

立法會

Legislative Council

LC Paper No. CB(1)867/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

Minutes of eleventh meeting on Tuesday, 19 December 2006, at 2:30 pm 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 Mrs Selina CHOW LIANG Shuk-yee, GBS, 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 LI Kwok-ying, MH, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon LEUNG Kwok-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** :
- Hon Albert HO Chun-yan
 - Dr Hon LUI Ming-wah, SBS, JP
 - Dr Hon Fernando CHEUNG Chiu-hung
 - 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 Limited

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

Mr Anthony CHU
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)504/06-07 -- Minutes of meeting on 28 October 2006)

The minutes of the meeting held on 28 October 2006 were confirmed.

II Integrated Operating Agreement
(LC Paper No. CB(1)520/06-07(01) -- Information paper provided by the Administration)

2. Members noted the speaking note of Mr Andrew McCUSKER, Operations Director of MTR Corporation Limited (MTRCL), tabled at the meeting.

(Post-meeting note: The speaking note was issued to members vide LC Paper No. CB(1)565/06-07 dated 20 December 2006.)

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

4. The Administration/MTRCL was requested to provide information on the following –

Action

- (a) Given that the integrated Operating Agreement (OA) would stipulate that, for individual new railway projects which were not natural Mass Transit Railway (MTR)-extension projects, Government had the right to determine whether the "ownership approach" (under which the post-merger corporation (MergeCo) would fund, construct and operate the new railway) or the "concession approach" (under which Government would fund the construction of the new railway and MergeCo would be granted a service concession to operate the new railway) should be adopted, some members were concerned that, with only one railway corporation left after the rail merger, and hence a monopolistic situation, the Administration would have little bargaining power when negotiating with MergeCo on which approach should be adopted for implementing the above new railway projects. The Administration was therefore requested to provide (i) details on the rationale behind the introduction of the above "right" upon the merger instead of continuing to adopt the "ownership approach" only, (ii) the rationale behind the adoption of differential arrangements for taking forward railway projects which were natural MTR-extension or not, and (iii) the criteria for determining which approach would be adopted, using the Shatin to Central Link as an example;
- (b) Having regard that MergeCo would require an appropriate commercial rate of return to be determined on a case-by-case basis for undertaking New Kowloon-Canton Railway (KCR) and New Separate Projects under the concession approach, the Administration was requested to elaborate how the commercial rate of return and the initial fares for these railway projects would be determined;
- (c) MTRCL to provide information on the performance levels of MTR with reference to international standards;
- (d) Prior to changing the level of any fare, MergeCo was requested to consider the level of public acceptance of any proposed change based on passenger surveys, and consult the Panel on Transport; and
- (e) The Administration was requested to provide a copy of the existing OA between MTRCL and the Government; and account for the major differences between the existing OA and the integrated OA.

Secretariat

5. The Secretariat was requested to prepare a comparison between the integrated OA and the existing OA between MTRCL and the Government, so as to highlight the changes to be made to the existing OA as a result of the proposed merger to ensure that the regulation of the operation of both the MTR and KCR systems would not be adversely affected by the changes.

Action

III Any other business

6. Members agreed to re-schedule the meeting originally scheduled for Tuesday, 27 March 2007, at 10:45 am to Friday, 30 March 2007, at 2:30 pm to avoid clash with the visit of the Panel on Administration of Justice and Legal Services to the Judiciary also scheduled for 27 March 2007.
7. In consideration of the number of questions and concerns expressed on the integrated OA at this meeting, the Chairman decided that the discussion on the matter should be continued at the twelfth Bills Committee meeting scheduled for Tuesday, 9 January 2007, from 10:45 am to 12:45 pm.
8. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1
Legislative Council Secretariat
2 February 2007

**Proceedings of the eleventh meeting of
the Bills Committee on Rail Merger Bill
on Tuesday, 19 December 2006, at 2:30 pm
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 – 000017	Chairman	- Confirmation of minutes of the meeting held on 28 October 2006 (LC Paper No. CB(1)504/06-07)	
000018 – 000154	Chairman Ms Emily LAU	- Meeting arrangements	
<i>Agenda Item II – Integrated Operating Agreement</i>			
000155 – 001914	Chairman Administration MTR Corporation Limited (MTRCL)	- Briefing by the Administration and MTRCL (LC Paper No. CB(1)520/06-07(01))	
001915 – 002545	Chairman Mr WONG Kwok-hing Administration	<ul style="list-style-type: none"> - Discussion on the major provisions on fare regulation to be included in the integrated Operating Agreement (OA) - The Administration's explanation in response to Mr WONG Kwok-hing that it would be more appropriate to use percentage instead of the number of service disruption incidents to indicate performance requirements because the latter could not take into account the differences in the scale of operation in terms of the number of scheduled train trips 	
002546 – 003052	Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - Mr LAU Kong-wah's view that, when adjusting fares subject to the proposed Fare Adjustment Mechanism (FAM), the post-merger corporation (MergeCo) should be required to, as in the case of changing the level of any Airport Express Line (AEL) fare, consider the level of public acceptance based on passenger surveys, and consult the Transport Advisory Committee (TAC) and the Panel on Transport - The Administration's explanation that adjustment of AEL fares was subject to the requirements for passenger surveys and consultation because the AEL was not subject to the direct-drive formula. On the other hand, since MergeCo would be required to comply with the 	

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		<p>direct-drive formula which was linked to changes in consumer price index and wage index in adjusting other controlled fares, the IOA would require MergeCo to notify instead of consult the Panel on Transport</p> <ul style="list-style-type: none"> - The Administration's explanation in response to Mr LAU that the Government would ascertain the need to request a review of the FAM provisions with regard to the operation of the railway and feedback of the public. However, conduct of the review would have to be agreed by both MergeCo and the Government 	
003053 – 003615	Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Mr Andrew CHENG's <ul style="list-style-type: none"> i) view that an additional performance indicator on train service disruptions should be introduced to facilitate monitoring. Committee Stage amendments to the Bill to this effect would be considered ii) queries about the need for introducing the concession approach for implementing individual new railway projects, and worries about the monopolistic position of the railway corporation after the rail merger which would put Government in a less favourable position when negotiating the terms of a railway project with MergeCo - The Administration's explanation that Government had the right to determine whether the ownership approach or the concession approach should be adopted for future new railways which were not natural MTR-extension, and hence greater choice and flexibility were provided 	Administration to take necessary follow-up action
003616 – 004123	Chairman Miss TAM Heung-man Administration	<ul style="list-style-type: none"> - The Administration's explanation in response to Miss TAM Heung-man that <ul style="list-style-type: none"> i) the rail merger would bring about higher performance requirements ii) the major consideration for determining which funding approach would be adopted for implementing new railway projects which were not natural MTR-extension projects was how resources could best be utilized with 	

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		regard to the relevant financial arrangements	
004124 – 004908	Chairman Mr LEE Cheuk-yan Administration	<ul style="list-style-type: none"> - Mr LEE Cheuk-yan's concern about the calculation of commercial rate of return under the concession approach and setting of railway fares under the concession approach - The Administration's explanation that the commercial rate of return would be determined on a case-by-case basis but the general principle was that it must be lower than the commercial rate of return under the ownership approach which was MTRCL's WACC (weighted average cost of capital) plus 1% to 3% - Mr LEE's request for further information to account for the above 	Administration to take necessary follow-up action
004909 – 005437	Chairman Mr LEUNG Yiu-chung Administration	<ul style="list-style-type: none"> - Mr LEUNG Yiu-chung's views that railway corporations should be penalized for train service disruptions and failure to notify Government of incidents which were of public concerns - The Administration's explanation of the reporting and notification requirements by the railway corporations. Efforts were being made by railway corporations to improve the reliability of train service and the Government would continue to closely monitor the service levels of railways 	
005438 – 005942	Mr Ronny TONG Administration	<ul style="list-style-type: none"> - Mr Ronny TONG's concern that, if the integrated OA would contain specific provisions on the FAM, MergeCo would be able to increase its fares even though it was not accepted by the general public as was the case in the toll revisions of the Eastern Harbour Crossing and other Build-Operate-Transfer tunnels - The Administration's views that it was not appropriate to compare the FAM with the mechanism for tunnel toll adjustments. The FAM would restrict MergeCo's freedom to adjust fares as compared with the fare autonomy currently enjoyed by the railway corporations. Under the more 	

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		<p>transparent and objective FAM, rail fares would be adjusted with reference to changes in price and wage indices. Independent third party certifications would be required before implementation of any fare adjustments under the FAM</p>	
005943 – 010542	<p>Chairman Ms Emily LAU MTRCL Kowloon-Canton Railway Corporation (KCRC) Administration</p>	<ul style="list-style-type: none"> - Clarification of the concerns expressed by the staff side of MTRCL and Kowloon-Canton Railway Corporation (KCRC) about the difficulties encountered in achieving higher performance requirements for railway lines - MergeCo was requested to address the noise and vibration emitted due to railway operations 	
010543 – 011100	<p>Chairman Mr Jeffrey LAM MTRCL Administration</p>	<ul style="list-style-type: none"> - New set of performance requirements would take immediate effect upon merger implementation if the merger deal was accepted by LegCo and the minority shareholders of MTRCL. The necessary procedures for seeking the support of the minority shareholders would take about three to six months to complete after the Bill was passed by LegCo - International benchmarking with other metro railways in the world 	<p>MTRCL to take necessary follow-up action</p>
011101 – 011622	<p>Mrs Selina CHOW Administration</p>	<ul style="list-style-type: none"> - Mrs Selina CHOW's emphasis of the need to strike a proper balance between fare level and commercial viability of railway operations. Hence the need to allow MergeCo to adjust fares according to the FAM, which could enhance transparency and certainty to suit the needs of both the travelling public and MergeCo, and this was already the most acceptable compromise achievable - The Administration's remark that MTRCL had indicated opposition to subjecting future fare adjustments to approval by any authority 	

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011623 – 012140	Chairman Mr Albert CHAN Administration	<ul style="list-style-type: none"> - Mr Albert CHAN's concern about the absence of Customer Service Pledges relating to the provision of feeder services, and the gradual cancellation of the many free feeder bus services offered by KCRC - The Administration's explanation that the rail merger would bring about higher performance requirements for railway lines which would benefit the travelling public. The Administration's recapitulation of both railway corporations' confirmation at previous meeting that free Light Rail connection to or from West Rail would continue to be provided upon the rail merger. Continuation of other service concessions would be a matter for MergeCo to decide 	
012141 – 012913	Chairman Mr LEE Wing-tat Administration	<ul style="list-style-type: none"> - Mr LEE Wing-tat's expression of <ul style="list-style-type: none"> i) the Democratic Party's concern about the little bargaining power the Administration would have when negotiating with MergeCo on which approach should be adopted for implementing new railway projects, particularly, MergeCo might pressurize Government into agreements in favour of it through community organizations' influences ii) concern about the absence of Customer Service Pledges relating to noise within train compartments, and of penalties for failure to meet the Pledges - The Administration's explanation that <ul style="list-style-type: none"> i) in taking forward railway projects, a balanced deal would be achieved having regard to the interests of all stakeholders ii) Performance Requirement would be stipulated in the integrated OA, failure to comply with which could result in penalties iii) noise level within train compartments was not covered in the IOA because the contributory factors were interwoven and complex and hence the level was not measurable 	

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012914 – 013314	Mr WONG Kwok-hing Administration	<ul style="list-style-type: none"> - Mr WONG Kwok-hing's concerns about the requirements for disclosure of information to Government, compliance with the performance requirements and the related penalties as well as MergeCo's refusal to attend future meetings of LegCo to answer members' questions and queries - The Administration's explanation that <ul style="list-style-type: none"> i) the IOA enabled Government to disclose particular Restricted Information which was obtained from MergeCo after consultation with MergeCo ii) the integrated OA was legally binding, and MergeCo had to meet the performance requirements as well as perform other duties specified therein. According to section 14 of the Mass Transit Railway Ordinance (Cap. 556), the Chief Executive in Council might by notice in writing impose on MTRCL a financial penalty for any failure by MTRCL to comply with any provision of Cap. 556 or the OA. The financial penalty ranged from \$10,000 to \$50,000. Where the failure was serious, MTRCL's franchise might be affected iii) MTRCL had indicated no change to its existing practice with regard to attendance at meetings of LegCo after the rail merger 	
013315 – 013854	Chairman Mr LEUNG Kwok-hung MTRCL Administration	<ul style="list-style-type: none"> - Mr LEUNG Kwok-hung's view that, in consideration of the monopoly to be created by the rail merger, and the fact that in Hong Kong, transport officials would not be held accountable for serious rail incidents, MergeCo should be subject to direct monitoring by LegCo instead of through the Government - MTRCL's remark that the present regulatory arrangements were satisfactory and MTRCL was performing to a very high standard. It did not see a need for the above proposed change in reporting line - The Administration's referral to views expressed by academics that the rail 	

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		<p>merger would not create monopolistic problems. Moreover, MergeCo would be subject to regulation by the government authorities. By regulating MergeCo's future fare adjustments, the FAM could help prevent monopolistic problems. Professional departments within Government would monitor the performance levels of MergeCo</p>	
013855 – 014318	Mr LAU Kong-wah Administration	<ul style="list-style-type: none"> - Mr LAU kong-wah's request for the Administration to <ul style="list-style-type: none"> i) request MergeCo to, prior to changing the level of any fare, consider the level of public acceptance of any proposed change based on passenger surveys, and consult the Panel on Transport, instead of only notifying it beforehand as presently required ii) ask MergeCo to retain the many existing fare concessions and promotion programmes for a period of time after the merger - The Administration's explanation that <ul style="list-style-type: none"> i) MTRCL was willing to accept the replacement of its present fare autonomy with a direct-drive FAM which could provide certainty to MergeCo. Such certainty might be compromised if the proposed steps in i) above were to be followed ii) the Administration would continue to encourage transport operators to provide / maintain fare concessions and promotion programmes MergeCo would decide on the offering of such programmes from time to time in response to prevailing circumstances and market conditions 	Administration to take necessary follow-up action
014319 – 014724	Chairman Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Mr Andrew CHENG's requests for <ul style="list-style-type: none"> i) provision of further information regarding the approaches for implementing new railway projects that were not natural MTR-extension projects ii) examination of the integrated OA provision by provision 	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
014725 – 015139	Mr LEUNG Yiu-chung Administration	<ul style="list-style-type: none"> - Mr LEUNG Yiu-chung's view that follow-up actions taken by the Administration in respect of rail incidents in the past and the available penalties highlighted above had little effect in preventing recurrence. It was necessary to take the rail merger as an opportunity to subject rail operation to more stringent monitoring to ensure service quality - The Administration's explanation that the existing MTR Ordinance already enabled the imposition of financial penalty on a daily basis. Moreover, MTRCL had already pledged to provide service according to international standards. Considering the complex nature of rail transport, the proposed performance requirements were already at very high levels 	
015140 – 015612	Chairman Mr LEE Wing-tat Administration MTRCL	<ul style="list-style-type: none"> - Mr LEE Wing-tat's indication of support for requiring MergeCo to consult the Panel on Transport and conduct passenger surveys before any adjustment to fares took effect - The Administration's explanation that under the FAM, fares of MergeCo would be adjusted according to a direct-drive formula. As to concerns about the proposed 10% flexibility, the Administration would discuss with MTRCL and revert in due course - MTRCL's belief that by linking future fare adjustments to the rate of changes of two objective and transparent indices, the FAM was open and fair. It was also related to the mechanics and cost of MTRCL's business, and could be measured and examined 	
015613 – 020138	Chairman Mr Albert CHAN	<ul style="list-style-type: none"> - Mr Albert CHAN's reiteration that many free feeder bus services offered by KCRC were being gradually cancelled in preparation for the rail merger - Request for the Research and Library Services Division to prepare a comparison between the integrated OA and the existing OA, highlighting the major changes to the relevant provisions 	Administration and the Secretariat to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item III – Any other business</i>			
020139 – 020342	Chairman	- Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
2 February 2007