

立法會

Legislative Council

LC Paper No. CB(1)1218/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of seventeenth meeting on Tuesday, 13 February 2007, at 10:45 am in the Chamber of the Legislative Council Building

- Members present** :
- Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
 - Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Dr Hon LUI Ming-wah, SBS, JP
 - Hon CHAN Kam-lam, SBS, JP
 - Hon LEUNG Yiu-chung
 - 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 Jeffrey LAM Kin-fung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon LEE Cheuk-yan
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon LI Kwok-ying, MH, JP
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon CHIM Pui-chung
 - Hon KWONG Chi-kin
 - Hon TAM Heung-man

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

Mrs CHU POON Kit-man, Hedy
Principal Assistant Secretary for the Environment,
Transport and Works

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

Mr Andrew TSANG
Principal Assistant Secretary for Financial Services and the
Treasury (Acting)

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 Y T LI
Senior Director, Transport

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

Ms Sarah YUEN
Senior Council Secretary (1)6

Mr Anthony CHU
Council Secretary (1)2

Miss Winnie CHENG
Legislative Assistant (1)5

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I Confirmation of minutes and matters arising

- (LC Paper No. CB(1)914/06-07 - Minutes of the meeting held on
9 January 2007
LC Paper No. CB(1)923/06-07 - Minutes of the meeting held on
16 January 2007)

The minutes of the meetings held on 9 and 16 January 2007 respectively were confirmed.

II Integrated Operating Agreement

- (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)755/06-07(01) - Submission from Dr Hon Fernando
CHEUNG Chiu-hung on the
integrated Operating Agreement
LC Paper No. CB(1)520/06-07(01) - Information paper on the integrated
Operating Agreement provided by the

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- Administration
- LC Paper No. CB(1)872/06-07(01) - Information paper on collection of fares provided by MTR Corporation Limited
- 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)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee continued to examine the integrated Operating Agreement (OA) clause by clause.

Clause 4.10 – Performance Requirements, New Projects and New Technology

4. Some members of the Bills Committee were concerned that despite the fact that under the Mass Transit Railway Ordinance (Cap.556), the Chief Executive in Council could impose on MTR Corporation Limited (MTRCL) a financial penalty for any failure by the corporation to comply with any provisions in the Ordinance or the OA, the Administration had not exercised its power in the past. They took the view that instead of simply warning the railway corporation or requiring it to provide an incident report to account for the cause of the incident upon occurrence, the Administration should refine clause 4.10 to reflect its determination to penalize the railway corporation in case of railway incidents and service disruptions. To this end, the Administration should consider amending the clause to the effect that the Government could introduce a penalty point system, or other objective and effective system, for the purpose of imposing financial penalty on the post-merger corporation (MergeCo) for any failure by it to comply with any Performance Requirement, and set out the circumstances under which information pertaining to the failure by MergeCo to meet any Performance Requirement would be made public. In particular, Mr LEE Wing-tat proposed that it should be written into the integrated OA that MergeCo's top management would be held accountable for any such failure by deducting any bonus or variable pay otherwise payable to them. In response, the Administration pointed out that the rail corporations had been meeting the performance requirements and it was necessary to consider each incident in its particular context in determining what was the most appropriate action to be taken by the Government as follow-up. Apart from the threat of penalty, the focus of the regulator would be on ensuring MergeCo could provide safe and efficient railway services. The problems and Government's concerns about the suggestion of introducing a penalty point system had been discussed in the Transport Panel before and a Member's motion on this subject was not passed by the Council. Regarding whether individual staff members of MergeCo should be held accountable and penalized in case of a railway incident, it should be a matter for MergeCo to investigate and decide on a case-by-case basis.

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Clause 4.10.1 – Performance Requirements

5. Referring to the "Train Punctuality Rate", which measured punctual train trips against actual train trips in a month, Mr Andrew CHENG said that such measurement could not reflect the actual duration of delay, and hence, the degree of seriousness of individual service disruptions to passengers. The effect was that a delayed trip, be it for two minutes or two hours, would only be counted as one trip for the purpose of calculation. Given that there was a time when the aggregate duration of service disruptions amounted to some 1 700 minutes within a period of six months but the train punctuality rate could still stand at 99% or more, he questioned the efficacy of the existing performance indicators in reflecting the service performance of rail systems. Highlighting the significant social impact of extended service delays in a busy city like Hong Kong, he also urged the Administration to introduce an additional performance indicator on train service disruptions whereby disruptions lasting more than eight minutes would be counted as one delayed trip, and to release monthly or quarterly reports of such delayed trips to facilitate monitoring and imposition of different levels of penalty according to the number of such service disruptions.

6. In response, the Administration explained that the existing performance indicators were based on performance criteria that were set in line with international practice. Moreover, the impacts of service disruptions during peak and non-peak hours could be very different and hence each disruption could have very different impact. In this regard, the inconvenience caused by delays to the travelling public could already be duly reflected in the existing performance indicator of "passenger journeys on time". Noting the above response, Mr LEE Wing-tat requested the Administration to illustrate that the impact of service disruptions during peak hours had been taken into account in the existing Performance Requirements.

7. Noting that the performance in relation to add-value machine reliability was appraised by measuring the time the machine was out of order against its operating hours during a period of time, some members considered the measuring method undesirable on grounds that it was malfunctioning which caused errors to occur in the use of EPS payment system to add value to the Octopus Card that mattered because such incidents, no matter whether it was an isolated case or not, would seriously undermine public confidence in electronic money. The Administration was urged to ensure the provision of a reliable and accurate fare collection system.

Clause 4.12 –Customer Service Pledges

8. Some members were gravely concerned that according to clause 4.12.4, the Customer Service Pledges listed in clause 4.12.3 were voluntary targets and were not themselves Performance Requirements or obligations relating to performance. The Administration explained that the OA had already stipulated the obligation for MTRCL to meet the Performance Requirement and as clearly stated at the time of privatization of the MTR Corporation in 2000, the Customer Service Pledges were voluntary targets of MTRCL which were different from the Performance

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Requirements. Since MTRCL had set the targets for these Customer Service Pledges at levels higher than the Performance Requirements to indicate their commitment to providing a high quality railway service, and that the service attributes so covered were voluntarily established, the Customer Service Pledges were meant to be voluntary targets only from the day of their establishment. At members' request, the Administration agreed to discuss with MTRCL on how to improve the wording of clause 4.12.4 to ensure that there would be follow-up by MergeCo should the company constantly fail to meet its Customer Service Pledges. Mr Abraham SHEK, however, expressed concern that the above proposed approach might result in MergeCo setting lower targets for these Customer Service Pledges for fear of being penalized for non-compliance. MTRCL and Kowloon-Canton Railway Corporation (KCRC) added that they were willing to strive for higher performance standards as long as they would not be penalized for failure to achieve them.

Follow-up actions

Admin/
MTRCL/
KCRC 9. To address various concerns expressed at the meeting, the Administration and the two railway corporations were requested to provide information on the following

Clause 4.10.

- (a) The Administration to illustrate how the impact of service disruptions during peak hours had been taken into account in the existing Performance Requirements;

Clause 4.10.1

- (b) The Administration to discuss with MTRCL on amending clause 4.10.1 to the effect that MergeCo would be required to provide information to the Legislative Council (LegCo) concerning any failure by MergeCo to meet any Performance Requirement during an assessment;

Clause 4.10.2

- (c) The Administration to consider amending clause 4.10.2 (b) to the effect that at any other time or times during the Operating Period, the Commissioner for Transport (the Commissioner) could, having regard to the results of any customer surveys covered by reports furnished pursuant to clause 4.13.3, request a joint review of the Performance Requirements in conjunction with MergeCo;

Clause 4.10.3

- (d) The Administration to consider the need of requiring MergeCo to brief LegCo of the Performance Requirements for New Projects before such New Projects were commissioned;

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Clause 4.12.2

- (e) The two railway corporations to
 - i) consider providing a breakdown of passenger complaints by categories when publishing passenger complaint data under clause 4.12.2(b);
 - ii) consider including data on railway incidents when publishing data in relation to accidents, etc. on the railways under clause 4.12.2(c); and
 - iii) consider publishing on a quarterly basis instead of on an annual basis data on issues covered in clauses 4.12.2(c) and 4.12.2(d);

Clause 4.12.3

- (f) The Administration to consider improving the wording of the clause to the effect that MergeCo should also provide and maintain accurate add-value machines and to introduce a new Performance Requirement/Customer Service Pledge for measuring the accuracy of the add-value machines;
- (g) The Administration to consider adding a new Customer Service Pledge on the reliability of facilities provided to persons with disabilities viz. wheelchair lifts, stair lifts, escalator audible devices, Braille plates, flashing system map, bi-directional wide gates, toilets for PwDs, lifts and tactile guide paths for the visually impaired; and

Clause 4.12.4

- (h) The Administration to discuss with MTRCL on how to refine clause 4.12.4 to the effect that MergeCo should take appropriate follow-up action should MergeCo constantly fail to meet the Customer Service Pledges listed in clause 4.12.3.

III Any other business

10. The Bills Committee agreed to continue examining the integrated OA clause by clause at the next meeting scheduled for Tuesday, 27 February 2007, from 10:45 am to 12:45 pm.

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

**Proceedings of the seventeenth meeting of
the Bills Committee on Rail Merger Bill
on Tuesday, 13 February 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes and matters arising</i>			
000000 - 000019	Chairman	- Confirmation of minutes of the meetings held on 9 and 16 January 2007 (LC Papers Nos. CB(1)914/06-07 and CB(1)923/06-07)	
<i>Agenda Item II – Integrated Operating Agreement</i>			
000020 - 000143	Chairman	- Opening remarks	
000144 - 000414	Administration	- Briefing on clause 4.10	
000415 - 000722	Mr LAU Kong-wah Administration	- Discussion on clause 4.10.3 on the need to facilitate monitoring by briefing the Legislative Council (LegCo) on the specific performance criteria, definitions, levels established for New Projects/Technology, and requiring the post-merger corporation (MergeCo) to report on how these New Project/Technology Requirements had been met after two years from the commencement of operations on/introduction of the New Projects/Technology	Administration to take necessary follow-up actions
000723 - 000949	Mr WONG Kwok-hing Administration	- Enquiry and explanation of the circumstances under which MergeCo would be required to explain to LegCo/the public any failure by MergeCo to meet any Performance Requirement (clause 4.10.1)	Administration to take necessary follow-up actions
000950 - 001531	Mr LEE Wing-tat Administration	- Reference to the East Rail underframe equipment mounting crack incident, and discussion on the need to introduce a system for the purpose of imposing financial penalty on the top management of MergeCo for any failure by it to comply with any Performance Requirement	
001532 - 001829	Chairman Ms LI Fung-ying Administration	- Enquiry and explanation of the implementation details of clause 4.10.1(d) and how the Commissioner for Transport (the Commissioner) could prevent abuse of the clause, in particular	

Time marker	Speaker	Subject(s)	Action required
		the timing of furnishing written explanations	
001830 - 002858	Chairman Mr Andrew CHENG Administration Mr LEE Wing-tat	- Discussion on the introduction of a penalty point system, or other objective and effective system for the purpose of imposing financial penalty on MergeCo for any failure by it to comply with any Performance Requirement, particularly on the imposition of financial penalty on MergeCo's top management for such failure (clause 4.10.1)	
002859 - 004538	Chairman Mr Andrew CHENG Administration Mr LEE Wing-tat	- Discussion on the regulatory and monitoring arrangements for railway services, particularly on how performance of railway services in the aspects of train punctuality and add-value machine reliability should be appraised, and on how to ensure the provision of a reliable and accurate fare collection system	Administration to take necessary follow-up actions
004539 - 005740	Chairman Ms Emily LAU Administration Mr LAU Kong-wah MTR Corporation Limited (MTRCL)	- Discussion on clause 4.12.4 on whether the Customer Service Pledges listed in clause 4.12.3 should be voluntary targets and were not themselves Performance Requirements or obligations relating to performance and subject to penalty should there be non-compliance - Discussion on how to refine clause 4.12.4 to ensure that MergeCo would honour its undertaking to provide a high quality railway service to the public, taking into account the results of any customer surveys	Administration to take necessary follow-up actions
005741 - 011529	Chairman Mr Andrew CHENG Administration	- Discussion on how performance of railway services in the aspects of train punctuality and add-value machine reliability should be appraised, particularly on the appropriateness and feasibility of including as a standard of performance add-value machine accuracy (clause 4.10.1) - Enquiry and explanation of the circumstances under which the Performance Requirements should be jointly reviewed by MergeCo and the Commissioner (clauses 4.10.2 and	

Time marker	Speaker	Subject(s)	Action required
		<p>4.13.3), and the meaning of the expression "the period during which new or substantially modified designs for passenger trains are implemented" in clause 4.10.2(b)(i)</p> <p>- Discussion on whether Government could request for the above joint review to be carried out (clause 4.10.2(b))</p>	Administration to take necessary follow-up actions
011530 - 012200	Chairman Mr Abraham SHEK Mr Andrew CHENG	- Discussion on the appropriateness of imposing penalties for failure to meet Customer Service Pledges (clause 4.12)	
012201 - 012346	Mr Andrew CHENG Administration	- Discussion on how to ensure that the performance criteria, performance definitions and performance levels to be established before the commencement of operations on any New Project referred to in clause 4.10.3(a) or the introduction of any New Technology could also satisfy the public instead of only the Commissioner (clause 4.10.3(c))	
012347 - 012505	Administration	- Briefing on clause 4.11	
012506 - 012713	Chairman Ms Emily LAU Administration MTRCL	- Report on efforts made to ensure the provision of public toilets at rail stations, particularly existing MTR stations	
012714 - 013213	Chairman Mr LAU Kong-wah Administration MTRCL Kowloon-Canton Railway Corporation (KCRC)	<p>- Discussion on the need and feasibility of</p> <p>i) providing a breakdown of passenger complaints which MergeCo would be required to publish under clause 4.12.2(b)</p> <p>ii) including in clause 4.12.2(c) on incidents the data in relation to which should be published on an annual basis particular incidents which might affect public safety</p> <p>iii) publishing on a quarterly basis instead of on an annual basis data on matters covered in clauses 4.12.2(c) and 4.12.2(d)</p>	MTRCL/ KCRC to take necessary follow-up actions
013214 - 013334	Chairman Dr Fernando CHEUNG Administration	- Discussion on Dr Fernando CHEUNG's proposal to add a new Customer Service Pledge on "the reliability of facilities provided to persons with disabilities" (clause 4.12.3)	Administration to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
013335 - 015649	Chairman Mr Andrew CHENG Administration Mr LAU Kong-wah Mr Abraham SHEK Ms Emily LAU MTRCL KCRC Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> - Enquiry and explanation of the scope of matters the data in relation to which MergeCo would be required to publish (clause 4.12.2) - Discussion on the need to also require MergeCo to publish data in relation to service disruptions - Discussion on the need and feasibility of imposing penalties on MergeCo should it fail to meet the Customer Service Pledges listed in clause 4.12.3, instead of stating in clause 4.12.4 that the Pledges were voluntary targets and were not themselves Performance Requirements or obligations relating to performance - Mr LEUNG Kwok-hung's view that the proposed rail merger would not be conducive to achieving higher rail service standards because it involved the taking over of KCRC, which was wholly owned by Government and hence accountable to the public, by MTRCL, a privatized company, and his request for the Administration to provide response to all requests made by the Bills Committee - Mr Andrew CHENG 's view that the provision of toilet facilities and radio reception on board MTR trains should be added as Performance Requirements, and that clause 4.12.4 should be deleted 	Administration to take necessary follow-up actions
<i>Agenda Item III – Any other business</i>			
015650 - 015726	Chairman	- Date of next meeting	