

立法會

Legislative Council

LC Paper No. CB(1)2303/05-06
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of second meeting on Wednesday, 20 September 2006, at 2:30 pm in Conference Room A of the Legislative Council Building

- Members present** :
- Hon Miriam LAU Kin-yee, 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 Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Hon LEUNG Yiu-chung
 - Hon SIN Chung-kai, 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
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon CHEUNG Hok-ming, SBS, JP
 - 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 CHAN Kam-lam, SBS, JP
 - Hon LAU Kong-wah, JP
 - Hon LEUNG Kwok-hung
 - Hon Ronny TONG Ka-wah, SC
 - 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 Martin GLASS
Deputy Secretary for Financial Services and the Treasury

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

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

Mr Lewis LAW Chung-ming
Government Counsel
Department of Justice

Attendance by invitation : MTR Corporation

Mr Lincoln LEONG
Finance Director

Mr Thomas HO
Property Director

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Kowloon-Canton Railway Corporation

Mr Daniel LAM
Director – Property

Mr Jeffrey CHEUNG
Director – Finance (Acting)

Mr Jeff LEUNG
External Affairs Manager

Government Financial Advisers

Mr Frank SLEVIN
Managing Director and Chief Operating Officer, Asia
Pacific Investment Banking
Citigroup

Mr Michael KERSHAW
Global Head of International Business Development for
China
HSBC

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

Action

- I Confirmation of minutes and matters arising**
(LC Paper No. CB(1)2196/05-06 - Minutes of the meeting held on
27 July 2006
LC Paper No. CB(1)2198/05-06(01) - Tentative meeting schedule)

The minutes of the meeting held on 27 July 2006 were confirmed.

2. The Bills Committee endorsed the meeting schedule from October to December 2006 (LC Paper No. CB(1)2198/05-06(01)).

(Post-meeting note: The endorsed meeting schedule was issued to members vide LC Paper No. CB(1)2238/05-06 on 21 September 2006.)

Action

II Finance and property package of the rail merger proposal

- (LC Paper No. CB(1)2198/05-06(02) - Information paper provided by the Administration
- LC Paper No. CB(3)700/05-06 - the Bill
- File Ref: ETWB(T) CR 1/986/00 - The Legislative Council Brief
- LC Paper No. LS91/05-06 - Legal Service Division Report
- LC Paper No. CB(1)2031/05-06 - Background Brief on Rail Merger Bill prepared by the Secretariat
- LC Paper No. CB(1)2176/05-06(01) - Fact sheet entitled“各界人士對地鐵有限公司和九廣鐵路公司就擬議合併一事所表達的關注事項”prepared by the Research and Library Services Division)

3. With the aid of powerpoint, the MTR Corporation Limited (MTRCL) briefed members on the rationale behind and benefits of the integrated Rail and Property model. The Administration also gave a powerpoint presentation on the breakdown of the total property development costs and details of the valuation of property development rights (PDR).

(Post-meeting note: The powerpoint presentation materials were tabled and circulated to members vide LC Paper No. CB(1)2237/05-06 on 21 September 2006.)

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

5. In the course of deliberation, members queried the need of and justifications for including the property package in the merger proposal and why the valuation of the eight property development sites conducted by the professional valuer appointed by Government would differ significantly from those prepared by other professional valuers as quoted in the press. They were worried that the properties might be disposed of at a severely diminished valuation which would be to the disadvantage of the people of Hong Kong who owned the assets of Kowloon-Canton Railway Corporation.

6. On the Rail and Property model, some members were of the view that whilst MTRCL had acquired substantial profit from property development through Government's granting of PDR to the company in connection with its railway projects, MTRCL had been reluctant to share its profit with the general travelling public by means of fare reduction and provision of concessionary fares to persons with disabilities. Some members considered that PDR should no longer be granted to railway corporations. Instead, PDR should be put up for open tender and the proceeds so derived could be used for setting up a fund to moderate the rate of fare increase and provide the necessary assistance to persons in need. Some other members also queried that whilst MTRCL had emphasized the benefits and importance of property development at the meeting, it had refused to reduce its fare in the past on the ground that profit from property development had nothing to do with railway fares.

Action

In response, MTRCL explained that the present fares had already taken account of the profit from property development. Without profits from property development the fares would have to be much higher than they currently were.

7. In consideration of the above concerns, the Bills Committee made the following requests –

- (a) the Administration and MTRCL to disclose all information relevant to their valuation of the property package; and
- (b) MTRCL to explain the relationship between property development and railway fares and how profit from property development would be used to benefit the travelling public in future.

8. Some members also stated that should the Administration and MTRCL fail to provide all the information relevant to the valuation of the property package, they might consider invoking the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to request the parties concerned to produce the information to the Bills Committee for consideration.

9. Concluding the discussion, members agreed that the next meeting of the Bills Committee scheduled for Thursday, 5 October 2006, at 4:30 pm should be devoted to continued discussion on the finance and property package of the rail merger proposal. Members also agreed that the Chairman and the Chief Executive Officer of MTRCL should be invited to attend the meeting.

III Any other business

10. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
4 October 2006

**Proceedings of the second meeting of
the Bills Committee on Rail Merger Bill
on Wednesday, 20 September 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes and matters arising</i>			
000000 – 000041	Chairman	- Confirmation of minutes of the meeting held on 27 July 2006 (LC Paper No. CB(1)2196/05-06)	
000042 – 000232	Chairman	- Endorsement of the meeting schedule from October to December 2006 (LC Paper No. CB(1)2198/05-06(01))	
<i>Agenda Item II – Finance and property package of the rail merger proposal</i>			
000233 – 000518	Chairman	- Opening remarks	
000519 – 003523	Chairman Mr Abraham SHEK Mr Andrew CHENG Administration MTR Corporation Limited (MTRCL)	- Powerpoint presentation by MTRCL and the Administration (LC Paper No. CB(1)2198/05-06(02))	
003524 – 004041	Chairman Mr WONG Kwok-hing Administration MTRCL	- Expression of regret that despite MTRCL's acquisition of substantial profit from property development through Government's granting of property development rights (PDR) to MTRCL, MTRCL had been reluctant to share its profit with the general travelling public by means of fare reduction - Administration and MTRCL's clarification that MTRCL had to pay \$4.91 billion 'entry fee' for the rights over the eight property development sites of the Kowloon-Canton Railway Corporation (KCRC). The sites would be offered to developers by open tender. Successful tenderers would need to arrange for payment of the full market value land premium to the Government	
004042 – 004553	Chairman Mr Jeffrey LAM Administration	- Enquiry about the reasons for the significant differences in the valuations of the eight property development sites conducted by the professional valuer appointed by the Government and those prepared by other professional valuers as quoted in the press, and whether	

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		<p>comparisons and analyses of the different valuations had been made</p> <ul style="list-style-type: none"> - The Administration's emphasis that the methodology and assumptions adopted by the independent valuer appointed by the Government for preparing valuation were commonly acceptable and that the pricing of the property package was fair and reasonable. Any disparity in valuation might be due to <ul style="list-style-type: none"> i) the adoption in the valuation of different assumptions of property market performance ii) the use of the total profit of the completed development instead of just the 'entry fee' as the basis of valuation, etc 	
004554 – 005107	Chairman Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Expression of views that as the Rail and Property model (the model) involved the granting of valuable public resources to a listed company, its operation should be more transparent to safeguard public interest. It was of paramount importance to ensure that the general travelling public could share the profits so generated in the form of fare reduction - The Administration's explanation that land premiums for two sites which had been set by the Lands Department (Lands D) had already been made public. The land premiums for the other six sites had yet to be fixed and hence were not available 	
005108 – 005618	Chairman Mr LEE Cheuk-yan Administration MTRCL	<ul style="list-style-type: none"> - Expression of views that the model had only benefited the Government and the railway corporations but not the public. The two railway corporations should share their substantial profit from property development with the general travelling public through fare reduction - Enquiry about the Government's targeted rate of return for MTRCL as a whole - MTRCL's view that <ul style="list-style-type: none"> i) the public had already been able to enjoy value-for-money railway service made possible by the model 	

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		<p>as compared to other overseas cities</p> <p>ii) MTRCL's return on assets (RoA) for the past years was 6%, which was significantly lower than that of the local utility companies</p>	
005619 – 010153	Chairman Mr Albert HO MTRCL	<ul style="list-style-type: none"> - Query about the need for including the purchase of KCRC's property management business - Expression of views that seamless connection between stations and property developments above or adjacent to stations could be achieved if appropriate provisions were incorporated in the relevant property development contracts. In so doing, the Government could dispose of the sites of such property developments through open tender to reflect their true market values. Proceeds therefrom could also be used to subsidize railway development. Moreover, MTRCL was a listed company with 25% shares owned by the public. The Government should no longer subsidize the company by granting it PDR - MTRCL's explanation that <ul style="list-style-type: none"> i) as the properties concerned were connected with stations, management of the two had to be integrated ii) contract provisions could never be exhaustive and hence could not ensure seamless connection between property developments and stations. It was therefore imperative to have one party responsible for co-ordinating the design, construction and management of both the property developments and the stations iii) there was no question of Government subsidizing MTRCL by granting it PDR because MTRCL was required to pay the full market value land premiums for the property development sites 	

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010154 – 010659	Chairman Mr LEE Wing-tat Administration MTRCL	<ul style="list-style-type: none"> - Expression of views that <ul style="list-style-type: none"> i) although the Hong Kong International Airport was constructed by different contractors, it was able to resolve all the technical-engineering interface issues and achieve seamless connection among various facilities. An effective mechanism was also in place to resolve conflict between the principal contractor and sub-contractors ii) although the post-merger Corporation (MergeCo) would have to pay land premiums for the property development sites, the premiums could not reflect the true market value because they were worked out through negotiation with the Government instead of through open tender. Moreover, the timing of premium negotiation, which would be initiated by MergeCo, could also affect the premium level iii) MTRCL, presently a listed company with 25% shares owned by the public, should no longer be granted PDR - The Administration’s explanation that the PDR of relevant sites had been granted to KCRC to help it construct and operate respective railway projects. The transfer of those rights to MTRCL was a natural consequence of the merger proposal - MTRCL’s emphasis that apart from paying the land premium for the development sites according to full market value, it also had to bear the risks associated with the property developments 	
010700 – 011139	Mr Albert CHAN	<ul style="list-style-type: none"> - Query that whilst MTRCL had emphasized the benefits and importance of property development at this meeting, it had refused to reduce its fare in the past on grounds that profit from property development had nothing to do with railway fares - Indication of opposition to the proposed merger and granting of PDR to MTRCL 	

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		<p>bearing in mind that MTRCL was no longer a public corporation but a listed company. Instead, the PDR should be put up for open tender and the proceeds so derived should be used for setting up a fund to moderate the rate of fare increase and provide the necessary assistance to persons in need</p> <ul style="list-style-type: none"> - Expression of the view that due to failure to provide toilets at MTR stations and access for persons with disabilities (PwDs) at certain stations, MTRCL had not fulfilled its corporate social responsibilities 	
<p>011140 – 011741</p>	<p>Chairman Ir Dr Raymond HO Administration MTRCL</p>	<ul style="list-style-type: none"> - Query about the relative proportions of the financing costs, the marketing costs and the professional fees in the breakdown of the total property development costs shown in the Administration’s powerpoint presentation - Expression of views that the Administration should account for the disparity between its valuation and the estimations rendered by other professional surveyors. If such essential information was not provided to assure members that the valuations were reasonable, there would be difficulty in securing support for the Bill - The Administration/MTRCL’s explanation that <ol style="list-style-type: none"> i) the level of land premium was determined by Lands D having regard to the prevailing market conditions ii) components of the total property development costs in the presentation materials represented average figures compiled by MTRCL from past projects iii) developers had to spend considerable sum on agency commission and promotional activities, the costs of which were included in the marketing costs. The financing costs represented interests on the capital outlay, which comprised the land premium, construction costs, project enabling 	

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		work costs, marketing costs, and professional fees and others	
011742 – 012308	Chairman Mr LEUNG Yiu-chung Administration MTRCL	<ul style="list-style-type: none"> - Expression of regrets that despite the acquisition of substantial profit by the railway corporations, the public could not benefit from fare reduction. As such, PDR should no longer be granted to railway corporations unless the profit therefrom could be reflected in the railway fares to ensure they were affordable in recognition of the absence of minimum wages in Hong Kong - Expression of view that the Government could still benefit even though the sites adjacent to or above stations were developed by parties other than the railway corporations - MTRCL’s explanation that <ul style="list-style-type: none"> i) with the model, Government, and hence, the public, had already acquired an overall benefit of around \$140 billion in value including the proceeds from the initial public offer ii) railway services were value-for-money when compared with other local public transport services. Without the profit from property development to supplement railway returns, railway fares would have been much higher 	
012309 – 012831	Chairman Miss TAM Heung-man Administration	<ul style="list-style-type: none"> - Query about the need to continue the model notwithstanding the cost savings from synergies arising from the merger - Request for disclosure of all information relevant to the valuation of the property package, in particular on how the net present value was worked out, to address public concerns that KCRC’s assets were disposed of at a diminished valuation which would be to the disadvantage of the people of Hong Kong who owned KCRC’s assets - Expression of views that the risk borne by MTRCL in property development was in fact low. Hence granting of PDR to MTRCL, which was a listed company, was indeed a form of 	

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		<p>“transfer of benefits”</p> <ul style="list-style-type: none"> - The Administration’s reiteration that the valuation of PDR, which was independently and professionally assessed, was reasonable and fair. Details on the property package that could be disclosed had already been provided to members in Annex II to LC Paper CB(1)2198/05-06(02) 	
012832 – 013423	Chairman Ms Emily LAU Administration MTRCL	<ul style="list-style-type: none"> - Expression of views that there was difficulty in supporting the Bill because <ul style="list-style-type: none"> i) the public had yet to be assured that KCRC’s properties were not disposed of at a severely diminished valuation ii) the concern that transport costs were a great burden on the grassroots had yet to be addressed iii) despite the substantial profit acquired by MTRCL, it had refused to provide fare concessions to PwDs - MTRCL’s view that it aimed to improve station facilities to make railway service accessible to PwDs. Any fare subsidy should be provided by the Government 	
013424 – 013718	Chairman Mr TAM Yiu-chung Administration	<ul style="list-style-type: none"> - Enquiry on whether the Administration had appointed more valuers to provide valuations on the property development sites for its reference - Request for provision of the valuation details of the property package compiled by the valuers respectively appointed by the Administration and by MTRCL - The Administration’s explanation that valuers were respectively appointed by the Government and by MTRCL on an independent basis to conduct valuation. The two parties would then try to reach a consensus on the assumptions used in the two valuations. Reference to valuations by additional valuers might not be helpful. Provision of further details of the valuation process would need to be discussed with MTRCL 	

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013719 – 013821	Chairman Dr Fernando CHEUNG	<ul style="list-style-type: none"> - Expression of the view that since the Government was already considering amending the Disability Discrimination Ordinance (DDO) (Cap. 487) to put it beyond doubt that selective provision of concessionary fares to PwDs would not constitute a contravention of DDO, MTRCL should adopt a more open attitude in this regard 	
013822 – 014311	Chairman Mr WONG Kwok-hing Administration	<ul style="list-style-type: none"> - Enquiry about <ul style="list-style-type: none"> i) the profit sharing ratio between MTRCL and the successful property developers, the amount receivable by the Government and whether any other parties could also reap profits from the co-development ii) details of the productivity factor in the fare adjustment mechanism (FAM) formula - The Administration’s explanation that <ul style="list-style-type: none"> i) the profit sharing ratio for individual development would be subject to the final tender offer and different from case to case ii) the scope for productivity gain for railways was limited. The Administration however had achieved an agreement with MTRCL, as part of the terms of the overall merger package, to include a productivity factor of a positive value of 0.1% in the FAM. This would have the effect of moderating future fare increases or increasing the level of fare reduction, as the case might be, which would benefit railway users, whilst at the same time incentivise MergeCo to achieve productivity 	
014312 – 014827	Chairman Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Enquiry on whether the Administration would ensure that the synergies arising from the merger, in particular the profits from property developments, could benefit the public through the setting up of a fare stabilization fund - The Administration’s explanation that <ul style="list-style-type: none"> i) the property package was part and parcel of the overall merger deal. Given that the price for the property package was considered fair and 	

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		<p>reasonable and that apart from paying the “entry fee”, MergeCo also had to arrange for payment of land premium, construction costs and other development costs, and bear the associated business risks in pursuing such developments in future, MergeCo should not be required to use the future proceeds from the property package to subsidize railway fares</p> <p>ii) Under the model, property and railway development were planned and constructed under an integrated approach. Profits from property developments were used to help bridge the funding gap for the construction of railway projects which were not financially viable. Property profits had already been taken into account when the initial railway fares were set.</p> <p>iii) FAM, when compared with the existing fare autonomy, would help stabilize railway fares because it was based on a formulaic approach and adjustment of fares in future would have to have regard to the changes in the consumer price index and the wage index</p>	
014828 – 015237	Chairman Mr LEE Cheuk-yan Administration MTRCL	<ul style="list-style-type: none"> - Expression of disappointment that MTRCL was reluctant to provide concessionary fares to PwDs. MTRCL should fulfil its role as a public transport service provider but not focusing on profit maximization - Expression of concern that since the RoA of KCRC was only 2% but the RoA of MTRCL was 6%, MergeCo might seek to raise the RoA of KCRC to 6% by increasing fares after the rail merger - Request for provision of the valuation figures of Ho Tung Lau and Wu Kai Sha Station - The Administration/MTRCL’s explanation that <ul style="list-style-type: none"> i) MergeCo had no targeted return rate. It should be noted that most local utility companies had a double-digit RoA much higher than 	

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		6% ii) valuation figures of Ho Tung Lau and Wu Kai Sha Station could not be provided as commercially sensitive information was involved	
015238 – 015745	Chairman Mr LEE Wing-tat Administration MTRCL	<ul style="list-style-type: none"> - Expression of concern that the land premium negotiated between MTRCL and Lands D on the property developments could not reflect the full market value of the sites concerned. PDR should instead be put up for open tender - Request for the estimation of each of the eight property developments compiled by the valuers appointed by MTRCL - The Administration/MTRCL's explanation that <ul style="list-style-type: none"> i) the property development sites would be tendered by MergeCo through an open process ii) the estimates compiled by the valuers appointed by MTRCL were commercially sensitive information and could not be provided to members 	
015746 – 015845	Chairman Ms Emily LAU Mr Albert CHAN	<ul style="list-style-type: none"> - Expression of views that <ul style="list-style-type: none"> i) MTRCL should review its stance regarding the provision of concessionary fares to PwDs ii) the Chairman and the Chief Executive Officer of MTRCL should be invited to attend the next meeting 	
<i>Agenda Item III – Any other business</i>			
015846 – 020037	Chairman Mr Andrew CHENG Mr Albert CHAN	<ul style="list-style-type: none"> - Date and agenda of next meeting - Expression of the view that should the Administration/MTRCL fail to provide the requested information, consideration might be given to invoking the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to request the parties concerned to produce the information to the Bill Committee for consideration - Request for a written response from MTRCL on the relationship between property development and railway fares 	The Administration and MTRCL to consider providing more information about the valuation basis of the property package MTRCL to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
		and how profit from property development would be used to benefit the travelling public in future	

Council Business Division 1
Legislative Council Secretariat
4 October 2006