

立法會
Legislative Council

LC Paper No. CB(1)1236/11-12
(These minutes have been seen
by the Administration)

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Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 9 January 2012, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon WONG Yuk-man (Chairman)
Dr Hon Samson TAM Wai-ho, JP (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
- Member attending** : Dr Hon PAN Pey-chyou
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
- Public officers attending** : Agenda item IV
Mr Gregory SO, JP
Secretary for Commerce and Economic
Development

Miss Elizabeth TSE, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Miss Eliza LEE, JP
Director-General of Telecommunications
Office of the Telecommunications Authority

Mr Danny LAU
Assistant Director (Regulatory)
Office of the Telecommunications Authority

Mr Sidney TSAN
Senior Regulatory Affairs Manager
Office of the Telecommunications Authority

Agenda Item V

Miss Elizabeth TSE, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Miss Eliza LEE, JP
Director-General of Telecommunications
Office of the Telecommunications Authority

Mr Danny LAU
Assistant Director (Regulatory)
Office of the Telecommunications Authority

Mr Kingsley YEUNG
Principal Regulatory Affairs Manager
Office of the Telecommunications Authority

Agenda Item VI

Miss Elizabeth TSE, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Mr Gordon LEUNG
Deputy Director of Broadcasting (Developments)
Radio Television Hong Kong

Mrs Fiona CHAK
Departmental Secretary
Radio Television Hong Kong

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

Staff in attendance : Mr Joey LO
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)721/11-12 -- Minutes of meeting held on
14 November 2011)

The minutes of the meeting held on 14 November 2011 were confirmed.

II. Information paper issued since the last meeting

2. Members noted that no paper had been issued since the last meeting held on 12 December 2011.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)741/11-12(01) -- List of outstanding items for discussion

LC Paper No. CB(1)741/11-12(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on Monday, 13 February 2011 at 2:30 pm to discuss the following items:

- (a) Provision of funding for extension of the Design Incubation Programme;
- (b) Creation of a post of Senior Principal Executive Officer (D2) under the Create Hong Kong (CreateHK) Office and the work progress of CreateHK; and
- (c) Proposed amendments to the Telecommunications (Control of Interference) Regulations.

(Post-meeting note: With the concurrence of the Chairman, a joint meeting with the Panel on Education will be held on Tuesday, 14 February 2012, at 9:00 am to discuss the subject of "Education on media literacy and free newspapers containing indecent content".)

IV. Guidelines for the Implementation of Fair Usage Policy

(LC Paper No. CB(1)741/11-12(03) -- Administration's paper on Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services

LC Paper No. CB(1)771/11-12(01) -- Administration's paper on Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services (power-point presentation material))
(tabled at the meeting and subsequently issued via e-mail on 9 January 2012)

Presentation by the Administration

4. At the invitation of the Chairman, Secretary for Commerce and Economic Development (SCED) briefed members on the "Guidelines for the Implementation of Fair Usage Policy (FUP) for the Provision of Mobile and Fixed Broadband Services" (the "Guidelines") issued by the Office of the Telecommunications Authority ("OFTA") on 9 November 2011. Senior Regulatory Affairs Manager, OFTA (SRAM) then gave a power-point presentation on the subject. Details of the briefing and presentation were set out in the Administration's papers (LC Paper Nos. CB(1)741/11-12(03) and CB(1)771/11-12(01)).

Discussion

Different understanding and non-uniform application of FUP by service providers

5. Mr Ronny TONG opined that given different interpretations to the FUP by service providers and lack of understanding of FUP by customers, it would be unfair to customers when a service provider took action against them on grounds that they had breached FUP. Mr Andrew LEUNG shared a similar view. To address the problem, Mr TONG and Mr LEUNG urged the Administration to provide a uniform set of FUP for compliance by all service providers to ensure consistency in interpretation.

6. SCED advised that with a view to addressing the problem areas associated with the implementation of FUP, the Telecommunications Authority (TA) had decided to promulgate the Guidelines governing how service providers should implement their FUP for the provision of mobile or fixed broadband services to all customers. In promulgating the Guidelines, TA had formulated a set of guiding principles to enable service providers to develop and apply FUP in a broadly uniform manner. This would enhance customers' understanding and maintain a degree of consistency across services.

7. Director-General of Telecommunications (DGT) supplemented that according to service providers, they would only take action according to FUP against atypical customers with ultra-high usage, which consisted of the top 5% of their customers with the highest usage. Accordingly, the average customers would not be affected under the FUP as their actual monthly usage was well within the allowance available to customers and would not trigger FUP. Low usage customers who had subscribed to unlimited usage plans could in fact be subsidizing heavy users. DGT stressed that OFTA would investigate complaints of misleading or deceptive sales practice involving

implementation of FUP under section 7M of the Telecommunications Ordinance (TO) (Cap. 106). In a complaint case concerning the imposition of a revised FUP by a service provider unilaterally and without advance notification, the service provider concerned had been found contravening section 7M and was fined \$130,000.

Guiding principles for the implementation of FUP

8. Mr CHAN Kam-lam opined that given the difficulties facing the general public in understanding the meaning of FUP, service providers should be refrained from attaching any qualifications, conditions and usage thresholds to service plans with the name described or promoted as "unlimited" (無限). This would avoid any misunderstanding or misleading information relating to promotion of such plans. Mr WONG Ting-kwong shared a similar view. In this regard, Mr CHAN and Mr WONG urged the Administration to clearly define the term "fair usage" (公平使用), and to periodically review the fair usage limit in order to ensure that subscribers of unlimited data usage plans could use the service without any unreasonable restrictions.

9. DGT advised that given the different understanding and non-uniform application of FUP by service providers and the lack of understanding of FUP by customers, the TA promulgated the Guidelines to govern how service providers should implement their FUP. With a common set of implementation and disclosure standards, customers' understanding and awareness of FUP would be enhanced and a degree of consistency across services would be maintained, thereby facilitating more informed consumer choices. The Guidelines would be reviewed after a certain period of implementation, taking into account feedback from service providers and customers, as well as the views expressed by members at the Panel meeting. Whether "unlimited" usage plans should be prohibited was subject to dispute as many members of the public had expressed a clear preference for the freedom to choose amongst different service plans.

10. SCED added that according to guiding principle 1 of the Guidelines, service providers seeking to promote or offer service plans with the term "unlimited" (無限) must clearly present any qualifications if any form of restriction or FUP was applicable. This would serve to avoid misunderstanding by customers.

11. In response to Dr PAN Pey-chyou's enquiry about unilateral change in service contract terms or conditions in the FUP, DGT advised that according to guiding principle 5 of the Guidelines, service providers concerned should give not less than 30 days' prior notice to the affected

customers before effecting the change. If such unilateral variation would result in substantial and adverse impact on the service that a customer had acquired, the service provider should permit the customer to terminate the contract by notice of no more than 15 days prior to the change coming into effect without the customer incurring any charges in respect of that termination.

Implementation of the Guidelines

12. In response to Mr Ronny TONG's enquiry about the implications of the Guidelines to the existing customers, SCED advised that service providers would be required to comply with the guidelines on a mandatory basis for all new and renewed service contracts signed on or after 13 February 2012. Service providers would also be encouraged to apply certain guiding principles under the Guidelines to their existing customers, such as to provide advance notice to atypical customers with excessive usage before triggering FUP.

13. Dr Samson TAM welcomed the implementation of the Guidelines which provided useful reference for service providers to follow in the provision of mobile or fixed broadband services. He opined that with the advance in technology and the exponential increase in volume of data being transmitted on their platform, many customers would expect service providers to continue to provide unlimited data usage plans. With the implementation of the Guidelines, customers should find it easier to comprehend what FUP represented to them, and to make informed subscription decisions. In this connection, he enquired if there would be an objective mechanism for determining whether a customer had exceeded the data usage threshold, and whether there would be any channel for appeal by aggrieved customers.

14. DGT advised that as data usage record could be readily retrieved from the customers' own smartphones or provided by the service providers for verification upon request, an appeal mechanism was deemed unnecessary. Moreover, any complaints of misleading or deceptive sales practice involving implementation of FUP might be investigated by OFTA under section 7M of TO.

V. Assignment of spectrum in 2.5/2.6 GHz band for wireless broadband services

(LC Paper No. CB(1)741/11-12(04) -- Administration's paper on public consultation on the assignment of the available

radio spectrum in the 2.5/2.6 GHz band for wireless broadband services

LC Paper No. CB(1)771/11-12(02) -- Administration's paper on public consultation on the assignment of the available radio spectrum in the 2.5/2.6 GHz band for wireless broadband services (power-point presentation material)
(tabled at the meeting and subsequently issued via e-mail on 9 January 2012)

Presentation by the Administration

15. At the invitation of the Chairman, Principal Regulatory Affairs Manager, OFTA (PRAM) gave a power-point presentation on the Administration's paper on public consultation on the assignment of the available radio spectrum in the 2.5/2.6 GHz band for wireless broadband services. Details of the presentation were set out in the Administration's papers (LC Paper Nos. CB(1)741/11-12(04) and CB(1)771/11-12(02)).

Discussion

Eligibility of bidders and qualification requirements

16. Mr CHAN Kam-lam opined that to avoid market domination by large conglomerates and to attract new entrants to the market, new entrants should be given better chances of winning the bid in the auction. Sharing a similar concern, Mr Ronny TONG considered that a spectrum cap should be imposed on existing mobile network operators ("MNOs").

17. DGT advised that at present, about a total of 470 MHz of the radio spectrum had been assigned for the provision of mobile services by five major MNOs through auction. In the proposed auction, existing MNOs and new entrants alike were welcome to bid for the total of 50 MHz of radio spectrum available for assignment in the 2.5/2.6 GHz Band. The radio spectrum was available in the form of paired frequency blocks of 25 MHz x 2. To cater for different amount of radio spectrum which might be required by new entrants and existing MNOs, the TA proposed that the available spectrum be divided into five paired frequency bands, each with a bandwidth of 5 MHz x 2. The total spectrum available for auction this time was 50 MHz which represented only about 10% of the existing pool of assigned spectrum for mobile services. Given that the mobile market in Hong Kong

was extremely competitive, the TA was of the view that it was not necessary to impose any restriction on the amount of spectrum that a bidder could acquire in the proposed auction. In the previous auction in 2009 using the same market-based approach, a new entrant was successfully introduced into the market.

Network and service rollout obligation

18. In response to Dr Samson TAM's concern about spectrum hoarding, DGT advised that spectrum was a scarce public resource. Since the first spectrum auction in 2001, 470 MHz of radio spectrum had already been assigned, involving spectrum utilization fees (SUF) of \$12 billion in total. Having paid hefty sums of money for the spectrum, MNOs would no doubt put the spectrum into speedy and effective use in order to obtain returns on their investment. Apart from the network and service rollout obligation imposed on successful bidders, a performance bond was also required to be lodged by the successful bidders to ensure compliance with rollout obligations. Given such safeguards and according to past experience, spectrum hoarding was not a cause for concern.

VI. Progress report on the manpower arrangement of Radio Television Hong Kong

(LC Paper No. CB(1)741/11-12(05) -- Administration's paper on promotion and recruitment exercises for the Programme Officer grade in Radio Television Hong Kong

LC Paper No. CB(1)741/11-12(06) -- Paper on new initiatives and manpower arrangement of Radio Television Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

Presentation by the Administration

19. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)) briefed members on the progress of promotion and recruitment exercises for the Programme Officer (PO) grade in Radio Television Hong

Kong (RTHK). Details of the briefing were set out in the Administration's paper (LC Paper Nos. CB(1)741/11-12(05)).

Discussion

Recruitment and promotion exercises

20. Dr PAN Pey-chyou enquired about the success rate of existing non-civil service contract (NCSC) staff to fill the civil service posts at promotion ranks of the PO grade in the recruitment and promotion exercises. Deputy Director of Broadcasting (Developments) (DDB(D)) advised that two out of the 16 recruitment exercises launched between March and December 2011 had been completed. The remaining 14 exercises were at different stages of processing, and were expected to be completed in the coming months. Out of the 10 posts which were involved in the two completed exercises, seven were filled by existing NCSC staff. For two posts in promotion ranks, as no suitable officers could be identified from internal promotion, RTHK had launched open recruitment exercises. The exercises were still on-going.

21. Noting that none of the 70 PO grade officers recommended for promotion or acting appointment were NCSC staff, Dr PAN Pey-chyou considered the situation undesirable and urged RTHK to exercise discretion to appoint these staff to fill the civil service posts at promotion ranks of the PO grade. Sharing a similar view, Mr Ronny TONG also urged the Administration to accord priority to incumbent NCSC staff so as to retain quality serving staff for RTHK.

22. DDB(D) advised that according to civil service regulations, vacancies at promotion ranks should normally be filled by promoting suitable civil servants from the immediate lower rank of the same grade. Due to its uniqueness as a media organization as well as a Government department, RTHK had historically maintained a proportion of 20 to 30% of NCSC staff in order to maintain a degree of flexibility in manpower arrangement.

23. PSCED(CT) stressed that RTHK management attached great importance to retaining its own talent. In the coming years, RTHK would be implementing a number of new initiatives and would be in great demand for experienced staff, both on civil service and NCSC terms.

24. The Chairman reminded members that at the meeting of the Panel on 14 March 2011, a motion was passed urging the Administration to, inter alia, accord priority to serving NCSC staff in recruitment. In this connection, Mr LEE Wing-tat urged the Administration to take account of the Panel's demand

and accord priority in recruitment to NCSC staff.

25. PSCED(CT) advised that RTHK had to observe procedural propriety and the principle of fair play in conducting the recruitment exercises. While RTHK management could not undertake that the civil service vacancies concerned would be filled by serving NCSC staff, it had addressed the demand of the Panel in the recruitment exercises by exercising discretion at its disposal as far as possible. For example, RTHK management would try its best to explore the possibility of granting Incremental Credit for Experience to candidates with relevant, specifically needed and particularly valuable experience. After all, NCSC staff with working experience in RTHK and proven track records should have a competitive edge in the recruitment exercise. At the request of the Chairman, the Administration undertook to report progress of RTHK's on-going promotion and recruitment exercises for the PO grade to the Panel at an appropriate time.

Admin

Contract staff ratio

26. In response to MR IP Kwok-him's enquiry about the contract staff ratio, DDB(D) advised that the existing number of civil servants and NCSC staff in the PO grade were around 300 and 250 respectively. With the completion of on-going recruitment exercises, the contract staff ratio was expected to resume to the historical one of around 30%.

27. Mr LEE Wing-tat enquired if the contract staff ratio could be further reduced. In response, PSCED(CT) stressed that the historical contract staff ratio of 30% would not be taken as a hard and fast rule. Every year, RTHK would review the ratio to see if certain NCSC posts could be rationalized and converted into civil service posts. In 2012-2013, RTHK would create about 20 civil service post to absorb corresponding NCSC posts which had established a long term need.

VII. Any other business

28. There being no other business, the meeting ended at 4:32 pm.