP) grade.

6. PSCIT(CT) further advised that he had briefed members of the Government IT Professionals Association (GITPA), which represented the staff of the AP grade, in February and May 2004 on the proposed merger. DITS had also briefed representatives of the AP, Computer Operator and Data Processor grades through staff meetings and forums. PSCIT(CT) said that the staff associations generally understood the public interest objective behind and maintained an open attitude towards the proposals, though some members of the AP grade were concerned about the impact of the proposals on the grade.

7. Dr LAW Chi-kwong expressed his support for the proposal. However, he pointed out that the Chinese post title for GCIO (政府資訊總監) might give rise to the impression that the post holder was a government official tasked to monitor the flow or dissemination of information. The Chairman shared Dr LAW's view and urged the Administration to re-consider the term and come up with a better Chinese title for the GCIO post.

8. Noting members' view, PSCIT(CT) said that it had taken the Administration considerable effort to come up with the present Chinese post title, which was found to be the most appropriate among other proposals. Nevertheless, the Administration would re-consider the matter and see if it could propose another suitable Chinese post title.

9. Mr Howard YOUNG expressed his support for the Administration's proposal as it would result in a strengthened and streamlined institutional structure. However, he noted that the proposal would result in a net deletion of posts and that the proposed post of GCIO was pitched at D6, and not at D5 level as the DITS post. He therefore sought the Administration's justification for pitching the proposed GCIO post at a higher rank. Mr YOUNG also enquired about the reasons why the exercise would result in an increase in the ceiling placed on the total notional annual mid-point salary value of all non-directorate

posts in the permanent establishment of the OGCIO in 2004-05 from \$261.8 million to \$270.8 million.

10. In response, PSCIT(CT) explained that the GCIO would head the OGCIO, the merged entity within CITB. Instead of being a conventional service department responding to clients' needs and requirements, the OGCIO would provide leadership in driving forward IT initiatives proactively within the Government, adopting new technologies, influencing business processes, and accounting for the Government's investment in IT and related programmes, in terms of cost-benefit, efficiency and services, and impact on the community. The duties and responsibilities of the GCIO went beyond those of DITS. The Administration therefore considered that pitching the GCIO post at D6 was commensurate with the scope and level of responsibilities of the post. Moreover, the GCIO post would be offset by the deletion of the DITS post (D5) and the proposed change would only result in a slight increase of \$8,500 in monthly salary. PSCIT(CT) further advised that the proposed merger would also bring about the deletion of two directorate posts, namely, one Chief Systems Manager and one Administrative Officer Staff Grade C.

(Post-meeting note: The Administration has subsequently advised that as a result of the transfer of 19 non-directorate posts in the IT-related divisions of CTB/CITB to the OGCIO upon the merger, the ceiling placed on the total notional annual mid-point salary (NAMS) value for all the non-directorate posts in the permanent establishment of the OGCIO will be increased to \$270.8 million (as compared to \$261.8 million for the ITSD) in 2004-05. The \$9 million increase in NAMS value covers the provisions for the remaining nine months in 2004-05 as from 1 July 2004.)

11. Members noted that under the proposed directorate structure of the OGCIO, the GCIO would be underpinned by two Deputy GCIOs (DGCIOs), both pitched at D3, who would be responsible for assisting the GCIO in "Planning and Strategy" and "Operation" respectively. In this regard, the Chairman recapped that some members of the AP grade had expressed concern about the impact of the proposals on the grade as it appeared that they could only advance up to D3 level at the rank of DGCIO under the new structure of the OGCIO. Given that the proposed merger would bring about a net annual saving of about \$3.9 million and noting that one of the DGCIO posts would be filled by a member of the AP grade, the Chairman asked whether consideration could be given to pitching that DGCIO post at D4 so as to provide a better advancement avenue to boost staff morale. He also remarked that the number of divisions and staff under the two DGCIOs were not the same and this should be better reflected in a difference in ranking.

12. In reply, PSCIT(CT) advised that the institutional structure for delivering the IT function had been reorganized with a view to enabling the new OGCIO to provide a more visible and proactive leadership role in driving E-government and furthering the development of IT in Hong Kong. The proposed directorate structure of the OGCIO had been worked out to meet the needs of its significant

and distinct role. While the advancement prospect of individual members of a civil service grade was not a major consideration in the reorganization exercise, PSCIT(CT) pointed out that serving officers could also apply for the one-rank departmental post of GCIO and their candidature would be considered on the basis of merits, as in the case of external candidates. Given that the job nature and scope of responsibilities for certain grades in ITSD had changed over time, PSCIT(CT) said that it was opportune to update their respective operational titles to reflect such changes. He assured members that the bureau and the departmental management would maintain discussion with the staff associations concerned.

13. Summing up, the Chairman said that the Panel supported in principle the proposed merger and the creation of the post of GCIO.

V Review on IT Easy Link services

LC Paper No. CB(1)1713/03-04(04) -- Information paper provided
by the Administration

14. At the invitation of the Chairman, the Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) (PASCIT(CT)) briefed members on the background of the IT Easy Link services and the review of the services in the second year of operation. She highlighted that the IT Easy Link services for the general public continued to be well received while the service for the businesses had registered a steady increase in the number of incoming calls. The average ratings given by randomly selected callers on their satisfaction level of the services provided to the general public and the business community was 8.8 and 9 respectively on a 1 to 10 point scale. PASCIT(CT) further advised that in view of the demand for the enquiry and IT advisory services, the Administration intended to extend the services for another year from July 2004 to June 2005. The services would continue to be operated by Hong Kong Computer Society (HKCS) and monitored by a steering committee. The estimated cost of \$4.2 million for running the services for another year would be met by CITB within its allocation. In view of the tight budget position of CITB, this extension would be a final one. Notwithstanding, PASCIT(CT) assured members that the Administration would continue with other programmes to encourage wider IT adoption in the business sector and the general community, and work with IT professional and industry bodies to explore other initiatives to bridge the digital divide.

15. Mr MA Fung-kwok commended the efforts of the Administration and HKCS in implementing the IT Easy Link services. However, he was gravely concerned that such well-received and successful services had to be discontinued due to budget constraint and at a time when Hong Kong was encouraging the community-wide adoption of IT. He urged that the services should be maintained to meet the increasing demand. Mr MA also highlighted that the cost of running the services at about \$4.2 million a year was relatively small but

the services could benefit a wide spectrum of users, including small and medium enterprises (SMEs). While appreciating the Administration's effort in lining up HKCS to operate the services, Mr MA pointed out that if the services were suspended, the Administration might not be able to secure the partnership of IT professional bodies again if it decided to re-launch the services at a later stage. As such, the Administration should explore viable options to sustain the provision of the services, such as seeking commercial sponsorship, increasing the cost-effectiveness of the services or suitably reducing the scope of services to lower the operating costs. Mr MA said that if necessary, he was prepared to support a financial proposal to fund such a worthwhile project.

16. In response, PASCIT(CT) advised that commercial sponsorship in the form of computer hardware and software had been secured to fund the IT Easy Link services. She informed members that currently, similar services were available at the Hong Kong Productivity Council (HKPC) though it might impose a charge for advisory services. Taking note of Mr MA's view, the Administration would explore ways to maintain the services, such as by encouraging resourceful IT bodies to provide similar services to SMEs. Nevertheless, PASCIT(CT) stressed that in the absence of recurrent funding support, the services could not be provided on a permanent basis in its existing mode. Even if the Administration could secure resources to support the operation of the IT Easy Link services for a few more years, it might still need to consider phasing out the project when the Hong Kong community as a whole was well-positioned in the use of IT.

17. Mr MA Fung-kwok did not fully subscribe to the Administration's proposed way forward. He acknowledged the contribution of HKCS in operating the services which handled some 200 000 calls a year. He considered it a pity that services not incurring substantial costs but which could benefit the entire community had to be discontinued. He was of the view that the Administration must see to it that similar services were offered by other service providers before it withdrew from providing the services.

18. Dr LAW Chi-kwong shared Mr MA's view. He opined that the Administration should only consider discontinuing the services if the demand had diminished or if the services were no longer cost-effective. The Administration should provide further information on how it would address the needs of SMEs on user support/enquiry services and how it would work with IT professional and industry bodies to explore other initiatives to bridge the digital divide.

19. On measures taken by the Government to promote the adoption of IT by SMEs, PASCIT(CT) advised that the Administration had organized in partnership with industry support organizations such as the HKPC free seminars and workshops to raise SMEs' awareness and provide information and practical advice to SMEs on adopting e-business. It had also devised sector-specific IT programmes for various sectors to help the enterprises in those sectors to understand that IT could enhance their business operations. PASCIT(CT) said that the Administration would consider how to enhance the support measures to

assist SMEs to adopt IT in their operation.

20. While appreciating the Administration's effort to promote the adoption of IT among SMEs, the Chairman considered that it would be more cost-effective to pursue projects with proven success such as the IT Easy Link services than to devise new measures the effectiveness of which was yet to be tested. He agreed with Mr MA's view and suggested that in the face of limited resources, it was fair for the Administration to consider lowering the existing service level or reducing the scope of services instead of ceasing the scheme altogether. For example, the service level could be lowered by allowing more calls to be abandoned during peak hours each day so as to lower the staff costs involved in manning the services. The Chairman considered that the community might be prepared to accept a higher abandon rate in return for the retention of the enquiry services.

21. Mr Daniel LAI, member of IT Easy Link Steering Committee (and former President of HKCS) thanked members' support for the IT Easy Link services. He informed members that currently, the enquiry services operated from 9:00 am to midnight from Monday to Sunday, including public holidays. Consideration might be given to shorten the duration of the services in order that the services could be retained.

22. Mr Howard YOUNG asked if the outbreaks of computer viruses had led to a higher number of telephone calls received by the IT Easy Link enquiry services. Separately, he was also concerned whether the number and timing of abandon calls were recorded for evaluation purpose.

23. In reply, PASCIT(CT) confirmed that the attacks of computer viruses and worms had resulted in more telephone calls made to the enquiry services. She recalled that during one of the large-scale incidents, as many as 800 calls had been received within one day. On abandoned calls, PASCIT(IT) advised that unattended calls would be directed to the voice mailbox. In case the mail box was full, the system would keep track of the timing of each call. Mr Daniel LAI, member of IT Easy Link Steering Committee supplemented that questions or requests for information/advice could be submitted to the IT Easy Link by phone, fax or e-mail.

24. Summing up, the Chairman said that the Panel was in support of the IT Easy Link services. He requested the Administration to consider members' strong request for the continuation of the services over the longer term. He also asked the Administration to brief the Panel on the way forward in about one year's time.

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

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| LC Paper No. CB(1)1713/03-04(05) | -- Information paper provided by the Administration |
| LC Paper No. CB(1)1713/03-04(06) | -- Mergers and Acquisitions in Hong Kong Telecommunications Markets - Statement of the Telecommunications Authority dated 3 May 2004 |
| LC Paper No. CB(1)1713/03-04(07) | -- Opinions of Professor Richard Whish, King's College London (English version only) |
| LC Paper No. CB(1)1789/03-04(01)
(tabled and subsequently issued on 12 May 2004) | -- Joint letter from Hutchison Telecommunications (Hong Kong) Limited, SmarTone Mobile Communications Limited and SUNDAY o/b Mandarin Communications Limited (English version only) |

25. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) DSCIT(CT) briefed members on the Administration's detailed response to the concerns relating to the "Telecommunications Authority Guidelines: Mergers and Acquisitions in Hong Kong Telecommunications Markets" (the M&A Guidelines), notably "safe harbours" and "first-mover" raised in the letters from PCCW-HKT Telephone Limited and Hutchison Telecommunications (Hong Kong) Limited (Hutchison) dated 15 April 2004 and 17 April 2004 respectively (CB(1)1565/03-04(03) and (02)). Members noted that the Administration had published the finalized M&A Guidelines on 3 May 2004 on the website of the Office of the Telecommunications Authority (OFTA). Members also noted that the Administration planned to gazette the Commencement Notice for the Telecommunications (Amendment) Ordinance 2003 (the 2003 Ordinance) on 14 May 2004 to bring the 2003 Ordinance into operation within this legislative session. The Commencement Notice, which was subsidiary legislation subject to negative vetting of the Legislative Council, would be considered by the House Committee on 21 May 2004.

26. The Chairman informed members that he had received a joint letter from Hutchison, SmarTone Mobile Communications Limited and SUNDAY o/b Mandarin Communications Limited, a copy of which was tabled at the meeting.

27. On the query raised in the joint letter about how far the M&A Guidelines could address the special features of the local telecommunications market, DSCIT(CT) stressed that the 2003 Ordinance, supplemented by the M&A Guidelines, were adequate in regulating M&A activities of the telecommunications market in Hong Kong. She pointed out that the M&A Guidelines, which had been formulated on the basis of similar guidelines adopted by overseas jurisdictions, contained relevant principles and justifications in preventing the emergence of market structures not conducive to competition arising from M&A activities that could generally be found in any telecommunications markets. Moreover, the Administration had obtained an independent opinion from Professor Richard WHISH of King's College London which concluded that the M&A Guidelines provided a sound basis for the application of the 2003 Ordinance and that they were in line with the regulatory policy for M&As adopted in other jurisdictions.

28. Members noted that as stated in paragraph 4 of the operators' joint letter, many parts of the M&A Guidelines were repeated verbatim in the "Draft Telecommunications Authority Guidelines on Anti-competitive Conduct in Hong Kong Telecommunications Markets" (the draft Anti-competitive Guidelines). The Chairman was concerned about the operators' comment and sought the Administration's clarification.

29. In response, the Deputy Director-General of Telecommunications (DDG/Tel) highlighted that M&A activities in the telecommunications market were regulated under section 7P of the 2003 Ordinance while sections 7K, 7L and 7N of Telecommunications Ordinance (TO) (Cap 106) dealt with anti-competitive conduct. DDG/Tel and the Principal Regulatory Affairs Manager (Competition), Office of the Telecommunications Authority pointed out that since both sets of Guidelines were promulgated under TO to provide for the competition analysis to assess the effect of an M&A or an anti-competitive conduct on market competition, they shared a number of key competition-related concepts, including the definition of "market", barriers to entry and references to anti-competitive effects.

30. Dr LAW Chi-kwong pointed out that normally, the Administration would draw up implementation guidelines in consultation with the industry. He found it difficult for members to comment on the views expressed in the joint letter in the absence of further elaboration or substantiation by the operators. He considered that the Administration should further discuss with the operators concerned with a view to addressing their concerns as highlighted in the joint letter before gazetting the Commencement Notice for the 2003 Ordinance.

31. Mr Howard YOUNG also agreed that the points made by the telecommunications operators in the joint letter were rather broadbrush. He recalled that during the scrutiny of the Telecommunications (Amendment) Bill 2002, the Administration had accepted many of the industry's suggestions for incorporation into the Bill or the M&A Guidelines. As the M&A Guidelines

could be revised or improved in the light of future needs, Mr YOUNG was of the view that the 2003 Ordinance should be brought into operation as proposed by the Administration.

32. DSCIT(CT) confirmed that the Administration had taken every opportunity to address the industry's concerns. It had conducted two rounds of consultation on the M&A Guidelines. The Telecommunications Authority (TA) had also met with interested parties and exchanged views with them on the proposed provisions in the M&A Guidelines. In addition, the Administration had also briefed the Panel on the subject in October 2003 and April 2004. DSCIT(CT) reiterated that the M&A Guidelines had balanced the needs for predictability over TA's decisions on M&A matters and safeguarding competition in the telecommunications market.

33. DDG/Tel supplemented that according to Professor WHISH, the M&A Guidelines had already struck the right balance between providing practical advice to the business, investment and legal communities as to what might be expected of a system of merger control on the one hand, and avoiding too much hypothesis and speculation, which could lead to a loss of clarity, on the other. She stressed that the M&A Guidelines provided a reasonable framework for administering the new system for regulating M&A activities.

34. Having regard to members' concerns and the Administration's initial response, the Chairman requested the Administration to provide a written response to the joint letter as soon as practicable and in any case before 21 May 2004 when the Commencement Notice was scheduled for consideration by the House Committee. The response should address the concerns about the contents being repeated verbatim in both the M&A Guidelines and the draft Anti-competitive Guidelines, and the applicability of the M&A Guidelines to the local telecommunications market. Dr LAW Chi-kwong remarked that the Panel had duly noted the views of the Administration and the industry. It would be for the House Committee to consider in due course whether or not to support the Commencement Notice after it was gazetted and tabled at the Council. In this regard, DSCIT(CT) pointed out that while the Administration was prepared to maintain discussion with the operators, it remained the Administration's intention to bring the 2003 Ordinance into operation within this legislative session, given that the legislation had been enacted for almost a year.

(Post-meeting note: The Administration's written response to the operators' joint letter has been issued to members on 18 May 2003 vide LC Paper No. CB(1)1862/03-04(01)).

VII Any other business

35. There being no other business, the meeting ended at 4:00 pm.

Council Business Division 1
Legislative Council Secretariat
10 June 2004