

立法會
Legislative Council

LC Paper No. CB(1)923/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

**Minutes of thirteenth meeting on
Tuesday, 16 January 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
 - Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Hon SIN Chung-kai, JP
 - Hon LAU Kong-wah, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon Andrew CHENG Kar-foo
 - Hon Abraham SHEK Lai-him, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Albert CHAN Wai-yip
 - Hon WONG Kwok-hing, MH
 - Hon LEE Wing-tat
 - Hon LI Kwok-ying, MH, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
 - Hon TAM Heung-man
- Members absent** :
- Dr Hon LUI Ming-wah, SBS, JP
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon CHAN Kam-lam, SBS, JP
 - Hon LEUNG Yiu-chung
 - Hon CHIM Pui-chung

Public Officers attending : Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works

Miss Ida LEE
Principal Assistant Secretary for the Environment,
Transport and Works

Mr Kady LO Kin-hung
Chief Inspecting Officer (Railways)
Environment, Transport and Works Bureau

Mr David LAU
Principal Assistant Secretary for Financial Services and the
Treasury

Mr Sunny CHAN Yuen-sun
Senior Government Counsel
Department of Justice

Miss Clara LEUNG
Government Counsel
Department of Justice

Mr Albert YUEN Lap-pun
Assistant Commissioner for Transport/Bus & Railway

Miss Alice AU YEUNG
Principal Transport Officer (Bus and Railway)
Transport Department

Attendance by invitation

: MTR Corporation

Mr Andrew McCUSKER
Operations Director

Mr Wilfred LAU
Head of Operations

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Kowloon-Canton Railway Corporation

Mr TSUI Wai-keung
General Manager – West Rail Operations

Mr Michael KWAN
Train Operations Manager

Mr Raymond WONG
Senior Corporate Affairs Manager

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr Anthony CHU
Acting Senior Council Secretary (1)3

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Integrated Operating Agreement

- (LC Paper No. CB(1)710/06-07(01) - The Administration's response to issues raised at the meeting on 9 January 2007 on integrated Operating Agreement
- LC Paper No. CB(1)520/06-07(01) - Information paper on the integrated Operating Agreement provided by the Administration
- LC Paper No. CB(1)627/06-07(01) - The Administration's response to issues raised at the meeting on 19 December 2006 on integrated Operating Agreement
- LC Paper No. CB(1)661/06-07(01) - A list of written questions raised by Hon LAU Kong-wah on Shatin to Central Link project
- LC Paper No. CB(1)681/06-07(01) - The Administration's response to questions raised by Hon LAU Kong-wah as set out in LC Paper No. CB(1)661/06-07(01)

Action

LC Paper No. IN03/06-07

- Information note on major changes proposed in the draft integrated Operating Agreement between the MTR Corporation Limited and the Government prepared by Research and Library Services Division of the LegCo Secretariat)

Mr Abraham SHEK declared interests as a member of the Managing Board of Kowloon-Canton Railway Corporation (KCRC).

2. Members noted Dr Fernando CHEUNG's submission on the integrated Operating Agreement (OA) tabled at the meeting.

(Post-meeting note: The submission was issued to members vide LC Paper No. CB(1)755/06-07 dated 17 January 2007.)

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Funding arrangements for and implementation of Shatin to Central Link (SCL)

4. Some members had expressed grave concern about the serious slippage in the implementation of SCL. Views had been expressed that as a result of the rail merger, implementation of SCL had been withheld for years. The Administration explained that since the acceptance of the SCL tender bid of KCRC in June 2002, KCRC had made changes to its Conforming Proposal (CP), including two major revisions to the CP in the year 2004. The implementation programme for SCL was also dependent on the progress of the Kai Tak Planning Review and the Wan Chai Development Phase II Review, which had yet to be finalized. As a result, the Government needed to consider in detail the technical, operational and financial implications on the SCL project in respect of such substantive amendments and the latest circumstances before deciding on the funding approach for the project. Pending the result of the on-going review, an agreement would need to be reached on a draft final proposal which would then be submitted to the Chief Executive in Council for approval and then the necessary statutory procedures for public consultation would be proceeded with. As such, there was no question of serious slippage of the SCL project as a result of the rail merger.

5. The Bills Committee had examined the comparison between the bidding proposals for the SCL project from MTR Corporation Limited (MTRCL) and KCRC. The Bills Committee noted that KCRC performed better in respect of fare level and funding support. There was no requirement for Government to grant any property development rights under KCRC's CP. KCRC's proposed fares were also lower than those of MTRCL. Some members were worried about the monopolistic position of the railway corporation after the rail merger and that the Administration would have little bargaining power when negotiating with the post-merger corporation (MergeCo)

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on the implementation of SCL. As a result, Government might be required to grant different forms of support to MergeCo for the SCL project which might not be in the best interest of the general public. Some members therefore suggested that in the context of the rail merger, MergeCo should be required to fund the SCL project without any form of Government funding support, similar to the terms as suggested by KCRC in its CP. To ensure the implementation of SCL in a timely manner, there was also suggestion that the Bills Committee should consider bundling the discussion of the SCL project with the Rail Merger Bill. To this end, Mr LEE Wing-tat had indicated that members of the Democratic Party might consider moving a motion to this effect at a meeting of the Bills Committee. Messrs Abraham SHEK and Jeffrey LAM, however, pointed out that due to changes in circumstances, there was a need to review the financial arrangements for SCL. They also indicated support to the view expressed by the Government not to adopt the proposed bundling approach, for fear of deferring fare reductions to be made possible by the rail merger.

6. Regarding the proposed bundling approach as suggested by some members, the Administration reiterated its view expressed at the last meeting, that whilst the Government would discuss with the railway corporations the implementation details of SCL, including the funding approach for the project, taking into account the progress of the rail merger exercise, it would be inappropriate and unwise to bundle the discussion of the SCL with the Rail Merger Bill because that could delay the merger exercise and hence the proposed rail fare reduction that would be made possible by the merger synergy. Early approval of the merger would help ensure the adoption of integrated interchange arrangements for SCL. The abolition of the second boarding charge under a merger scenario would also benefit passengers. The Administration also said that under the integrated Operating Agreement (OA), if an agreement on the terms for MergeCo to take forward a new project which was not natural MTR-extension on the basis of the "ownership approach" could not be reached, Government could require MergeCo to take up the operator's role and operate the new project under the "concession approach". The above would apply to SCL. The availability of two options for funding approach would help ensure that new projects would be implemented to benefit the public.

7. Some members doubted whether it would be appropriate for the Government to re-award the SCL project to another bidder after awarding the development rights to KCRC without going through another tender exercise. There were worries that this might have already contravened the tendering spirit, procedures and requirements as stipulated in the Agreement on Government Procurement of the World Trade Organization.

Fares for SCL

8. Regarding the concerns expressed by some members in respect of the fares for SCL, the Administration advised that when setting fares for new railways, the railway corporations had all along taken into account the prevailing fare table and the same approach was expected of MergeCo irrespective of which approach was adopted for pursuing a new railway project. MergeCo would be required under the integrated OA

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to consult the Panel on Transport and the Transport Advisory Committee (TAC) if the initial fares were inconsistent with the prevailing fare table of MergeCo, whereas MergeCo would be required to brief the Panel and TAC if the initial fares were consistent with the prevailing fare table of MergeCo. Moreover, if the merger was implemented, MergeCo would be making reference to its fare table when setting fares for the SCL, and its fare table would have reflected the fare reduction to take effect upon the merger.

9. Some members were dissatisfied that the Administration had bundled the proposed fare reduction with the rail merger. Given the deflation over the past few years, railway fares should have long been reduced. Moreover, as the majority shareholder of MTRCL, Government could also exercise its influence in the MTRCL Board to enable fares to be adjusted according to the economic situation.

10. The Administration explained that the proposed fare reduction would be made possible by synergies to be achieved as a result of the merger, and hence it was a term for the merger.

Proposed fare adjustment mechanism

11. The Bills Committee had examined whether the proposed fare adjustment mechanism (FAM) could adequately safeguard public interest. In particular, the Bills Committee had reviewed whether there was a need to include specific provisions in the integrated OA, requiring MergeCo to consult the Panel on Transport and consider the level of public acceptance based on passenger surveys prior to changing the level of any fare under the FAM. Concerns had also been expressed about how fare adjustments under the FAM could be properly monitored to obviate manipulation.

12. The Administration pointed out that after the rail merger, fares of MergeCo would be adjusted according to a formula which was linked to changes in consumer price index and wage index. In general this formula could reflect economic conditions in Hong Kong and affordability of the public. In particular, the two indices were objective and verifiable and were published data of the Census & Statistics Department. Besides, MergeCo would also be required under the integrated OA to obtain certifications from two independent experts regarding the details of individual fare adjustments to ensure compliance with the FAM before the fare adjustments could take effect. As different from the present arrangement where the railway corporations were required to consult the Panel on Transport and TAC on fare adjustments because the corporations had full discretion to adjust their fares at present, if fare autonomy was replaced by the proposed direct-drive FAM after the merger, MergeCo would have to comply with the FAM in future fare adjustments and hence it would be appropriate for MergeCo to notify instead of consult the Panel on Transport and TAC prior to implementation of the adjusted fares. The required duration of a notification period of at least two weeks was based on existing practice. Where necessary, MergeCo would also be prepared to attend meetings of the Panel to answer questions on fare adjustment.

Action

Follow-up actions

Admin./
MTRCL/
KCRC

13. To address the various concerns expressed above, the Administration/MTRCL/KCRC was requested to take the following follow-up actions –

- (a) MTRCL to disclose the three property development sites which MTRCL required Government to grant property development rights in its bidding proposal for SCL;
- (b) The Administration to provide a paper on the legal status of the award of the SCL project to KCRC, particularly the legal rights and obligations of Government/KCRC in respect of the SCL project;
- (c) KCRC to provide a paper reporting on the progress of SCL, including the progress of the various studies related to SCL, the alignment and stations design, the difficulties encountered in taking forward SCL and the estimated implementation timetable; and
- (d) MTRCL to provide information on how the air flow condition and level of carbon dioxide within the compartments of train cars plying lines starting from or passing through Central were checked, and whether the readings could comply with the standards set by the Environmental Protection Department in this regard, in particular during peak hours.

II Any other business

14. The Bills Committee agreed to continue examining the integrated OA clause by clause at the next meeting scheduled for Tuesday, 23 January 2007, from 4:30 pm to 6:30 pm.

15. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
8 February 2007

**Proceedings of the thirteenth meeting of
the Bills Committee on Rail Merger Bill
on Tuesday, 16 January 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Integrated Operating Agreement			
000000 - 000157	Chairman	- Opening remarks	
000158 - 000452	Chairman Administration	- Briefing by the Administration (LC Paper No. CB(1)710/06-07(01))	
<i>Discussion on the Administration's response to issues raised at the meeting on 9 January 2007 on integrated Operating Agreement (LC Paper No. CB(1)710/06-07(01))</i>			
000453 - 001102	Mr WONG Kwok-hing Administration	- Discussion on whether the post-merger Corporation (MergeCo) should implement the Shatin to Central Link (SCL) project on financial terms similar to those offered by the Kowloon-Canton Railway Corporation (KCRC), which had been awarded the project - Discussion on the time requirement for MergeCo to notify the Panel on Transport (the Panel) and the Transport Advisory Committee (TAC) before implementing fare adjustments	
001103 - 001630	Chairman Mr LEE Wing-tat Administration	- Discussion on the progress of and funding arrangement for SCL, and the need for bundling the consideration of the Rail Merger Bill with SCL - Indication of members of the Democratic Party's intention to move a motion to ensure that all uncertainties surrounding SCL would be cleared before giving support to the Bill	
001631 - 002155	Chairman Mr LAU Kong-wah Administration KCRC	- Discussion on the need for MergeCo to consult the Panel and consider the level of public acceptance prior to changing the level of any fares under the proposed fare adjustment mechanism (FAM), and on whether MergeCo should require Government support in the form of property development rights for taking forward SCL	
002156 - 002712	Mr Andrew CHENG Administration	- Discussion on how fare adjustments under the proposed FAM could be properly monitored and on the funding arrangement for SCL	

Time marker	Speaker	Subject(s)	Action required
002713 - 003258	Chairman Ms Emily LAU Administration	- Discussion on the progress of the railway projects outlined in the Railway Development Strategy 2000, and the role of Government and MergeCo in determining whether and how these projects would be taken forward	
003259 - 003806	Mr Ronny TONG Administration	- Discussion on how far the merits of the rail merger could be realized in terms of fares, implementation of SCL, retaining railway talents and staff development	
003807 - 004303	Chairman Dr Raymond HO Administration	- Discussion on the state of competition in the transport service market, practicability of inviting railway operators other than the existing ones to take forward railway projects and the bargaining power of Government after the rail merger when discussing with MergeCo the funding arrangements for new railway projects	
004304 - 004622	Mr Abraham SHEK	- Expression of dissenting views on some other members' proposal to bundle the consideration of the Rail Merger Bill with the SCL project, and their call upon MergeCo to take forward SCL on terms similar to KCRC's funding proposal for SCL	
004623 - 005146	Chairman Mr WONG Kwok-hing Administration	- Discussion on whether MergeCo should consult instead of notify the Panel and TAC before implementing new fares and on the timing of notification	
005147 - 005501	Chairman Mr Jeffrey LAM Administration	- Expression of dissenting views on some other members' proposal to bundle the consideration of the Rail Merger Bill with the SCL project, and their call upon MergeCo to take forward SCL on terms similar to KCRC's funding proposal for SCL	
005502 - 010114	Chairman Mr LEE Wing-tat Administration MTR Corporation Limited (MTRCL)	<ul style="list-style-type: none"> - Request for information on the property development sites required in MTRCL's bidding proposal for SCL - Discussion on the appropriateness of re-awarding the SCL project to MergeCo, which might require Government support in the form of property development rights, without re-inviting tenders 	MTRCL to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
010115 - 010650	Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - Discussion on the feasibility of allowing KCRC to continue to take forward the SCL project notwithstanding the proposed rail merger - Discussion on the need for MergeCo to consult the Panel and consider the level of public acceptance prior to changing the level of any fares under the FAM - Discussion on the progress of SCL 	
010651 - 011153	Chairman Mr Andrew CHENG Ms Emily LAU Administration	<ul style="list-style-type: none"> - Discussion on the implementation of SCL and on the bundling of fare reduction with the proposed rail merger 	
011154 - 011727	Chairman Ms Emily LAU Administration	<ul style="list-style-type: none"> - Discussion on the progress of SCL and the composition of the Board of MergeCo to safeguard public interests 	
011728 - 012052	Chairman Mr Albert CHAN	<ul style="list-style-type: none"> - Expression of concerns about re-awarding the SCL project to MergeCo - Expression of views, objecting to the proposed rail merger 	
012053 - 012604	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> - Expression of views, objecting to the proposed rail merger - Expression of concern about bundling fare reduction with the proposed rail merger 	
012605 - 012836	Mr LEE Wing-tat Administration	<ul style="list-style-type: none"> - Discussion on the need to seek legal advice on the legality of re-awarding the SCL project to MergeCo without re-inviting tenders 	
012837 - 013350	Chairman Mr Albert HO Administration	<ul style="list-style-type: none"> - Discussion on the legal status of the award of the SCL project to KCRC, and request for information on the legal rights and obligations of KCRC/Government in respect of the SCL project before the proposed rail merger 	Administration to take necessary follow-up actions
013351 - 014143	Chairman Mr LAU Kong-wah Mr Abraham SHEK Ms Emily LAU Administration	<ul style="list-style-type: none"> - Request for a paper from KCRC reporting on the progress of SCL, including the progress of the various studies related to SCL, the alignment and stations design, the difficulties encountered in taking forward SCL and the estimated implementation timetable 	KCRC to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
<i>Clause-by-clause examination of the integrated Operating Agreement (LC Paper No. CB(1)627/06-07(01)</i>			
014144 - 014340	Chairman Mr Andrew CHENG Administration	- Briefing by the Administration - Explanation of footnote 1, in particular the "threshold of capital expenditure invested"	
014341 - 014842	Chairman Mr LEE Wing-tat Administration	- Enquiry and explanation of the procedure of and the circumstances that would trigger off the extension of franchise (clause 2 of integrated OA and section 5 of the Mass Transit Railway Ordinance (Cap.556))	
014843 - 015116	Administration	- Briefing by the Administration	
015117 - 015802	Chairman Mr LEE Wing-tat Administration MTRCL	- Enquiry and explanation of the coverage of clause 3.6 - Request of MTRCL to provide information on how the air flow condition and level of carbon dioxide within the compartments of train cars plying lines starting from or passing through Central were checked, and whether the readings could comply with the standards set by the Environmental Protection Department in this regard, in particular during peak hours	MTRCL to take necessary follow-up actions
015803 - 020243	Chairman Mr Andrew CHENG Administration Mr LAU Kong-wah	- Discussion on the need to amend clause 3.4 as proposed	
Agenda Item II – Any other business			
020244 – 020323	Chairman	- Date of next meeting	