

**立法會**  
**Legislative Council**

LC Paper No. CB(1)943/07-08  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/ITB/1

**Panel on Information Technology and Broadcasting**

**Minutes of meeting**  
**held on Monday, 14 January 2008, at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon Albert Jinghan CHENG, JP (Chairman)  
Hon SIN Chung-kai, SBS, JP (Deputy Chairman)  
Dr Hon David LI Kwok-po, GBM, GBS, JP  
Dr Hon LUI Ming-wah, SBS, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Albert CHAN Wai-yip  
Hon Ronny TONG Ka-wah, SC
- Members attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHOY So-yuk, JP
- Members absent** : Hon Fred LI Wah-ming, JP  
Hon Bernard CHAN, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS
- Public officers attending** : Agenda Item IV  
Mr Alan SIU, JP  
Deputy Secretary for Commerce and Economic  
Development (Communications and Technology)

Mrs Marion LAI, JP  
Director-General of Telecommunications

Mr T Y CHAN  
Assistant Director of Telecommunications (Regulatory)

Agenda Item V

Mrs Rita LAU, JP  
Permanent Secretary for Commerce and Economic  
Development (Communications and Technology)

Mr Alan SIU, JP  
Deputy Secretary for Commerce and Economic  
Development (Communications and Technology)

Ms Maisie CHENG  
Commissioner for Television and Entertainment  
Licensing

Miss Angela LUK  
Assistant Commissioner for Television and  
Entertainment Licensing (Entertainment)

**Attendance by  
invitation** : Agenda Item V

Consumer Search Hong Kong Limited

Mr Robert LI  
General Manager (Research Divisions)

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (1)3

**Staff in attendance** : Ms Pauline NG  
Assistant Secretary General 1

Ms Annette LAM  
Senior Council Secretary (1)3

Ms Guy YIP  
Council Secretary (1)1

Ms May LEUNG  
Legislative Assistant (1)6

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Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(1)461/07-08 -- Minutes of meeting held on  
12 November 2007)

The minutes of the meeting held on 12 November 2007 were confirmed.

**II. Information paper issued since last meeting**

2. Members noted that no paper had been issued since the last meeting held on 10 December 2007.

**III. Date of next meeting and items for discussion**

(LC Paper No. CB(1)544/07-08(01) -- List of outstanding items for  
discussion

LC Paper No. CB(1)544/07-08(02) -- List of follow-up actions)

Regular meeting on 29 January 2008

3. Members noted that due to Lunar New Year holidays, the regular Panel meeting in February 2008 was advanced to 29 January 2008 to discuss the following items proposed by the Administration:

- (a) Public consultation on public service broadcasting including issues related to the future of Radio Television Hong Kong and the opening up of radio/TV channels for use of the community; and
- (b) Consultation on the implementation framework of mobile television services and development of digital audio broadcasting in Hong Kong.

Special meeting on 19 February 2008

4. Members noted that, as agreed at the Panel meeting on 10 December 2007, a special meeting would be held on 19 February 2008 from 4:30 pm to 6:30 pm to discuss the following items:

- (a) Policies relating to the regulation of radio broadcasting and the use of radio communications apparatus for the purpose of radio broadcasting; and

(b) Progress update on the implementation of digital terrestrial television.

5. In respect of item (a) above, members agreed that public views be invited by posting a notice on the Legislative Council (LegCo) website. Members also agreed to invite the Secretary for Justice (SJ) and representatives of Citizens' Radio to the meeting. As many Members were interested in this subject, it was agreed that all Legislative Members be invited to the discussion.

*(Post-meeting note: At the instruction of the Chairman, a general notice inviting submissions on the issue was posted on the LegCo website on 18 January 2008. Invitation to attend the meeting was sent to SJ and Citizens' Radio on 18 January 2008. Members were duly informed of the above arrangements vide LC Paper No. CB(1)610/07-08 issued on 17 January 2008.)*

**IV. Public consultation on the proposed Unified Carrier Licences**

(LC Paper No. CB(1)544/07-08(03) -- Paper provided by the Administration

LC Paper No. CB(1)573/07-08(01) -- Submission from Hong Kong Cable Television Limited  
(English version only)

LC Paper No. CB(1)583/07-08(01) -- Submission from PCCW-HKT Telephone Limited  
(English version only)

LC Paper No. CB(1)583/07-08(02) -- Submission from Wharf T&T Limited  
(English version only)

LC Paper No. CB(1)601/07-08(01) -- Administration's paper on public consultation on the proposed Unified Carrier Licences (power-point presentation materials)  
*(tabled at the meeting and subsequently issued via e-mail on 15 January 2008)*

Declaration of interest

6. Dr David Li declared that he was the Independent Non-Executive Director of the PCCW-HKT Telephone Limited (PCCW).

Presentation by the Administration

7. With the aid of power-point presentation, Assistant Director of Telecommunications (Regulatory) (AD of T(R)), briefed members on the two consultation exercises which were conducted in parallel by the Secretary for Commerce and Economic Development (SCED) and the Telecommunications Authority (TA) concerning the proposals for the creation of a unified carrier licence (UCL). The consultation exercises covered the general conditions (GCs), licence

period, fee structure, and the proposed licensing framework of the UCL including the special conditions (SCs), the approaches for granting UCL under different scenarios, and the arrangements for migrating the existing licences to UCLs. Referring to the Administration's paper (LC Paper No. (1)544/07-08(03)) which provided details of the consultation, AD of T(R) highlighted the following points:

- (a) The proposed UCL would be the single licensing vehicle regulating all kinds of fixed, mobile, and converged telecommunications services. It would replace the four existing types of carrier licences - fixed carrier licence (FCL), fixed carrier (restricted) licence (FCRL), mobile carrier licence (MCL), and mobile carrier (restricted) licence (MCRL) - upon the expiry of these licences and be issued to new applicants. Basically, the same set of GCs for the existing fixed and mobile carrier licences would continue to apply to UCLs. As such, the UCL would allow incumbent operators and new market entrants to provide fixed, mobile, and converged services under a streamlined and flexible licensing framework with common rights and obligations, paving the way for fixed-mobile convergence (FMC) in the telecommunications sector.
- (b) The validity period of the proposed UCL issued for a new application or for a replacement of an existing carrier licence upon its expiry was proposed to be 15 years, which was the same as the existing carrier licence.
- (c) On the fee structure, the UCL licence fees would basically follow a similar structure as that of the existing carrier licences. An UCL licensee would be required to pay a fixed annual fee of \$1 million for the provision of fixed local services or mobile services or both; while a fee of \$100,000 would apply for providing fixed external services and/or mobile services other than land mobile services only. A subscriber-based fee of \$8 per customer connection was payable per annum. The calculation of spectrum management fee and base station/land station fee under the UCL would remain the same as that under the existing carrier licences. To encourage a more efficient use of telecommunications numbers by operators, an annual fee of \$3 per number would be imposed irrespective of whether the allocated numbers were used by end customers or not.

8. On the way forward, AD of T(R) said that the consultation exercises would end on 20 February 2008. After considering the submissions received, SCED would finalize the proposal and proceed to make the necessary subsidiary regulation(s) under section 7(2) of the Telecommunications Ordinance (TO) (Cap.106). To tie in with the auction of the broadband wireless access (BWA) spectrum scheduled for the fourth quarter of 2008, the Administration planned to table the amendment regulation(s) for negative vetting by the LegCo within the 2007-2008 legislative session for the UCL to be in place in the second half of 2008.

Discussion

*Proposed fee for Unified Carrier Licence*

9. Mr SIN Chung-kai sought explanation on the basis for the proposed licence fee for UCL as set out in the Administration's paper (LC Paper No. CB(1)544/07-08(03)).

10. In response, AD of T(R) explained that OFTA Trading Fund operated in accordance with the Trading Funds Ordinance (TFO) (Cap. 430) and the proposed level of UCL fees was set on a cost recovering principle with a view to recovering the costs of administering the licences, and aligning the fees for fixed and mobile services under the UCL in the light of FMC. Director-General of Telecommunications (DG of T) supplemented that the TFO required that the OFTA Trading Fund be financially self-sustaining in meeting the operating costs and achieving a reasonable return on the fixed assets employed. The return on average net fixed assets (ANFA) set for 2006-2007 was 8.5%.

11. In this regard, Mr SIN Chung-kai shared with the meeting that according to the annual report of the OFTA Trading Fund, the revenue for 2004-2005, 2005-2006 and 2006-2007 stood at a high of \$318.6 million, \$310 million and \$320.9 million respectively, while the pre-tax profit for the past three years was also high, at \$75.8 million, \$74.3 million and \$92.6 million respectively. The amount of dividends paid to the Government for the three years was \$31.5 million, \$30.7 million, and \$24.3 million respectively. As regards the principle of cost-recovery, he pointed out that the return on ANFA for 2004-2005, 2005-2006 and 2006-2007 was 29.7%, 30.7% and 24.3% respectively, showing that the OFTA Trading Fund had not only recovered its cost but had in fact profited beyond the target return on ANFA. Noting the strong financial position of the OFTA Trading Fund, Mr SIN sought the Administration's view on whether there was room for a fee reduction.

12. In this connection, Ms Emily LAU referred to the Hong Kong Cable Television Limited's (Cable TV) concern about the proposed rise of \$1 to \$8 in customer connection fee and the Wharf T&T Limited's (WT&T) strong objection to the proposed increase. Noting paragraph 3.2 of Cable TV's submission which stated that the OFTA Trading Fund's operating costs had decreased from \$235.7 million in the year ended 31 March 2006 to \$228.3 million in the year ended 31 March 2007, and that the pre-tax profit had gone up by 24.6% to \$92.6 million for the year ended 31 March 2007, she queried whether a fee increase was justifiable in view of the substantial profit achieved.

13. While appreciating that the distinction between fixed and mobile networks and services was becoming increasingly blurred due to market and technology developments, Mr Howard YOUNG was concerned whether it was fair, on a cost recovery basis, to align the fee for mobile and fixed services considering the different licensing framework and regulatory regime for mobile and fixed services.

14. In response, DG of T said that the reduction in the total expenditure of the OFTA Trading Fund during the period referred to was mainly attributable to savings in staff costs and stringent cost control. The surplus achieved now might not necessarily guarantee profits in the years ahead. She pointed out that the UCL would not come into operation until 2009-2010 at the earliest. As such, in addition to looking at the present financial position, OFTA as a responsible institution would have to take account of the projected future growth in the fixed and mobile telecommunications industry when setting the proposed UCL fee level. She said that as a UCL licensee could operate both fixed and mobile services, the proposed fee structure with the alignment of customer connection fee at \$8 per connection, i.e. an increase to \$8 from the existing fee of \$7 per customer connection for FCL and a reduction to \$8 from the existing \$18 per mobile station for MCL, should be viewed in totality in the light of FMC. DG of T further pointed out that although Cable TV and WT&T, both of which provided local fixed services, might perceive the \$1 rise as additional expenses, the substantial reduction of \$10 in the per mobile station fee on the other hand would serve to neutralize the increase for those network operators providing converged services. The proposed level of UCL was therefore considered appropriate, prudent and balanced. She reiterated that in the control and management of the Trading Fund, the Administration had to be prudent in maintaining a fiscal balance and ensuring a reasonable return on fixed assets, as determined by the Financial Secretary. Referring to a series of fee reduction in the past which brought the mobile station fee down to \$18 from \$75 in mid-1999, and the substantial reduction in the level of FCL for the provision of extend service only since mid-2003, DG of T stressed that the Administration had in the past made several rounds of fee reduction whenever there was room for adjustment. She assured members that the Administration was mindful that the proposed fee level would not be a burden to the industry and would be conducive to the healthy development of the telecommunications industry in Hong Kong.

15. Responding to Ms Emily LAU's enquiry as to whether it was necessary to pre-determine at this moment in time the UCL fee for 2009-2010, DG of T said that to tie in with the auction of the BWA spectrum scheduled for the fourth quarter of 2008, it was expedient to set the UCL fee now in order to provide a clear and predictable business environment to the telecommunications market players. She stressed that the matter was currently under consultation and the Administration would take account of the prevailing market conditions and consumer demands and would also fully consider the views of LegCo members, the public and the industry players when finalizing the fee level.

#### *Telecommunications numbering plan*

16. Referring to Dr LUI Ming-wah's enquiry about the available number of numbers under the existing numbering system for allocation to telecommunications operators and/or for use by the public, AD of T(R) said that theoretically, there were about 100 million possible 8-digit numbers, and all numbers were for allocation. Numbers beginning with "1" were reserved for enquiry directories and hotlines, while numbers starting with "7" were reserved for paging service. At present, all

fixed and mobile network operators might apply to the TA for telecommunications numbers at no charge. Numbers and codes were allocated by the TA to operators on a block-by-block basis, and the operators were entrusted by the TA to assign individual numbers and codes to end customers. Operators could apply to TA for additional numbers when 60% of the numbers allocated to them were used and/or assigned to end customers. Depending on the rate of allocation and utilization as well as the number of unused numbers returned by operators, numbers with prefixes "6" and "9" reserved for mobile phones were close to running out. At the existing consumption rate, the 8-digit numbering plan might be exhausted in seven years and a review had to be conducted in four years' time to decide on whether to migrate to a 9- or 10-digit numbering plan. However, any proposal for extending the existing 8-digit plan to a longer digit plan would have wide social implications in terms of cost and convenience to existing consumer and the business sector. To meet the increasing demand and to extend the lifetime of the existing 8-digit number plan, the TA, with the endorsement of the Numbering Advisory Committee, would allocate mobile numbers beginning with digit "5" shortly and would also consider the option of freeing up pager numbers with prefix "7". As some operators and large companies were holding blocks of unused numbers, a \$3 number fee per subscriber number, irrespective of whether the numbers were used or not, was proposed under the UCL fee structure to encourage the return of these unused numbers for re-allocation. Operators would not need to pay the \$3 number fee for unused numbers returned to OFTA.

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17. In this connection, the Chairman and Ms Emily LAU enquired about the extent of the problem of operators holding onto blocks of unused numbers. In response, AD of T(R) said that about 70% to 80% of the 8-digit telecommunications numbers for fixed and mobile services were allocated to operators and on the whole less than 60% of the allocated numbers were used by end customers. He undertook to provide after the meeting information on the numbers of 8-digit telecommunications numbers that were:

- (a) available for allocation to telecommunications network operators/service providers,
- (b) actually distributed to operators/service providers, and
- (c) assigned by operators to end users/customers.

18. Referring to the practice in the US where phone cards would be cancelled three months after no value was added, Mr Howard YOUNG pointed out the potential waste of number resources in Hong Kong whereby numbers designated for phone cards were not reused long after expiry. Noting that telecommunications numbers were valuable public resources, he considered that the Administration should give further thoughts to the better utilization of the phone card numbers.

*The proposed number fee*

19. In response to Ms Emily LAU's enquiry about the policy objective of the proposed \$3 number fee per subscriber number, DG of T said that there was no provision under the existing licensing regime requiring the operators to return unused numbers for reallocation. As telecommunications numbers were scarce public resources and in view of the relatively low utilization rate of less than 60% of the numbers allocated to operators, a number fee was proposed under the UCL fee structure to encourage the return of unused numbers. Under the proposal, the more number resources held by a licensee, the higher amount of total number fee it would have to pay. Alternatively, the licensee might return unused numbers to the TA to reduce the number fee payable. She believed that the proposed number fee should therefore provide the necessary financial incentive for licensees to make more efficient use of their numbers, thereby helping to prolong the lifetime of the existing 8-digit numbering plan.

20. Mr Albert CHAN opined that the fee of \$3 per number was too low to deter operators from holding onto auspicious numbers, such as those with the number "8" considered lucky by some people. To discourage operators from holding onto unused numbers indefinitely without a good reason, he was of the view that stricter sanctions and measures should be imposed and a time limit, such as three years, should be set for the return of the unused numbers. DG of T noted Mr CHAN's suggestion and said that the Administration would closely monitor the situation to assess the effectiveness of the proposed number fee as the first step towards encouraging the return of unused numbers.

*Number portability*

21. Noting that the porting of numbers across fixed and mobile services was technically viable, Mr Jasper TSANG enquired about the Administration's policy stance on fixed mobile number portability (FMNP) and whether there was a time-table for introducing FMNP.

22. In response, AD of T(R) and DG of T explained that currently, fixed carrier licensees were required to facilitate fixed number portability and mobile carrier licensees were required to facilitate mobile number portability, but the porting of numbers across fixed and mobile services, albeit technically viable, was currently not supported. Following a review of the feasibility of introducing FMNP, the TA had in its statement in April 2007 announced that a market survey would be conducted to gauge the public's views and assess the market demand for FMNP before deciding the way forward. AD of T(R) advised that the survey findings would be available in March/April 2008 and FMNP, if introduced, would help to prolong the lifetime of the existing 8-digit numbering plan. He nevertheless pointed out that if FMNP was adopted, telecommunications users might be assigned with a single number for both fixed and mobile services, and call recipients would not be able to discern whether the call originated from fixed or mobile network. Deputy Secretary for Commerce and Economic Development (Communications and Technology) (DSCED(CT)) added that all unified carriers would be required to

support number portability at their own expenses if FMNP was introduced.

*Migrations to Unified Carrier Licences*

23. Noting that the four fixed telecommunications network services/fixed carrier licences issued in 1995 were due to expire in June 2010, Mr SIN Chung-kai enquired about the arrangements for migration of existing fixed and mobile carrier licences to UCLs and whether the existing licensees could opt out of converting their licences to UCLs.

24. In response, DG of T and AD of T(R) pointed out that as the boundary between fixed and mobile networks and services had become increasingly blurred and in the light of FMC, the Administration's intention was to replace the four existing types of carrier licences, (i.e. FCL, FCRL, MCL and MCRL) by UCL upon expiry of their current licences. To facilitate migration to the unified licensing regime, it was proposed that UCLs would be issued for both new applications and for replacement of the existing carrier licences upon their expiry. Moreover, existing fixed and mobile carrier licensees might apply to convert to UCLs before the expiry of their current licences on a voluntary basis. As such, upon the expiry of the existing carrier licences, all kinds of fixed, mobile and converged telecommunications services would be brought under the licensing and regulatory regime of the UCL. The UCL validity period for both new applications or for the replacement of an existing carrier licence would be 15 years, same as the existing FCL and MCL. In the event an existing carrier licensee applied to convert its licence to UCL without any change in service scope, the UCL validity period would be the same as the remaining term of the original carrier licence.

*Universal service obligation*

25. Mr Howard YOUNG noted that PCCW was currently the only fixed carrier subject to the universal service obligation (USO) to provide universal "basic services" and that such an obligation would continue to apply to PCCW under the UCL. He was concerned whether such a requirement was the best arrangement, considering that other service providers were free from this obligation. He also enquired what compensation was payable to PCCW for the provision of universal services.

26. In reply, DG of T said that presently PCCW's network covered practically most parts of Hong Kong. The Administration considered it most appropriate and effective for PCCW to continue to provide such services and did not see the need to change the arrangement at the present stage. She advised that PCCW would continue to be compensated for the net cost of providing basic telephone services in areas or buildings with no alternative fixed network coverage and for operating payphones in areas with no competitive and alternative service in the vicinity. AD of T(R) supplemented that in the past, USO cost sharing was based on the external telecommunications service (ETS) traffic volume, i.e. international direct dialing (IDD) minutes carried by ETS service providers and carriers. With effect from May 2009, the basis for USO cost sharing would be changed from IDD traffic

volume to the number of all telephone numbers allocated. He recapped that the Panel had been briefed on the Universal Service Contribution Scheme and the new cost sharing mechanism at its meeting in July 2007.

27. Mr Jasper TSANG noted that in the light of FMC and with the emergence of the new broadband wireless access (BWA) technology, wire-line based services could be made available through wireless transmission. As such, he questioned whether USO was still necessary for areas supported by wireless access facilities and considered that it might become unnecessary in the future to require PCCW to continue to have a USO under the UCL, particularly in view of the wide coverage of the wireless access services. Echoing his view, the Chairman said that if PCCW was freed from USO in areas supported with wireless access facilities, the amount of compensation to PCCW could be reduced, resulting in a saving in the public coffers.

28. In response, AD of T(R) said that wireless access services might be less stable and effective compared with fixed-lines services via cable transmission. Moreover, some remote areas might not be covered by the wireless network. He said that whether the development of BWA technology was considered advanced enough to replace fixed-line transmission would be a matter for the industry to decide. As regards the provision of basic fixed-line telephone services and payphone services at affordable prices to all persons across Hong Kong under USO, AD of T(R) advised that the TO currently required that these fixed-line services be provided by fixed carrier licensee(s) through wire-line transmission. Except with the requisite legislative amendment, it was not legally permissible under the existing regulation to withdraw USO from areas supported by wireless access facilities. In this connection, the Chairman asked whether the Administration would consider making legislative amendment to this effect in the context of the coming TO review. AD of T(R) said this had to be considered carefully. Any change would have to be preceded by consultation with the industry and the public.

29. Mr Howard YOUNG recapped that before the liberalization of the fixed-line market, the intention of USO was to provide basic telephone services to all citizens across the territory including remote rural areas. He pointed out that although wireless technology was technically capable of providing most fixed-line services, the issue of whether to replace all cable transmissions with wireless technology should be carefully examined before a decision was taken to withdraw USO.

#### *Regulatory framework for UCL*

30. Mr Albert CHAN expressed his concern about the poor service quality as well as the misleading and deceptive conduct of telecommunications service providers which he said was due to a lack of proper and effective regulatory control under the pretext of self-regulation by the industry. He considered that the Administration should take a more active role in setting up an effective and authoritative complaint handling mechanism to enhance consumer protection and strengthen the regulation of business practices of the telecommunications industry.

He also called on the Administration to tighten up control when drawing up the conditions for the new UCL.

31. In response, DG of T pointed out that to address members' concern about consumer protection and licensees' service quality in a forward-looking manner, the TA had included two special conditions (SCs) in the current proposal as a common licence obligation for all unified carrier licensees including the future BWA licensees. The proposed SC1 on "Compliance with Codes of Practice" of the UCL required licensees to comply with any code of practice or guideline which the TA might issue for the protection and promotion of consumers' interests for telecommunications goods and services. To enhance consumer protection and improve the handling of consumer complaints in relation to contractual matters, SC36 on "Service Contracts and Dispute Resolution" of the UCL was proposed requiring the licensees to comply with the code of practice to be issued by the TA in respect of contractual requirements on telecommunications services, including contract documentation, entering into or terminating service contract and settlement disputes, etc. She highlighted that non-compliance with the codes of practice would constitute a contravention of the licence condition. She believed that making the compliance of the code of practice and guidelines part of the licence condition would further strengthen the TA's role in consumer protection.

Summing up

32. The Chairman said that SCED, having regard to the submissions received during the consultation exercises scheduled to end on 20 February 2008, would finalize the proposal and table the amendment regulation(s) for negative vetting by the LegCo within the 2007-2008 legislative session in time for the UCL to be in place in the second half of 2008.

**V. Survey results on the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) and the effectiveness of the existing regulatory regime under the COIAO**

(LC Paper No. CB(1)544/07-08(04) -- Paper on "Public opinion survey on the operation of the Control of Obscene and Indecent Articles Ordinance" provided by the Administration

LC Paper No. CB(1)544/07-08(05) -- Paper on "Effectiveness of the existing regulatory regime under the Control of Obscene and Indecent Articles Ordinance" provided by the Administration

LC Paper No. CB(1)573/07-08(02) -- Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)601/07-08(02) -- Administration's paper on public opinion survey on the operation of the Control of Obscene and Indecent Articles Ordinance (power-point presentation materials)  
*(tabled at the meeting and subsequently issued via e-mail on 15 January 2008)*

Relevant papers

LC Paper No. CB(1)858/06-07(01) -- Letter dated 15 January 2007 from a group of concerned clinical psychologists  
*(English version only)*

LC Paper No. CB(1)1214/06-07(01) -- Letter dated 13 March 2007 from Hon CHOY So-yuk  
*(Chinese version only)*

LC Paper No. CB(1)227/07-08(01) -- Letter dated 6 November 2007 from Hon Jasper TSANG Yok-sing  
*(Chinese version only)*

LC Paper No. CB(1)227/07-08(02) -- Letter dated 7 November 2007 from Hon Howard YOUNG  
*(Chinese version only)*

Presentation by Consumer Search Hong Kong Limited

33. Mr Robert LI, General Manager (Research Divisions) of Consumer Search Hong Kong Limited gave a power-point presentation on the findings of the 2006 public opinion survey on the operation of the Control of Obscene and Indecent Articles Ordinance (COIAO) (Cap. 390) commissioned by the Television and Entertainment Licensing Authority (TELA) covering four areas of (i) public knowledge of the COIAO; (ii) enforcement of the COIAO; (iii) publicity and public education activities for the COIAO; and (iv) public views on standards of morality, decency and propriety. The survey was conducted from 4 November 2006 to 7 January 2007 among Hong Kong residents aged 15 to 65 based on questionnaire-guided face-to-face interviews. A total of 1 501 interviews were successfully completed and the response rate was 73.1%. Regarding public views on standards of morality, decency and propriety, only respondents aged between 18 and 65 were invited for their views on the articles sampled for the survey. General observations arising from the survey findings were summarized as follows:

- (a) Most respondents were generally aware of the COIAO but the understanding was not in depth;
- (b) Most respondents possessed a reasonable level of knowledge about the Obscene Articles Tribunal (OAT);
- (c) Less than half of the respondents were aware of the penalties meted out for breaches under the COIAO;

- (d) Respondents held diverse views on the appropriateness of the penalties. The majority of those regarding the penalties inappropriate considered the penalties too lenient;
- (e) Most respondents regarded the current composition of the OAT appropriate. A majority of the respondents considered the factors and criteria which had to be considered by the OAT in classifying articles under the COIAO appropriate;
- (f) Differences between the prevailing standards of OAT classifications and the standards of morality generally accepted by the public were observed. For Class I and Class II articles, the respondents generally adopted stricter standards than the OAT did. For Class III articles, the OAT's prevailing standards were generally in line with those of the respondents; and
- (g) Television and newspapers were the most effective channels for publicizing the COIAO for persons of all ages, while the Internet was another effective channel for students or persons aged 15-24.

## Discussion

### *Enforcement of COIAO*

34. Referring to the recent incident in which a picture published by some local newspapers was classified as Class II while the same picture published by a foreign magazine was not even submitted for classification, Miss CHOY So-yuk criticized the flaws and weaknesses of the existing COIAO and said that the inconsistency had given rise to public concern about selective prosecution by the enforcement agents and had created confusion among the media and the public. She urged the Administration to provide clear and objective criteria as basis for classification, enforcement, and prosecution, and enquired what measures the Administration would adopt to improve the COIAO.

35. On developing objective criteria for OAT classification, Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)) said that different people would have different views on standards of morality and decency, both of which could not be scientifically quantified. However, it was hoped that objectivity could be achieved through the OAT mechanism with members drawn from a wide spectrum of socio-economic background and having regard to a number of factors including the prevailing standards of morality, decency and propriety that were generally accepted by reasonable members of the community. She said that as public expectation of COIAO enforcement might vary from time to time depending on the prevailing moral standards, general perception, and the acceptance level of sensitive content published in different types of media, TELA would continue to conduct public opinion survey on a regular basis to keep track of community views on standards of morality, decency and propriety. In view of the community's concerns about the

various aspects of the operation of the COIAO, the Administration would conduct a comprehensive review of the operations of COIAO and the current classification mechanism to seek the community's views on what improvements were required.

36. As regards enforcement of COIAO, the Commissioner for Television and Entertainment Licensing (CTEL) pointed out that due to the broad coverage of "articles" under the COIAO and the huge number of outlets all over Hong Kong, there was a practical need for TELA to focus its enforcement resources on priority areas of greater public concern. She said that TELA had all along taken a proactive approach in monitoring the sale of indecent VCDs and DVDs and local entertainment magazines on news stands and convenient shops while articles in books and imported entertainment magazines published in foreign languages were inspected and monitored less vigorously. She said that TELA was mindful of the need to adjust their enforcement priorities from time to time to meet public aspirations and intended to consult the public on the appropriateness of the existing enforcement priorities in the coming COIAO review.

37. Referring to the discrepancies in the classification of the same articles/pictures by OATs with different membership, Miss CHOY So-yuk suggested that the same set of material should be reviewed by the same OAT members to avoid double standard. In response, PSCED(CT) advised that to preclude bias and ensure fairness, the current arrangement was that different stages of OAT hearings should not be heard by the same adjudicators. She explained that upon a request for a review of the interim classification made in respect of an article, a full public hearing would be conducted by an OAT comprising a presiding magistrate and four or more adjudicators not previously involved in making the interim classification.

38. While appreciating that it was difficult to achieve 100% consensus over the prevailing standards of morality and decency, Mr Howard YOUNG nevertheless considered it important to maintain consistency in classification as far as practicable and to avoid giving the public an impression of differential treatment. While agreeing that a review of the interim classification should not be made by the same adjudicators, he was of the view that it would be fairer for the same set of articles to be classified by the same OAT members, who should also be informed of any precedent or similar cases to facilitate consistency in making classification.

39. Mr Albert CHAN expressed concern that the recent incidents of OATs making different classifications for the same set of articles had reflected badly on TELA's lack of co-ordination and the absence of objective criteria for classification. He called on the TELA to put in place an internal control mechanism to avoid the repeated occurrence of inconsistent classifications which led to or was perceived as selective prosecution.

40. In response, PSCED(CT) said that there was no question of TELA making selective submission of articles for classification. She said that the background of the recent incidents in question was set out in the Administration's paper (LC Paper No. CB(1)544/07-08(05)). PSCED(CT) pointed out that the OAT hearing

procedure, the time-frame for classification of articles, the factors to be taken into account when making the classifications, and the composition of the OAT were stipulated in the COIAO and that TELA, as an enforcement agency, had to operate in accordance with the COIAO. She remarked that the public could be easily confused due to a lack of clear understanding about the differences in the work and the role of OAT and TELA. She elaborated that the OAT was set up under the COIAO as part of the Judiciary vested with exclusive jurisdiction to determine for the purposes of the COIAO whether any article was obscene or indecent. In this regard, all factors, such as different sizes of the same photo and how the photo was displayed, would affect the final classification. She highlighted that TELA did not have a role in the classification of articles, either in making an interim classification or in the review of an interim classification which was the exclusive jurisdiction of the OAT. The role of TELA was to monitor publications and inspect retail outlets for articles suspected of breaching the COIAO on the basis of the classification guidelines stipulated in the COIAO as well as the OAT's past rulings. Such articles would then be submitted to OAT for classification. CTEL supplemented that TELA had and would continue to make the best effort to submit all cases concerning the same article suspected of breaching the COIAO to the same OAT for classification at the same time.

41. On the control of obscene and indecent articles, Mr Albert CHAN considered that the regulatory regime should seek to strike a balance between safeguarding public morals on one hand and preserving the freedom of expression and creativity on the other. He urged the Administration to review the OAT operation and appointment mechanism and to improve the classification regime. PSCED(CT) noted Mr CHAN's suggestion and said that the Administration, in conjunction with the Judiciary, would review the operation, representativeness and membership of the OAT and explore measures to ensure that the classification and OAT mechanism could better reflect the prevailing standards of the community.

#### *Penalty provisions in the COIAO*

42. Referring to the 2006 survey findings in which the majority of the respondents who regarded the penalties not appropriate considered them too lenient, Miss CHOY So-yuk expressed concern about the low level of penalties imposed upon conviction, in particular those relating to repeated offenders. She noted that some media organizations had repeated records for publishing indecent articles and enquired whether the Administration had any plan to strengthen the deterrent effect of COIAO by increasing the maximum penalty on repeat offenders and imposing harsher penalties on them.

43. In response, PSCED(CT) said that the Administration was aware of the community concern about the low level of penalties and the call for reviewing the penalty provisions in the COIAO to increase the maximum penalty, particularly for repeat offenders. She said that the existing COIAO had already stipulated fairly high maximum penalty on repeat offenders. As regards the level of penalty imposed upon conviction and whether past convictions of the media organization in question would be taken into account when meting out sentences would be a matter

for the court to decide. She pointed out that TELA and the Department of Justice (DoJ) had all along kept in view the penalty handed down by the court against breaches of COIAO and would apply to the court for a review of the penalty where appropriate. In 2006, TELA and DoJ had requested for a review of penalties in a number of cases. PSCED(CT) assured that members' and the public's concerns in this regard would be considered and addressed in the coming review of the COIAO.

44. In response to the Chairman's enquiry, PSCED(CT) confirmed that upon conviction on breaches against COIAO, the court would be informed of the past conviction records of the media organization in question for consideration in determining the penalty.

*Regulation of materials transmitted on the Internet*

45. In view of the pervasiveness of Internet service in Hong Kong families and its popularity among youngsters, Miss CHOY SO-yuk expressed concern about the prevalence of indecent/obscene Internet content easily accessible by young people and students. She asked what measures the Administration would adopt to protect young people from being exposed to objectionable materials classified under the COIAO.

46. In reply, CTEL said that as in many other overseas jurisdictions, the proliferation of information transmitted in a globalized and transient way by users who were not required to reveal their identities posed both difficulties and constraints on the regulation of objectionable Internet content. Given that it was impracticable to actively monitor information transmitted over the Internet due to its vast volume and transient nature, TELA adopted a complaint-driven approach in dealing with indecent/obscene Internet content. Nevertheless, she said that TELA would continue to work closely with the Hong Kong Internet Service Providers Association to tackle the problem of objectionable Internet content. Publicity and education would be stepped up on the positive use of the Internet and the wider use of filter softwares.

47. In this connection, Miss CHOY So-yuk suggested requiring every school to send a letter to all parents encouraging them to make use of the filter software to protect youngsters from indecent Internet content, and that assistance should be provided to families having difficulties in installing filter software. In reply, CTEL said that regular talks and seminars on the use of filter software had been organized for students and parents in collaboration with school authorities, non-governmental organizations, and parent groups. She said that about 16 000 discs with filter software had been distributed free of charge in the past two years during seminars and talks, and parents were also encouraged to download free filters provided by the Internet Content Rating Association. She emphasized that TELA would continue its publicity and education effort in the coming year and would consult the community on feasible ways to improve the regulation of Internet content in the context of the coming COIAO review.

**VI. Any other business**

48. There being no other business, the meeting ended at 4:45 pm.

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