

立法會

Legislative Council

LC Paper No. CB(1)772/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of tenth meeting on Tuesday, 12 December 2006, 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
 - Hon LEE Cheuk-yan
 - 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 CHEUNG Hok-ming, SBS, JP
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
 - Hon TAM Heung-man
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - Dr Hon LUI Ming-wah, SBS, JP
 - Hon LI Kwok-ying, MH, JP
 - 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 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

Attendance by invitation : MTR Corporation Limited

Mr Lincoln LEONG
Finance Director

Mr Eddie SO
Senior Transport Planning Manager

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Kowloon-Canton Railway Corporation

Mr Raymond CHAN
General Manager – Financial Control

Mr Victor LEUNG
Marketing Manager – Service Planning

Mr Jeff LEUNG
External 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 Confirmation of minutes and matters arising

(LC Paper No. CB(1)448/06-07 -- Minutes of meeting on 2 November 2006)

The minutes of the meeting held on 2 November 2006 were confirmed.

II Fare-related matters arising from the rail merger

(LC Paper No. CB(1)442/06-07(01) - The Administration's response to issues raised at the meeting on 30 November 2006 on fare adjustment mechanism and fare reduction proposal

LC Paper No. CB(1)483/06-07(01) - A list of written questions raised by Hon LAU Kong-wah on fare adjustment mechanism

LC Paper No. CB(1)483/06-07(02) - The Administration's response to questions raised by Hon LAU Kong-wah as set out in LC Paper No. CB(1)483/06-07(01)

LC Paper No. CB(1)195/06-07(01) - Information paper on fare adjustment mechanism and fare reduction proposal provided by the Administration

LC Paper No. CB(1)258/06-07(01) - The Administration's response to issues raised at the meeting on 2 November 2006 on fare adjustment mechanism and fare reduction proposal

Action

- LC Paper No. CB(1)383/06-07(01) - The Administration's response to issues raised at the meeting on 14 November 2006 on fare adjustment mechanism and fare reduction proposal
- LC Paper No. CB(1)289/06-07(02) - Illustration of the fare adjustments within $\pm 10\%$ points from the overall fare adjustment provided by MTR Corporation Limited
- LC Paper No. CB(1)258/06-07(02) - A list of written questions raised by Hon LAU Kong-wah on fare adjustment mechanism and fare reduction proposal
- LC Paper No. CB(1)258/06-07(03) - Letter dated 9 November 2006 from Hon LAU Kong-wah providing information on the hypothetical changes to railway fares based on the proposed fare adjustment mechanism
- LC Paper No. CB(1)258/06-07(04) - The Administration's response to questions raised by Hon LAU Kong-wah as set out in LC Paper No. CB(1)258/06-07(02)
- LC Paper No. CB(1)258/06-07(05) - The Administration's response to Hon LAU Kong-wah's letter dated 9 November 2006 circulated vide LC Paper No. CB(1)258/06-07(03)
- LC Paper No. CB(1)222/06-07(01) - Speaking note of Mr Lincoln LEONG, Finance Director, MTR Corporation Limited at the meeting on 2 November 2006
- LC Paper No. CB(1)289/06-07(01) - Speaking note of Mr Lincoln LEONG, Finance Director, MTR Corporation Limited at the meeting on 14 November 2006)

2. Members noted the following papers tabled at the meeting –

- (a) The Administration's response to questions raised by Hon LAU Kong-wah as set out in LC Paper No. CB(1)483/06-07(01) (LC Paper No. CB(1)483/06-07(02)); and
- (b) Speaking note of Mr Lincoln LEONG, Finance Director, MTR Corporation Limited (MTRCL), at the meeting (LC Paper No. CB(1)496/06-07(01)).

(Post-meeting note: The above papers were issued to members vide LC Paper No. CB(1)496/06-07 dated 13 December 2006.)

Action

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).
4. Mr Abraham SHEK declared interests as a member of the Managing Board of Kowloon-Canton Railway Corporation (KCRC).
5. The Administration/MTR Corporation Limited was requested to consider and provide further information on the following -
 - (a) Given that the Ombudsman was presently empowered to investigate complaints of maladministration by KCRC or initiate direct investigation into significant issues, and areas of maladministration in the absence of complaints, the Administration was requested to advise whether the jurisdiction of the Ombudsman would be affected as a result of the rail merger, and whether Part I of Schedule 1 to the Ombudsman Ordinance (Cap. 397) would cover the post-merger corporation (MergeCo).
 - (b) The Administration was requested to consider reducing the scope of flexibility granted to MergeCo to adjust individual fares from the fare adjustment rate calculated in accordance with the fare adjustment mechanism (FAM).
 - (c) In view that the agreed formula for annual adjustments in fare would be applied automatically, the Administration was requested to consider the following alternatives to fine tune the proposed FAM:
 - to set up a fare stabilization fund to moderate the rate of fare increase under the FAM by using profits from property developments;
 - to empower the Chief Executive in Council or the Legislative Council to have the ultimate power to determine the rate of fare increase or decrease under the FAM; or
 - to require MergeCo to consider other factors such as prevailing economic conditions, its operating environment and public affordability before determining the rate of fare increase or decrease under the FAM.
 - (d) With reference to the implementation of Tsuen Wan Line and Kwun Tong Line, MTRCL was requested to provide information on the variation, if any, between the then estimated and actual profits from property developments, and the usage of the windfall profits from property developments.
 - (e) With reference to the implementation of individual railway lines, MTRCL was requested to illustrate the variation in monetary values if different rates on top of the weighted average cost of capital were applied for calculating the commercial return of railway projects.

Action

III Any other business

6. The Bills Committee agreed that the next Bills Committee meeting scheduled for Tuesday, 19 December 2006, from 2:30 pm to 4:30 pm should be devoted to the discussion on the Integrated Operating Agreement.
7. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 1
Legislative Council Secretariat
22 January 2007

**Proceedings of the tenth meeting of
the Bills Committee on Rail Merger Bill
on Tuesday, 12 December 2006, 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 - 000010	Chairman	Confirmation of minutes of the meeting held on 2 November 2006 (LC Paper No. CB(1)448/06-07)	
<i>Agenda Item II – Fare-related matters arising from the rail merger</i>			
000011 - 000154	Chairman	Opening remarks	
000155 - 000902	Administration MTR Corporation Limited (MTRCL)	- Briefing by the Administration and MTRCL (LC Paper No. CB(1)442/06-07(01))	
000903 - 001502	Mr WONG Kwok-hing Administration MTRCL	<ul style="list-style-type: none"> - Mr WONG Kwok-hing's expression of concerns about the following – <ul style="list-style-type: none"> (i) the flexibility granted to the post-merger corporation (MergeCo) to adjust individual railway fares within ± 10 percentage points (the permitted range) from the overall fare adjustment rate under the fare adjustment mechanism (FAM) would be too wide to be acceptable and unfair to the passengers; and (ii) profits from property developments should be used to provide concessionary fares to persons with disabilities and the elderly - The Administration's remark that under the Mass Transit Railway Ordinance (Cap. 556), the Chief Executive in Council (CE in ExCo) could give direction to MTRCL in relation to any matter concerning the franchise but the Government was liable to pay compensation to the Corporation for loss or damage sustained by the Corporation arising from the Corporation's compliance with the direction - The Administration's explanation that the FAM already limited the flexibility of MergeCo to adjust individual fares as 	

Time marker	Speaker	Subject(s)	Action required
		<p>compared with the present fare autonomy enjoyed by the railway corporations</p> <ul style="list-style-type: none"> - MTRCL's explanation of the rail-and-property model, emphasizing that profits from property development rights had already been taken into account when setting the initial railway fares 	
001503 - 002105	Mr LEE Wing-tat MTRCL	<ul style="list-style-type: none"> - With reference to the implementation of railway projects in the past, Mr LEE Wing-tat enquired about the accuracy of the original estimates of profits from property developments vis-à-vis the actual profits, and the past usage of the windfall profits - MTRCL's explanation that the commercial return (including both railway operation and property development) in respect of MTRCL for taking on new railway projects was MTRCL's weighted average cost of capital plus 1% to 3%. Under the rail-and-property model, the funding gap was calculated by using a financial model with inputs of various planning assumptions. The funding gap for MTR projects in the past had been filled by profits from property development arising from the relevant projects. Given the timeframe of the financial model which was 50 years and taking into account the fact that profits from property developments was only one of the many planning assumptions in use, it would not be appropriate to single out an individual planning assumption for comparison purpose 	
002106 - 002619	Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Mr Andrew CHENG's expression of views that even without the profits from property developments, Kowloon-Canton Railway Corporation (KCRC) was still able to earn several hundred million dollars or more a year. To safeguard public interest, the profits from property developments should be set aside and injected into a fare stabilization fund to moderate the rate of fare increase - The Administration's explanation that 	

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		<p>KCRC had a low rate of return on assets although it recorded small profits. The travelling public would benefit from fare reductions made possible by the rail merger. At the closed meeting on 24 November, the Administration had presented information on the valuation of the property package which refuted allegation that the property package was disposed of at severely diminished valuation. Besides, given that the profits from property developments had been taken into account in the setting of initial fares, the Government would not consider setting up a fare stabilization fund</p>	
002620 - 003249	Mr LEUNG Yiu-chung Administration KCRC MTRCL	<ul style="list-style-type: none"> - On Mr LEUNG Yiu-chung's view that FAM should not be "direct-drive" and other social and economic factors should be considered in the fare adjustment process, the Administration's view was that the direct-drive FAM was an improvement over the current fare autonomy and would offer more protection for the public whilst providing certainty for MergeCo - On Mr LEUNG's queries about the discretion given to KCRC to use its property development profits from the sites listed in the Administration's reply to follow-up questions of the Bills Committee dated 30 November 2006 vide LC Paper No. CB(1)442/06-07(01), the Administration clarified that the profits were generated from sites outside the context of the application of the rail-and-property model - On Mr LEUNG's queries about the use of property development profits, KCRC/MTRCL explained that the income from property management, leasing of shops and so on were used to cover the recurrent and capital expenditures of railway operations. The annual fare adjustments would take into account the economic conditions, competitions and whether the services were value for money but not property profits/income 	

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003250 - 003753	Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - Mr LAU Kong-wah's expression of concern that the FAM might result in a higher rate of fare increase as shown by the comparisons of the hypothetical application of the FAM with the actual fare adjustments in the past. Certain restrictions must be imposed to improve the FAM to safeguard public interests. Factors such as public affordability, economic conditions and operating environment should also be considered in the fare adjustment process - The Administration's explanation that the fare adjustments upon hypothetical application of FAM were lower than or comparable with the actual fare adjustments in the past. FAM, which was simple and transparent, was an improvement over the current fare autonomy and provided certainty for MergeCo. Any inclusion of other factors would be arbitrary and would cause uncertainty and disputes during the annual fare adjustment 	
003754 - 004259	Dr Fernando CHEUNG MTRCL	<ul style="list-style-type: none"> - Dr Fernando CHEUNG's observation that it was misleading to say that fare adjustments under the hypothetical application of the FAM were lower than or comparable with the actual fare adjustments in the past as an overall fare reduction of 10% reduction was assumed in the former case. The two railway corporations should have reduced their fares by more than 10% in view of the past deflation - On Dr CHEUNG's queries about the initial fare setting process and the relationship between property development and railway fares, MTRCL explained that the funding gap for a new railway project was calculated using the financial model and agreed with the Government. The funding gap in the past for MTR projects has been filled by profits from property development arising from the relevant projects. The fare structure of new railway lines which was modelled on that of existing lines was stipulated in the project agreement when the property development rights were granted and would not be affected by the state of the 	

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		<p>property market</p> <ul style="list-style-type: none"> - On Dr CHEUNG's query about how the windfall profits from property developments were handled, MTRCL explained that there were many planning assumptions in the financial model. As such, it would not be appropriate to focus on a single planning assumption for comparison purpose 	
004300 - 004839	Mr LEE Cheuk-yan MTRCL	<ul style="list-style-type: none"> - MTRCL's clarification that the state of the property market would only affect the estimated property income for the purpose of calculating the funding gap for a MTR project but not the fare structure of the relevant railway line which would be modelled on those of the existing lines - Mr LEE Cheuk-yan's expression of concern that the existing railway fares were not affordable to the low-income group. Upon privatization, MTRCL aimed at profit maximization which might be at the expense of the general travelling public 	
004840 - 005340	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> - Mr LEUNG Kwok-hung's expression of objection to the Rail Merger Bill as it involved the transfer of public assets to a private company, the operation of which would fall outside the monitoring by the general public and LegCo. Railway services should be provided by Government at affordable prices 	
005341 - 005844	Mr KWONG Chi-kin Chairman MTRCL	<ul style="list-style-type: none"> - Mr KWONG Chi-kin queried about the usage of the windfall profits from property developments and considered it worthwhile to pursue the proposal of setting up a fare stabilization fund to moderate the rate of fare increase - MTRCL's explanation that the financial model was worked out on the basis of a number of planning assumptions over a period of 50 years. It was not appropriate to single out a planning assumption (i.e profits from property development) for evaluation purpose. Moreover, the MTRCL lines were still in the early years of operation and it was too early to make an assessment of 	

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		the actual figures in comparison with the estimated figures	
005845 - 010441	Ms Emily LAU MTRCL Administration	<ul style="list-style-type: none"> - On Ms Emily LAU's queries about the passenger surveys conducted by MTRCL, MTRCL explained that the survey of value for money amongst Hong Kong public transport operators was conducted by an independent market research consultant. While some sectors of the community had expressed views that MTRCL fares should be reduced, the overall response was that the fares were value for money - Ms LAU's request for further information on whether the jurisdiction of the Ombudsman on KCRC would be affected as a result of the rail merger, and whether Part I of Schedule 1 to the Ombudsman Ordinance (Cap. 397) would cover MergeCo - The Administration was requested to consider members' views expressed at the meeting to fine tune the fare regulatory framework 	The Administration to take necessary follow-up action
010442 - 010752	Mr Abraham SHEK	<ul style="list-style-type: none"> - Mr Abraham SHEK's expression of view that the property developments had been used to stabilize railway fares by bridging the funding gap of new projects. Annual fare adjustments would only take into account the economic conditions and not the profits from the property developments, which tended to fluctuate year from year 	
010753 - 011309	Mr Albert CHAN Administration	<ul style="list-style-type: none"> - Mr Albert CHAN's expression of view that the Government had indirectly subsidized the railway corporations, through injection of equity funding and granting of property development rights. The Government's transport policy was also inclined towards railway operations, not to mention that the growth and development of other public transport services were unduly suppressed by the Government. If the FAM were adopted, future railway fares would not be subject to any form of control. He therefore objected to the present model - The Administration's explanation that 	

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		<p>injection of equity funding into railway projects was intended to provide otherwise commercially unviable railway service for the benefit of the travelling public. There was sufficient competition between railway and other public transport services. Future railway fares adjustment would also be subject to the control of FAM which represented an improvement over the existing fare autonomy of railway corporations</p>	
011310 - 011903	Mr WONG Kwok-hing Administration	<ul style="list-style-type: none"> - Application of section 13 of the Mass Transit Railway Ordinance (Cap 556) regarding the directions given by CE in ExCo in relation to the fare adjustments under FAM - Scope of non-fare revenue 	
011904 - 012514	Mr LEE Wing-tat MTRCL Administration	<ul style="list-style-type: none"> - MTRCL was requested to account for the variation between the estimates in the financial projections and the actual profits from property developments with reference to the implementation of Tsuen Wan Line and Kwun Tong Line. Mr LEE Wing-tat commented that windfall profits from property developments had not been used to moderate the rate of fare increase in the past, and queried about the monitoring role of the Government - MTRCL's explanation that Kwun Tong Line and Tsuen Wan Line had a planning timeframe of 50 years. There would be asset replacement and maintenance programme in the remaining years of operation which involved substantial costs. As profit from property developments was only one of the planning assumptions used in the financial model, it was not appropriate to focus on one single planning assumption for comparison purpose 	MTRCL to take necessary follow-up action
012515 - 013132	Mr LEUNG Yiu-chung Administration Chairman MTRCL	<ul style="list-style-type: none"> - Mr LEUNG Yiu-chung's expression of concerns on <ul style="list-style-type: none"> i) the use of the windfall profits from property developments ii) if the property development profits were underestimated, it might lead to higher fares 	

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		<p>iii) the direct-drive FAM would not take into account other factors, such as public affordability</p> <ul style="list-style-type: none"> - The Chairman's enquiry about the usage of the profits from property developments in case MergeCo were able to achieve windfall profits in the end - The Administration's explanation that as the financial projections were estimates, it would not be appropriate to focus on one single planning assumption for comparison purpose. Given that the financial model was based on a 50-year time horizon, any comparison in the middle of the planning horizon would only represent a partial picture - The Administration's explanation that FAM was a simple formula linking future fare adjustments to the rate of changes of two objective and transparent indices which could reflect public affordability and the economic conditions - The Administration/MTRCL's explanation that risks associated with railway project developments would be borne by the railway corporation. Dividends had been paid to the Government 	
013133 - 013715	Mr Andrew CHENG Chairman Administration	<ul style="list-style-type: none"> - Mr Andrew CHENG's expression of disappointment that even with the sizable profit from property developments, MTRCL had not reduced its fares - Mr CHENG and the Chairman requested the Administration to consider setting up a fare stabilization fund by using parts of the profits from property developments - The Administration's explanation that the proposed FAM was an improvement over the current fare autonomy 	

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013716 - 014350	Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - Mr LAU Kong-wah's expression of views that the scope of the permitted range was too wide to be fair and FAM might result in a higher rate of increase which would not be in the best interest of the general public. By way of illustration, the fare increases under the hypothetical application of FAM in 1985 and 1990 were higher than the actual increases - The Administration's explanation that the hypothetical application of the FAM had resulted in a lower or comparable fare adjustment rate with the actual one and that the limit of permitted range at 10% already represented a restriction over MergeCo's flexibility to adjust individual fares as compared with the existing fare autonomy - Mr LAU's query about the use of the windfalls from property developments, if any, and Administration's explanation that it must be read in conjunction with the risk associated with the railway development including the risk in property development loss which the railway corporation had to bear 	
014351 - 014905	Dr Fernando CHEUNG MTRCL	<ul style="list-style-type: none"> - Dr Fernando CHEUNG's expression of concern that windfall profits from property developments should be used to moderate the rate of fare increase and there should be a mechanism, such as a fare stabilization fund, to achieve such purpose - MTRCL's explanation that the current fares had already incorporated property development profits 	
014906 - 015400	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> - Mr LEUNG Kwok-hung called on members to object to the Rail Merger Bill - Mr LEUNG's expression of view that public transport was a necessity in a modern city. If the public transport was privatized, it was logical that the privatized company would aim to operate at a profit 	

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015401 - 020407	Mr Albert CHAN Administration Chairman MTRCL	<ul style="list-style-type: none"> - Mr Albert CHAN's expression of view that from the information provided by the Administration at the closed meeting on 24 November, the property package was disposed of at a severely diminished valuation - Mr CHAN's objection to the MTRCL's overseas investments and he would consider proposing Committee Stage amendments to prohibit MergeCo from undertaking overseas investments - Given the commercial return for MTRCL's new railway projects was its weighted average cost of capital plus 1% to 3%, Mr CHAN's request for illustrations of the variation in monetary values if different return rates were applied with reference to the implementation of individual railway lines - The Administration/MTRCL's explanation that the commercial return was to be agreed between the Government and MTRCL for individual new railway lines on a case-by-case basis 	MTRCL to take necessary follow-up action
020408 - 020937	Mr LEE Cheuk-yan Mr Abraham SHEK	<ul style="list-style-type: none"> - Mr LEE Cheuk-yan's expression of view that the Administration should give due consideration to members' suggestions expressed at the meeting on fare adjustments - Mr Abraham SHEK's expression of views that property developments were used to indirectly subsidize railway development projects by filling the funding gap so that the initial fares could be set at a lower level. Since FAM could stabilize fares, the Alliance would support the FAM. He also requested the Administration to consider whether the scope of the permitted range could be reduced 	
<i>Agenda Item III – Any other business</i>			
020938 - 021258	Chairman Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - The Chairman's concluding remark on requesting the Administration to give due consideration to members' suggestions expressed at the meeting - Date and agenda for next meeting 	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none">- In response to Mr LAU Kong-wah's enquiry, the Administration advised that according to the two railway corporations, their study to develop a new set of terms and conditions of employment would be completed by end of 2006. The two railway corporations would consult their staff on the proposed terms and conditions for MergeCo. The Bills Committee would be informed of the results of staff consultation in due course	

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22 January 2007