

立法會
Legislative Council

LC Paper No. CB(1)1053/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Wednesday, 2 February 2005, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP

Members attending : Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon Alan LEONG Kah-kit, SC
Hon Ronny TONG Ka-wah, SC

Member absent : Hon Timothy FOK Tsun-ting, GBS, JP

Public officers attending : Agenda Item I

Mr John C TSANG, JP
Secretary for Commerce, Industry and Technology

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

Mrs Betty FUNG, JP
Deputy Government Chief Information Officer
(Planning & Strategy)

Mr Daniel CHENG
Administrative Assistant to Secretary for Commerce,
Industry and Technology

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

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Issues related to the newspaper articles on Cyberport authored by the Secretary for Commerce, Industry and Technology (SCIT) published on 26 and 27 January 2005

LC Paper No CB(1)814/04-05(01) -- A newspaper article on Cyberport authored by SCIT published on 26 January 2005

LC Paper No CB(1)814/04-05(02) -- A newspaper article on Cyberport authored by SCIT published on 27 January 2005

LC Paper No CB(1)814/04-05(03) -- Table on chronology of past discussions on the Cyberport at Legislative Council committees prepared by the Secretariat

LC Paper No CB(1)817/04-05 -- Brief prepared by the Secretariat

Other past papers for reference

(a) Panel on Information Technology and Broadcasting

Meeting on 8 March 1999

LC Paper No CB(1)1394/98-99 -- Minutes of meeting
(<http://www.legco.gov.hk/yr98-99/english/panels/itb/minutes/it080399.htm>)

Joint meeting with Panel on Planning, Lands and Works on 29 April 1999

LC Paper No CB(1)814/04-05(04) -- Information paper provided by the Administration

LC Paper No CB(1)1817/98-99 -- Minutes of meeting
(<http://www.legco.gov.hk/yr98-99/english/panels/itb/minutes/ij290499.htm>)

Meeting on 5 May 1999

LC Paper No CB(1)814/04-05(05) -- Correspondences between Vincent T K CHEUNG YAP & Co, representing a group of publicly listed companies and the Administration on the proposed Cyberport development at Pok Fu Lam (English version only)

LC Paper No CB(1)814/04-05(06) -- 2 press releases dated 10 and 11 May 1999 issued by Sirius Pacific Consultants Ltd, representing 10 property development companies and the press release dated 10 May 1999 issued by the Government

LC Paper No CB(1)1882/98-99 -- Minutes of meeting
(<http://www.legco.gov.hk/yr98-99/english/panels/itb/minutes/it050599.htm>)

Meeting on 12 June 2000

LC Paper No CB(1)814/04-05(07) -- Legislative Council Brief on Cyberport Project Agreement (ITBB/CP 303/2(00) issued on 17 May 2000)

Meeting on 10 January 2005

LC Paper No CB(1)588/04-05(01) -- Latest progress report provided by the Administration
(<http://www.legco.gov.hk/yr04-05/english/panels/itb/papers/itb0110cb1-588-1e.pdf>)

LC Paper No CB(1)623/04-05 -- Background brief on Cyberport
(<http://www.legco.gov.hk/yr04-05/english/panels/itb/papers/itb0110cb1-623e.pdf>)

(b) Public Works Subcommittee meeting on 12 May 1999

LC Paper No CB(1)814/04-05(08) -- Extract of minutes of meeting

(c) Finance Committee meeting on 21 May 1999

LC Paper No CB(1)814/04-05(09) -- Extract of minutes of meeting

(d) Panel on Finance Affairs meeting on 6 December 1999

LC Paper No CB(1)814/04-05(10) -- Information paper on ground rules for special consideration of private sector initiatives

LC Paper No CB(1)814/04-05(11) -- Extract of minutes of meeting

The Chairman said that he had convened the special meeting for Members to seek further explanation and clarification from the Administration on the newspaper articles authored by the Secretary for Commerce, Industry and Technology (SCIT) on the Cyberport on 26 and 27 January 2005. He also informed Members that he had invited Mr Donald TSANG, Chief Secretary for Administration (CS) to attend the special meeting. However, CS had replied that he had nothing to add to his speech delivered at the Motion Debate of the Legislative Council (LegCo) meeting on 27 January 2005. Members noted that both the Chairman's letter and CS's reply thereto had been issued to all Members vide LC Paper No. CB(1)828/04-05.

2. Members noted that a set of 24 documents, mostly correspondences/documents exchanged between the Government and the then Pacific Century Group (PCG) on the Cyberport Project from September 1998 to March 1999, were made available by the Administration and tabled at the meeting.

(post-meeting note: The Administration had made available the aforesaid set of documents shortly before the meeting and all Members had been urgently notified by a pager message. The set of documents has subsequently been issued to all Members on 3 February 2005 vide LC Paper No. CB(1)852/04-05(01)).

3. At the invitation of the Chairman, SCIT remarked that the Administration had made available the correspondences/documents to show that when taking the Cyberport project forward, the Government had in fact acted in the best interest of the public by minimizing the Government's investment in the project, maximizing its return and transferring the risks to the private sector where possible. He also considered that officers in the former Information Technology and Broadcasting Bureau (ITBB) had handled the matter in a highly professional and prudent manner and that there was certainly no question of "collusion between business and the Government" and "transfer of benefits".

(post-meeting note: The speaking note of SCIT has subsequently been issued to all Members on 3 February 2005 vide LC Paper No. CB(1)852/04-05(02))

Construction cost of Cyberport Portion

4. Members noted from the newspaper article published on 26 January 2005 that one of the Government's considerations when deciding to enter into partnership with PCG to build the Cyberport was the need for heavy upfront investment in the Cyberport (estimated to be around \$5 billion on top of the costs of providing essential infrastructure facilities). In this connection, Mr Ronny TONG referred to paragraph 20 of the Administration's latest report on the Cyberport project (LC Paper No CB(1)588/04-05(01)) submitted to the Panel on Information Technology and Broadcasting (ITB Panel) for its meeting on 10 January 2005 which stated that the capital contribution of the Developer (formerly PCG) was the funding of \$4.36 billion it provided to finance the construction costs and related expenses of the project. Mr TONG therefore questioned the marked difference between the original estimated cost and the actual construction cost of the Cyberport Portion and asked whether the Government had conducted a realistic assessment on the construction cost of the Cyberport Portion before entering into agreement with PCG.

5. In response, the Deputy Government Chief Information Officer (Planning & Strategy) (DGCIO(P&S)) explained that the actual construction cost of the Cyberport Portion on completion in 2004 was about \$4.5 billion, which was \$0.5 billion lower than that estimated in 1999. She said that the difference between

the two figures was mainly attributable to deflation over the period which resulted in lower construction costs. DGCIO(P&S) further explained that the figure of \$4.36 billion was the capital contribution made by PCG to meet all project expenses before proceeds from the pre-sale of the units in the Residential Portion were available to fund project expenses. She recapped that according to the Project Agreement, the sales proceeds would be held securely and used, in respective order, to fund the construction costs and related expenses due and payable in respect of the Cyberport and Residential Portions, to contribute to a Development Maintenance Fund for up-keeping the Cyberport, and to fund other project expenses before being distributed as surplus sales proceeds between the Government and PCG in accordance with their respective capital contribution. In other words, part of the construction costs of the Cyberport Portion had been funded by the sales proceeds starting from the pre-sale of Phase 1 of the Residential Portion in February 2003.

LegCo's consideration of the Cyberport project

Consultation with LegCo

6. Mr Ronny TONG pointed out that in his article of 26 January 2005, SCIT had highlighted that the Government had briefed LegCo on the main terms of the Project Agreement and the grant of development right to PCG in June 2000, as well as consulted the Public Works Subcommittee (PWSC) and Finance Committee (FC) a number of times between May 1999 and December 2000. Mr TONG considered that the Administration had not put events in a proper perspective and the information presented was highly misleading as readers might be under a false impression that adequate prior consultation with LegCo had taken place. According to the information paper (re-circulated vide LC Paper No CB(1)814/04-05(04)) tabled by the Administration at the joint meeting of the ITB Panel and Panel on Planning, Lands and Works (PLW Panel) held on 29 April 1999, the Government had already reached agreement with PCG on the broad framework for the development of the Cyberport in February 1999 (paragraph 9) and obtained the agreement in principle from the Chief Executive in Council (CE in Council) to proceed with the drawing up of legal documentation with PCG (paragraph 44). He also referred to enclosure (23) of CB(1)852/04-05(01) which revealed that the Government had already signed the Letter of Intent (LOI) with PCG on 2 March 1999. As such, Mr TONG highlighted that there was no prior consultation with any committee of LegCo before these major decisions were made. He urged that the Administration should clarify the matter to the public.

7. Mr LEE Wing-tat noted that in the same newspaper article, SCIT had stated that the Government had actively consulted relevant LegCo committees and Panels on more than 20 occasions from March 1999 to January 2005. Sharing Mr Ronny TONG's concern, Mr LEE stressed that a distinction should be drawn between consultation before making the decision and subsequent reviews and progress reports. He pointed out that most of the meetings in

question were held by the ITB Panel to discuss the progress reports from the Administration on project implementation. To set record straight, Mr LEE stated that there was no prior consultation with LegCo before the Government made its decision to develop a Cyberport in Hong Kong in conjunction with PCG.

8. SCIT disagreed that the information provided in his articles was misleading. He advised that in pursuing the Cyberport project, the Administration had followed the usual procedures of consulting the relevant Panel(s) before submitting the funding proposals to PWSC and FC. Thereafter, the Administration had kept the ITB Panel posted of project developments. Regarding some Members' concern that the Administration had already decided on the project arrangements before consulting LegCo, SCIT stressed that the terms in the LOI signed with PCG were, as specified therein and as with any other LOIs, "subject to contract". A legally binding contract (i.e. the Cyberport Project Agreement) was signed between the Government and PCG on 17 May 2000, which was well after FC had approved the proposed funding for the construction of the essential infrastructure and such approval was given on the understanding that the Government would develop the Cyberport in partnership with PCG.

9. Mr Ronny TONG was unconvinced of the Administration's explanation. He queried whether the Administration had informed the then LegCo Members the legal position of the broad framework as well as the LOI agreed between the Government and PCG in February and March 1999 respectively; and whether the Administration had sought the endorsement of LegCo in deciding to grant the land to PCG for the development of the Cyberport and Residential Portions. Mr TONG strongly considered that SCIT's articles had not properly reflected the circumstances under which the project had been considered by LegCo. SCIT maintained that the Administration had followed the relevant consultation procedures in seeking LegCo's approval of the project, as evident from the various funding submissions made to the relevant Panels, PWSC and FC. On the grant of the land and development right of Cyberport, SCIT noted that the approval of LegCo was not required in the disposal of land which was a responsibility of the Government.

10. Ms Emily LAU was of the view that the Government should have secured the support of LegCo before it signed the LOI with PCG. In fact, she recalled that at the meeting of PWSC held on 12 May 1999, some members had requested the Administration to defer the funding proposal and put the project to open tender. However, the Administration had advised against such an option for reasons that going through the tendering process would delay the project by one year or so. The item was then put to vote. Ms LAU considered the arrangement unfair to Members and strongly urged that the Administration should seek the views or support of LegCo prior to entering into any agreement with the private sector partner.

Funding approval

11. On the question of whether the Cyberport project had the support of LegCo, SCIT pointed out that if the majority of LegCo Members were not supportive of the Cyberport project to be taken forward based on a public-private partnership (PPP) model, they would not have voted for the funding proposal to provide the essential infrastructure at the PWSC and FC meetings. Without the necessary funding to develop the infrastructure such as roads and water supplies at Telegraph Bay, it would not have been possible to implement the Cyberport project.

12. Mr Albert HO and Mr LEE Wing-tat did not agree with SCIT's reasoning that FC's funding approval for the provision of essential infrastructure at Telegraph Bay could be taken as LegCo's support for taking the project forward under the present mode of implementation and financial arrangement. They considered it highly inappropriate for the Administration to make such an inference.

13. Ms Emily LAU said that to a certain extent, she could accept that when members of PWSC and FC considered the funding proposal on the construction of essential infrastructure at Telegraph Bay, they were aware that if the proposal was approved, the Cyberport project would be implemented in the manner as proposed by the Administration. However, Ms LAU considered that the Administration should have handled the matter in a more proper manner since the Administration's decision was a departure from established practice. If the Administration had the intention to seek Members' views on the Cyberport project, it should have at least moved a motion at a Council meeting so as to provide an opportunity for Members to debate on various aspects of the project, including the decision to grant the development right of Cyberport to PCG without going through the usual tendering process.

14. Noting from paragraph (d) of the letter dated 11 February 1999 (enclosure (16) of LC Paper No CB(1)852/04- 05(01)) that according to Mr K C KWONG, former Secretary for Information Technology and Broadcasting (SITB), one of the main challenges for the Administration in ensuring the smooth implementation of the Cyberport project was to obtain the support of the public and LegCo for the structure and the financial terms of the project, Mr Albert HO queried whether such support had ever been sought from LegCo. In response, the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (PSCIT(CT)) explained that when the said letter was written, the Government was still in the course of drawing up the detailed partnership arrangements with PCG. The remark in question was only a general observation and not a pre-condition. Thereafter, it became clear that PCG would be responsible for the construction of the Cyberport and Residential Portions and the Administration would only need to seek funding support from LegCo on the provision of the essential infrastructure.

Developers' alternative proposal to tender the land for the Residential Portion*Consideration of the proposal by LegCo*

15. Ms Emily LAU noted from SCIT's article dated 26 January 2005 that LegCo had considered and rejected an alternative suggestion made by the real estate sector to excise the Residential Portion from the project and, through open tendering the land, provide the Government with the necessary funds to construct the Cyberport Portion. She stated her grave concern that this statement was far from the truth.

16. Referring to the background brief (LC Paper No CB(1)817/04-05) prepared by the Secretariat, Ms Emily LAU recalled that at the joint meeting of the ITB Panel and PLW Panel on 29 April 1999, members noted from the 50-page paper, which was only made available on the day of the meeting, that there was an alternative proposal put forward by a group of property developers. Due to the late availability of the Administration's paper and the need for further discussion, another special meeting was convened by the ITB Panel on 5 May 1999 during which members noted copy of a letter dated 21 April 1999 from Vincent T.K. Cheung, Yap & Co. acting on behalf of a group of property developers addressed to the then Financial Secretary (FS) (re-circulated vide LC Paper No CB(1)814/04-05(05)). Ms LAU further pointed out that while the developers' alternative proposal had not been discussed at length at the meeting, it should be noted that the Administration had already taken a position against the proposed excision of the residential part from the Cyberport project before the ITB Panel had a chance to study the alternative proposal. She stressed that the Administration's stance on the alternative suggestion by the property developers was made known to members at the meetings of the PWSC and FC and none of these committees had taken any vote or expressed any position on the alternative suggestion. As such, Ms LAU considered the Administration's statement that LegCo had considered and rejected the developers' alternative suggestion was unfounded and misleading.

17. In response, SCIT said that the Administration had no intention whatsoever to mislead the public. He recalled that the paper tabled by the Administration at the joint Panel meeting on 29 April 1999 had provided a detailed analysis on the financial returns and risks of both PCG's proposal and the developers' proposal. There was also some discussion on the developers' proposal at the Panel meetings on 29 April and 5 May 1999, during which the Administration had given its view and the reason why the developers' proposal to purchase the site for ancillary residential development only was not acceptable. SCIT remarked that while the Administration had made available information relating to the developers' proposal and its view thereon in the Panel papers, it would be for Panel members to decide whether or not they would wish to express a position or take a vote on the alternative proposal; and in this case, the Panel had not done so. SCIT further said that in the Administration's view, the two proposals were mutually exclusive. Hence, Members' approval of the

Administration's funding proposal to provide the essential infrastructure for the Cyberport development would in effect mean that the alternative proposal put forward by the developers was not accepted.

18. Ms Emily LAU did not fully subscribe to SCIT's view. She considered that since the relevant committee(s) had neither discussed at length nor expressed any position on the alternative proposal in question, the Administration should not infer that the proposal was rejected by LegCo. She further recapped that when reporting to the PWSC on 12 May 1999, Hon SIN Chung-kai, ITB Panel Chairman, had confirmed that at the two Panel meetings previously held, members had not reached any consensus or had any collective views on the subject of the Cyberport project. In the absence of any general agreement or disagreement reached, Ms LAU reiterated her view that the inference drawn by the Administration was incorrect and highly misleading. Echoing Ms LAU's view, Mr LEE Wing-tat considered that SCIT should withdraw the statement in question.

The Administration's decision not to accept the developers' proposal

19. The Deputy Chairman noted that in their proposal, the developers had indicated that they were prepared to underwrite a minimum reserve price of \$8 billion if the Government would put up for sale by auction or tender the land earmarked for the ancillary residential development. The Government could then use \$5 billion of the sum to construct the Cyberport Portion while returning the remaining \$3 billion upfront cash to the Treasury. The Deputy Chairman said that the proposal appeared to have relieved the Government of the risks and uncertainties associated with the Cyberport construction. He queried why the Government had not accepted this attractive offer and asked who was responsible for making the decision to reject it.

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20. In explaining the Administration's decision, SCIT highlighted that the primary objective of the Cyberport project was not to generate revenue through land sale. Having regard to the financial analysis of PCG's proposal and the developers' proposal as set out in the Administration's paper tabled at the joint Panel meeting on 29 April 1999 (LC Paper No CB(1)814/04-05(04)), the Administration had come to the view that the PPP arrangement with PCG would yield a higher return and bring lower risks to the Government.

21. DGCIO(P&S) supplemented that in addition to the less favourable financial returns to the Government as compared to PCG's proposal, under the developers' proposal, the Government would be solely responsible for the construction of the Cyberport Portion. This "Government-led approach" was not preferred for several reasons. Firstly, there was insufficient expertise within the Government to develop an IT infrastructure project of the scale and complexity as that of the Cyberport. Secondly, to go through the many steps and procedures required for public works projects undertaken by the Government would delay the completion of the Cyberport by one to two years, which was

contrary to the Government's objective of completing the Cyberport project within the shortest possible time. Thirdly, under the alternative proposal, the Government had to bear all the financing, construction and related risks arising from the Cyberport Portion. Under the partnership agreement, however, these risks would be transferred to PCG.

22. The Deputy Chairman did not accept the Administration's explanation and opined that under the developers' proposal, the risks to the Government were minimal because these risks, if any, would be mitigated by the favorable terms contained in the proposal. With the reserve price of \$8 billion, the Government would have ample budget in constructing the Cyberport and even to cater for a certain cost overrun. Moreover, as indicated in the developers' proposal, the Government could still allocate a portion of the proceeds to fund the development of the Cyberport Portion by the selected implementing company (e.g. PCG) on a cost-plus-profit basis and pay for any related government infrastructure.

23. SCIT pointed out that the Administration had decided to entrust the development of Cyberport to PCG having regard to its leading position in the IT sector, its ability to line up leading IT companies as tenants, and its commitment to bear all risks related to the financing and construction of the Cyberport. The developers' proposal to excise the Residential Portion did not meet the foregoing requirements and was a fundamental departure from the whole concept behind the Cyberport project, which was to develop the entire project as an integrated development.

24. In reply to Ms Audrey EU's query on the justification for implementing the project as an integrated development, SCIT said that such an arrangement was necessary to ensure smooth and speedy implementation due to site constraints and programming considerations. On whether the Administration would adopt this mode of implementation for similar projects in future, SCIT advised that the mode of implementation would need to be considered in the light of the nature, circumstances and requirement of individual projects.

Disclosure of information on the Government's decision-making process

25. Mr Albert HO was disappointed to note that the 24 documents (LC Paper No. CB(1)852/04-05(01)) provided by the Administration contained mostly correspondences between the Government and PCG. He considered that in the absence of any documentation on internal meetings, Members were unable to ascertain how and why the decision to take forward the project had been reached. In response, SCIT confirmed the Administration's stance that it had already provided, in full, all the documents as requested by the Panel vide its letter dated 28 January 2005.

26. In reply to Mr Albert HO, PSCIT(CT) confirmed that enclosure (13), which was entitled "Mode of Implementation: Possible Framework", was a

discussion note prepared by the then ITBB and handed to PCG on 26 January 1999 to solicit its views on the possible framework for implementing the Cyberport project, and was not part of another document.

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27. Mr Albert HO referred to the note in which five queries were raised on the proposed partnership arrangement with PCG to take forward the project. Mr HO considered that the five queries, which he presumed had been raised by Mr K C KWONG, former SITB, were valid concerns which must be properly addressed. On account of these concerns, Mr HO was of the view that at that juncture, Mr K C KWONG might still have reservation on the proposed implementation of the Cyberport project. However, some 15 days later, on 11 February 1999, Mr K C KWONG sent a letter (enclosure (16)) to PCG suggesting modifications to PCG's proposed arrangement. Mr HO was concerned that this was indicative of a change in SITB's stance and asked what had transpired during this period that had led to the change, as well as whether and how the five queries raised in enclosure (13) had been addressed. Mr HO requested the Administration to provide all relevant information, including any documents and records of internal deliberations during this period. He would also like to know who had authorized the broad framework for the Cyberport project and the signing of the LOI with PCG.

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28. Noting that the Government's decision to build a Cyberport was announced by FS in March 1999, some two months after the Chief Executive's visit to Israel with the top management of PCG, Mr LEE Wing-tat requested the Administration to provide information (including documents/correspondences) on the exchanges of ideas and discussion, if any, between the Chief Executive and the top management of PCG on the proposed Cyberport project before March 1999. In this connection, Mr Albert HO also queried whether CE in Council had given formal approval to the project before the signing of the LOI. The Chairman also requested the Administration to inform Members the dates on which CE in Council had considered the Cyberport project in 1998 and 1999, including the date on which CE in Council approved the project in principle and the date on which formal approval was given.

29. In connection with Members' request for further information, SCIT advised that the Administration had already made the best endeavour to accede to the Panel's request and made available at short notice all the correspondences and documents exchanged between the Government and PCG on the Cyberport project during the period September 1998 to March 1999. He said that it was established Government policy not to disclose records of internal Government meetings and deliberations of the CE in Council so as not to impair the frankness and candour of such discussions which might prejudice the wider public interests ultimately. SCIT also confirmed that the disclosure of the documents for this Panel meeting had been made in accordance with the Code on Access to Information.

Admin

30. Mr Albert CHAN was disappointed that the Administration declined to disclose records of internal deliberations leading to Government's decision. In view of the Administration's stance, Mr CHAN requested the Administration to provide a schedule setting out the chronology of events and the stakeholders/decision-makers involved, starting from the initial discussion of the Cyberport project, progress of negotiation, consideration by the CE in Council to the final decision on taking the project forward in conjunction with PCG. In reply, PSCIT(CT) remarked that compilation of the schedule as requested by Mr CHAN would involve disclosure of information relating to records of internal Government meetings and this would not be consistent with the existing Government policy on the disclosure of information.

31. In this connection, Mr LEE Wing-tat said that Members of the Democratic Party would consider pursuing the matter through other channels such as the setting up of a Select Committee if the Administration refused to provide the information requested by Members.

Decision to award the project to PCG

32. Mr Albert HO noticed that in order to lobby the Government's support for its proposal to develop the Cyberport, PCG had drawn an analogy with the Disneyland theme park and submitted that PCG was best placed to deliver the project because it was the only property development company in Hong Kong with a track record in technology and information services. He was also aware that PCG had cast doubt on the Government's ability to select the right tender if the project was put to tender. Mr HO queried whether the Government had decided to award the project development right to PCG on the basis of its self-presented strengths; and whether this was a justified decision to deviate from the usual procedures.

33. In response, SCIT reiterated that the decision to award the development right to PCG without tender had been made in view of the special circumstances prevailing at that time. He recapped that Hong Kong was suffering from the aftermath of the Asian financial crisis in 1998 and was greatly in need of new initiatives to revive the economy and provide employment opportunities. In order that Hong Kong could sustain its competitiveness in the region, the Government had decided to develop the Cyberport and Disneyland and announced the two projects in the 1999-2000 Budget. To put in place a state-of-the-art IT infrastructure within the shortest possible timeframe, the Government had decided to enter into partnership with PCG as it was one of the leading players in the IT sector based in Hong Kong and had pledged to attract quality tenants to the Cyberport. Moreover, PCG was willing to bear all risks involved in project development.

34. In this regard, Ms Emily LAU pointed out that at the time when the Government decided to enter into partnership with PCG, PCG was only a relatively new IT company with a short track record. Recalling the

Administration's remark at the PWSC meeting on 12 May 1999 that putting the project to public tender would delay it by one year or so and thus seriously jeopardize the chance of success of the project, Ms LAU questioned the urgency of the project because in his article, SCIT had also referred to the Silicon Valley which took two decades to create a sustainable strategic cluster of leading IT companies.

Admin 35. Mr LEE Wing-tat stressed that awarding the development right to PCG without putting the project to tender was a clear case of deviation from the established land disposal policy and it was incumbent upon the Administration to provide justification. Mr LEE reiterated his request that the Administration should provide all relevant written information/papers documenting the Government's decision to take forward the project in conjunction with PCG. Admin The Chairman was also concerned about who had decided to award the development right to PCG without going through a tendering process and when Admin such a decision was made. Although there were ample examples of Private Treaty Grants, Mr LEE understood that such grants were for the development of facilities such as churches, piers or schools, instead of for profit-making residential development as in the present case. Mr LEE further said that he would not dispute the outcome as long as the Government had followed the established procedures, such as in the case of awarding a hotel site in Ma On Shan to a property developer at a price of about \$200 per square foot (based on the total permissible gross floor area) in 1998 following a tender exercise.

36. SCIT recapped that the Cyberport project had been conceived in the hype of the dot.com boom when many of the regional neighbours had already built or were in the process of building their own integrated IT infrastructure. The Administration had not carried out a tender exercise because of the need to act promptly in the face of growing competition. While he was prepared to answer Members' questions, he re-affirmed that it was established Government policy not to disclose records of internal deliberations.

Take-up guarantee by PCG

37. Noting that under the LOI, PCG was required to provide a take-up guarantee if the Cyberport Portion did not attract tenants as envisaged, Mr Albert HO queried why the take-up guarantee was subsequently dropped in the Project Agreement signed on 17 May 2000. In reply, PSCIT(CT) and DGCIO(P&S) explained that the Government's decision to waive the take-up guarantee by PCG was taken during the dot.com boom and at a time when interest in the Cyberport was overwhelming. As the Administration anticipated that demand was likely to exceed the supply of office space in the Cyberport, the Administration believed that dropping the take-up guarantee would be in the Government's favour. Had the Administration agreed to keep PCG's take-up guarantee in the Project Agreement, such an arrangement would have been perceived to be excessive and over-dominating as one single company would be allowed to occupy 20% to 50% of the space available in a Government-owned IT

infrastructure.

Admin

38. Mr Albert HO and Ms Audrey EU did not subscribe to the Administration's explanation. They pointed out that under the take-up guarantee, PCG had agreed to take up not less than 20% and not more than 50% of the total office space within the first five years of the completion of Phase I of Cyberport only if the space was not taken up 36 months after completion. They therefore considered that the take-up guarantee was in fact a kind of safeguard against the risk of unsatisfactory tenancy uptake and should not therefore be dropped by the Administration on its own accord. Mr HO cautioned that the voluntary waiver of the guarantee might be construed as a form of "transfer of benefit" in favour of PCG. He questioned who was responsible for making the decision on waiving the take-up guarantee by PCG and the soundness of the decision.

(post-meeting note: On the instruction of the Chairman, the extracts of the minutes of the Panel meetings on 12 June 2000 and 8 April 2002, in which the issue of the Administration's decision to drop the take-up guarantee by PCG was discussed, have been re-circulated to all Members on 4 February 2005 vide LC Paper No CB(1)868/04-05(01))

Concluding remark

Admin

39. Summing up, the Chairman stressed that Members had discussed a number of issues arising from the two articles authored by SCIT. However, the Panel had not taken a position on the issues discussed at the meeting. To facilitate Members' consideration, the Chairman urged the Administration to provide, in a manner it deemed appropriate, the information requested by Members at the meeting.

(post-meeting note: The written reply of the Administration to Members' request raised at the meeting (vide LC Paper No CB(1)864/04-05(01)) has been circulated to all Members on 18 February 2005 vide LC Paper No. CB(1)943/04-05(01)).

II Any other business

40. There being no other business, the meeting ended at 12:40 pm.