

香港特別行政區政府

政府資訊科技總監
辦公室



OFFICE OF THE
GOVERNMENT CHIEF INFORMATION OFFICER
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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18 February 2005

Miss Polly Yeung
Clerk to Panel
Legislative Council Building
8 Jackson Road, Central
Hong Kong
Fax no.: 2121 0420

Dear Miss Yeung,

**Panel on Information Technology and Broadcasting
Follow-up to the special meeting held on 2 February 2005**

Thank you for your letter of 7 February 2005 to the Secretary for Commerce, Industry and Technology, enclosing a revised summary of requests for information raised by Members at the captioned meeting. He has asked me to reply on his behalf.

You may be aware that Mr Donald Tsang, the Chief Secretary for Administration, has already responded to similar requests made by the Hon LEE Wing-tat vide his letter dated 7 February 2005 (at **Annex A**). The letter was copied to all Legislative Council Members.

The CS' reply represents the Administration's position on the requests in question. Nonetheless, to facilitate reading, we have set out in **Annex B** the Administration's response to the requests raised by Members at the captioned meeting, making reference to the CS' reply, where appropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Betty Fung', with a stylized, cursive script.

(Mrs Betty Fung)
for Secretary for Commerce, Industry and
Technology

Encl.

c.c. Hon Sin Chung-kai, Panel Chairman

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

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

Ms Kathleen Au
CEO(Admin), Communications and Technology Branch
Commerce, Industry and Technology Bureau

香港特別行政區政府
政務司司長辦公室



CHIEF SECRETARY
FOR ADMINISTRATION'S OFFICE
Government of the Hong Kong
Special Administrative Region

7 February 2005

The Hon Lee Wing-tat
Chairman
Democratic Party
Rooms 401-409, West Wing
Central Government Offices
11 Ice House Street
Hong Kong

Dear Chairman Lee.

Request for further information on the Cyberport Project

Thank you for your letter of 2 February 2005.

First of all, let me assure you that, in response to the request of the Legislative Council (LegCo) Panel on Information Technology and Broadcasting (ITB Panel), the Administration has provided, in full, all the correspondence and documents exchanged between the Government and the then Pacific Century Group (PCG) on the Cyberport development during the period September 1998 to March 1999. This was contained in the bundle of paper delivered to ITB Panel on 2 February 2005. There is nothing more.

As you appreciate, records of internal government meetings and deliberations of the Executive Council (ExCo) belong to a different category of paper, which in the public interest cannot be released. It is established Government policy not to disclose any such records. If we cannot assure the confidentiality of such records or discussions, the candour of discussions would be seriously impaired, thereby harming or prejudicing the operation of ExCo and of the Government, and ultimately the wider public interests.

However, in order to help you and all LegCo members understand more fully the backdrop, thinking and rationale behind the Government's decision in this subject, I shall endeavour to encapsulate them in answering your specific questions in two parts, reflecting as accurately as possible the essence of the Administration and ExCo's deliberations of the Cyberport project.

Part I

The decision to enter into a public-private partnership (PPP) with PCG in developing the Cyberport was based on the following considerations:

- (a) In 1998, the Hong Kong economy had suffered sharply in the wake of the Asian financial crisis and its aftermath. The territory was desperately in need of new drivers to boost not only economic growth but also her people's confidence. In response to this situation, the Government believed that Hong Kong should ride on the information age and augment its established strengths in information technology (IT) and tourism as a matter of urgency. After intensive deliberations and negotiations, the Administration announced in the 1999-2000 Budget its firm intention to undertake two special projects, namely the Cyberport and the Disney project. The Cyberport concept was premised on the strategic consideration of Hong Kong's competitive position both in the region and globally. The state of IT, telecommunications and broadcasting development in other cities was advancing rapidly upwards, and a global trend was firming up towards convergence of IT, telecommunications and broadcasting technologies and infrastructures. The Government believed that Hong Kong had an edge in developing information services and multimedia content creation. We should thus capitalize on the strengths of our sophisticated telecommunications network, strong intellectual property rights protection regime and well established service industries. The Cyberport provided an important infrastructure that was lacking in Hong Kong at that time; we needed it to form a strategic cluster of IT and related companies.

- (b) The Cyberport project was conceived when many of our regional neighbours had already built or were in the process of building their own integrated IT infrastructure. In view of the speed at which the IT sector was advancing and the efforts of practically all of our regional competitors in trying to carve out their corners in the market, Hong Kong had to race against time and put in place a state-of-the-art IT infrastructure as soon as practicable. There were also strong sentiments and overwhelming support in the IT sector in Hong Kong that we should expedite the completion of the Cyberport project. This sector regarded the Cyberport as an essential building bloc in the Government's overall IT strategy – Digital 21.
- (c) To meet the specialized needs of IT companies, the Government considered that the Cyberport development should rely on the expertise and entrepreneurial spirit of the private sector. In order that Hong Kong might make a head-start in this project as early as possible, the Government had to secure external help in articulating the project profile, detailed design and hardware specifications, etc of the Cyberport. Quite simply, there was insufficient expertise within the Government at that time to plan and build a Cyberport that would meet the high specifications of such a project. It was in these circumstances that the Government decided to commence negotiation with PCG, the originator of the Cyberport concept.
- (d) PCG was one of the leading players in the IT sector based in Hong Kong. It was best positioned to develop the project. Should it be allowed to undertake the project, PCG also pledged to attract quality tenants to the Cyberport by mobilizing its extensive network of partners and suppliers in the field.
- (e) Most of all, PCG was willing to bear all the risks involved in project development. The Government regarded this as a significant point, given the volatilities across the market at the time.

Let me now turn to the question of the so-called five "fundamental issues to be addressed", listed at the end of the discussion note prepared by the then Information Technology and Broadcasting Bureau (ITBB) and handed over to PCG on 26 January 1999. The main purpose of that discussion note was to put forward a possible framework for implementing the Cyberport project. The final section of the discussion note served to remind PCG the need to address the five fundamental issues, which had been mutually resolved but would most likely be the primary concern to the public, in devising an implementation plan. This resulted in PCG's letter dated 27 January 1999 proposing a scheme to implement the Government's framework.

Before the Government handed over the discussion note to PCG on 26 January 1999, we had considered these five issues thoroughly and, for reasons (a)-(e) above, had clearly decided that the negotiation with PCG should continue on the basis of a PPP model. The decision to take forward PCG's proposal as a matter of priority is evident from the then Secretary for Information Technology and Broadcasting's (SITB) earlier letter dated 14 January 1999 to PCG, which states that:

"The HKSAR Government, having considered your proposal and taken initial advice on the advantages a Cyberport may bring for Hong Kong, has decided to take forward consideration of the proposal as a matter of priority, with a view to completing the work necessary for a decision on the proposal and formal announcement thereof as soon as possible."

It is thus incorrect to infer that there was a U-turn in the Government's thinking during the 15-day period between 26 January and 11 February 1999. By mid-January 1999, all leading players in the Administration were agreed that the fundamental issues of the Cyberport project had been resolved and that the project should, subject to ExCo's endorsement and approval by LegCo's Finance Committee of the necessary infrastructure, proceed under a PPP arrangement. There was no internal meeting, negotiation or change of mind on the part of any leading official relating to this project recorded on file during the period 26 January to 11 February 1999. This was naturally the case as the Administration was simply waiting for PCG's response to the framework put forward on 26 January 1999, for there was little else the Administration should do during this period.

Part II

Under the Letter of Intent (LOI) signed between the Government and PCG on 2 March 1999, PCG undertook to occupy at least 7,000 sq. m. of office space in Cyberport Phase I and to take up extra space (not less than 20% and not more than 50%) if the Cyberport did not attract enough tenants as envisaged.

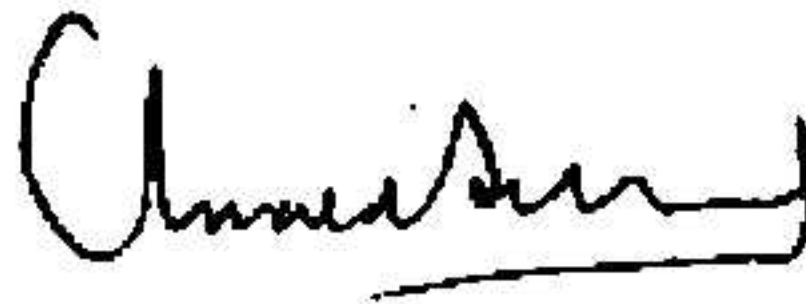
During the negotiations on the Cyberport Project Agreement, it became clear that PCG considered that its proposed take-up guarantee would give it an automatic right to occupy "not less than 20%" of the office space in Cyberport under a long-term lease and on concessionary terms. Had we agreed to keep this guarantee in the Project Agreement, we would have given a long term commitment to PCG, and would have been left with too little space to accommodate the over 120 companies which had registered interest in becoming Cyberport tenants as at May 2000. It would also have been perceived to be excessive and over-dominating for one single company to occupy 20% to 50% of the space available in a Government-owned IT infrastructure. In the light of these considerations, the Government considered that dropping PCG's take-up guarantee would be preferable, and asked PCG to apply for tenancy in the same way as other interested companies, and all such applications would be subject to the approval of a committee comprising local and international experts. PCG agreed to this.

On 17 May 2000, the Government promptly reported to LegCo in a formal Brief of the decision to drop the PCG's proposed guarantee from the Project Agreement. There was no dissent noted. The ITBB officials later highlighted this point again at the LegCo ITB Panel meeting held on 12 June 2000, and none of the Members present had queried the decision.

As at January 2005, PCG has taken up some 8,000 sq m. in Cyberport Phase I and II, which is equivalent to 8% of the total office area available in all phases. It is the largest tenant at the Cyberport at present.

The Government's decision to drop the take-up guarantee was taken during the dot.com boom and at a time the interest in Cyberport was overwhelming. Moreover, regardless of the occupancy rate in future, it would have been unreasonable to allow PCG to occupy up to 50% of the lettable space available at Cyberport.

Yours sincerely



(Donald Tsang)
Chief Secretary for Administration

c.c. All LegCo Members

Mr John C Tsang, Secretary for Commerce, Industry and Technology

b.c.c. All Principal Officials

H, CPU

D of Adm

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**The Administration's Response to the Requests for
further information raised at the special meeting of
the Panel on Information Technology and Broadcasting
on 2 February 2005**

Requests for all relevant information including records of internal deliberations relating to the Cyberport project (paragraphs 1, 3, 4 and 7 of the revised summary of requests)

In response to the request of the Panel on the Information Technology and Broadcasting (ITB Panel) dated 28 January 2005, the Administration has already provided, in full, **all** the correspondence and documents exchanged between the Government and the then Pacific Century Group (PCG) on the Cyberport project during the period September 1998 to March 1999. These documents were submitted to the ITB Panel on 2 February 2005.

2. It is, however, the established Government policy not to disclose records of internal government meetings and deliberations of the Executive Council (ExCo). The confidentiality of such records or discussions must be assured, lest the candour of discussions would be seriously impaired, thereby harming or prejudicing the operation of ExCo and of the Government, and ultimately the wider public interests.

3. Notwithstanding this, the Chief Secretary for Administration (CS) had encapsulated in his letter dated 7 February 2005 (at Annex A) the background and rationale behind the Government's decision on the Cyberport project, reflecting as accurately as possible the essence of the Administration and ExCo's deliberations of the project.

Whether and how the five fundamental issues raised under paragraph 2(a) and (e) of Encl. (13) of the List of Correspondence/Documents between Government and the PCG had been addressed (paragraph 1 of the revised summary).

4. The CS has already clarified in his letter the purpose of the Government raising the five “fundamental issues to be addressed” in the discussion note handed to PCG on 26 January 1999. In brief, the final section of the discussion note served to remind PCG the need to address the five issues, which had been mutually resolved but would most likely be the primary concern to the public, in devising a plan to implement the framework proposed by the Government. Before handing over the discussion note to the PCG on 26 January 1999, the Government had already considered the five issues thoroughly and decided that the negotiation with PCG should continue on the basis of a public-private partnership (PPP) model.

Who authorized the broad framework for the Cyberport project and the signing of the Letter of Intent (LOI) with PCG (paragraph 2 of revised summary)

5. As the CS has mentioned, by mid-January 1999, all leading players in the Administration were agreed that the fundamental issues of the Cyberport project had been resolved and that the project should, subject to ExCo’s endorsement and approval by the Finance Committee of the Legislative Council (LegCo) of the necessary infrastructure works, proceed under a PPP arrangement. The Government then passed the discussion note entitled “Mode of Implementation: Possible Framework” (Encl.(13)) to PCG on 26 January 1999 so that the latter could come up with a concrete proposal to implement the framework. Further discussions between the two sides took place between 27 January to 24 February 1999, resulting in certain modifications to the original framework and the signing of the Letter of Intent on the Cyberport project on 2 March 1999.

A schedule setting out the chronology of events and stakeholders/decision-makers involved, from the initial discussion of the Cyberport project, progress of negotiation, ExCo’s consideration to the final decision on taking the project forward in conjunction with PCG (paragraph 4 of the revised summary)

6. The provision of such a schedule involves disclosure of information relating to records of internal government meetings and

ExCo's deliberations. As stated in paragraph 1 above, it is established Government policy not to disclose such records.

Decision not to accept the offer proposed by a group of public listed companies (paragraph 5 of the revised summary)

7. In the paper submitted for discussion at the joint meeting of the ITB Panel and Planning, Lands and Works Panel held on 29 April 1999, the Government presented a financial analysis of both the PCG proposal and the alternative proposal put forward by "a group of companies" through their lawyers to the Government on 21 April 1999. Having compared the two proposals, the Government concluded that the financial arrangement under the PPP proposal could yield a significantly greater receipt and, at the same time, a lesser risk to the Government. More importantly, the Government believed that the PPP proposal could meet its objective of creating a strategic cluster of information technology and information services companies and talents in Hong Kong within the shortest possible time (paragraph 26 of the Panel paper). On the other hand, under the alternative proposal the group of companies would purchase the site for the ancillary residential development of the Cyberport only. This would be a fundamental departure from the concept behind the Cyberport project, which is to develop the entire project as an integrated development. Moreover, all the risks involved in developing the Cyberport would have to be shouldered by the Government.

Decision to waive the take-up guarantee by PCG (paragraph 6 of the revised summary)

8. The CS has explained in Part II of his reply the background and rationale leading to the Administration's decision not to include the proposed take-up guarantee by PCG in the Project Agreement. In brief, the Government's decision was taken during the dot.com boom and at a time the interest in the Cyberport was overwhelming. Moreover, regardless of the occupancy rate in future, it would have been unreasonable to allow PCG to occupy up to 50% of the lettable space available at Cyberport.

9. On 17 May 2000, the Government informed LegCo in a formal

Brief of its decision to drop the PCG's proposed guarantee. There was no dissent noted. The Government officials later highlighted this point again at the ITB Panel meeting held on 12 June 2000, and none of the Members present had queried the decision.

Commerce, Industry and Technology Bureau
February 2005