

立法會
Legislative Council

LC Paper No. CB(4)402/12-13
(These minutes have been seen
by the Administration)

Ref : CB4/SS/5/12

**Subcommittee on Telecommunications (Telecommunications Apparatus)
(Exemption from Licensing) (Amendment) Order 2012**

**Minutes of the first meeting
held on Wednesday, 16 January 2013, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Charles Peter MOK(Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon WU Chi-wai, MH
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP

**Public officers
attending** : Agenda item II

Mr T F SO
Assistant Director (Operations)
Office of the Communications Authority

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications &
Technology) B

Mr L H TING
Senior Telecommunications Engineer (Spectrum
Planning)¹, Office of the Communications
Authority

Ms Karmen KWOK
Senior Government Counsel, Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 11

Mr Joey LO
Senior Council Secretary (4)3

Action

I. Election of Chairman

Mr Charles Peter MOK was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(L.N. 190 of 2012

-- Telecommunications
(Telecommunications
Apparatus) (Exemption from
Licensing) (Amendment)
Order 2012

Ref: CTB(CR)7/5/11/3

-- Legislative Council Brief on
Telecommunications
(Telecommunications
Apparatus) (Exemption from
Licensing) (Amendment)
Order 2012 issued by the
Commerce and Economic
Development Bureau in
December 2012

- LC Paper No. CB(4)309/12-13(01) -- Administration's paper on
(*Chinese version only*) Telecommunications
(Telecommunications
Apparatus) (Exemption from
Licensing) (Amendment)
Order 2012 (power-point
presentation material)
- LC Paper No. LS15/12-13 -- Legal Service Division
(*issued vide LC Paper No. Report*
CB(2)431/12-13 on 3 January 2013)
- LC Paper No. CB(4)309/12-13(02) -- Marked-up copy of the
Telecommunications
(Telecommunications
Apparatus) (Exemption from
Licensing) (Amendment)
Order 2012 prepared by the
Legal Service Division)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

3. The Administration was requested to provide the following information:

- (a) parties consulted on the proposed withdrawal of the licensing exemptions granted in respect of Personal Handy Phone System ("PHS") apparatus and relevant documents in the public consultation launched in November 2011, including written submissions received and statement issued by the former Telecommunications Authority after the consultation;
- (b) estimated total number of PHS apparatus still being used in Hong Kong and the estimated remaining lifespan of such apparatus; and
- (c) record of confiscation, prosecution and non-prosecution (with reasons) in relation to the detection of illegal telecommunications apparatus in the past few years.

Legislative timetable

4. To allow sufficient time for the Subcommittee to study the

Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012 ("the Amendment Order"), members agreed that the Chairman should move a motion at the Council meeting on 23 January 2013 to extend the scrutiny period of the Amendment Order to 27 February 2013.

III. Any other business

5. The Chairman reminded members that the second meeting would be held on 22 January 2013 at 10:45 am.

6. There being no other business, the meeting ended at 10:22 am.

Council Business Division 4
Legislative Council Secretariat
6 February 2013

**Proceedings of the first meeting of
Subcommittee on Telecommunications (Telecommunications Apparatus)
(Exemption from Licensing) (Amendment) Order 2012
on Wednesday, 16 January 2013, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000109 – 000153	Mr James TO Mr Charles Peter MOK Mr Wong Ting-kwong	Election of Chairman	
000154 – 000433	Chairman	Opening remarks by the Chairman	
000434 – 001421	Chairman Administration	Briefing by the Administration	
001422 – 001916	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai enquired about the sale of PHS apparatus in Hong Kong, and whether the import, possession or deployment of PHS for personal use in Hong Kong would carry criminal liability after the withdrawal of the licence exemption.</p> <p>The Administration advised that in many market surveys conducted at retail level, no PHS apparatus was found to be on sale in the local market and since 2002, no applications had been received for the certification of PHS apparatus. Considering the limited supply of PHS apparatus over the past decade and the typical life-time of a home cordless telephone, the number of PHS apparatus still in use in Hong Kong was expected to be very small. The Office of the Communications Authority ("OFCA") had diligently monitored the radio spectrum utilization of the 1895 - 1906.1 MHz band and found that there was scanty deployment of PHS in Hong Kong, resulting in inefficient use of the radio spectrum concerned.</p> <p>The Administration supplemented that under section 8(1) of the Telecommunications Ordinance ("TO") (Cap. 106), licences were required for establishing or maintaining any means of telecommunications, or possessing or using, or dealing in the course of trade or business, or demonstrating with a view to sale in the course of trade a business, radiocommunications apparatus. The possession or use of such apparatus without a licence would incur criminal liability. Nevertheless, as a general practice of the enforcement agency, a person had not been and would not be</p>	

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		<p>prosecuted, if such person, without knowledge, committed the offence in relation to the illegal possession or use of PHS apparatus for domestic purpose. Only the PHS apparatus would be confiscated.</p>	
001917 – 002959	<p>Chairman Mr Ronny TONG ALA Administration</p>	<p>In order to assess the need for the Subcommittee to hold a meeting to receive views from members of the public and the industry, Mr Ronny TONG requested that the Administration should provide further information on the public consultation launched in November 2011.</p> <p>Discussion on ways for members of the public to identify a legal telecommunications apparatus.</p> <p>In response to members' enquiry on criminal liability, ALA advised that under section 20 of TO, any person who contravened section 8(1) would be guilty of an offence and would be liable on summary conviction, to a fine at level 5, i.e. \$50,000 and to imprisonment for 2 years; and on conviction on indictment, to a fine at level 6, i.e. \$100,000 and to imprisonment for 5 years.</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>
003000 – 003947	<p>Chairman Mr James TO Administration</p>	<p>Discussion on the estimated total number of PHS apparatus being used in Hong Kong and the estimated remaining lifespan of such apparatus.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>
003948 – 005020	<p>Chairman Mr Wong Ting-kwong ALA Administration</p>	<p>Mr WONG Ting-kwong considered it difficult for members of the public to ascertain whether a telecommunications apparatus was a PHS apparatus. Whilst he agreed that the licensing exemptions in respect of the sale or import of PHS apparatus be ceased, he suggested that the licensing exemptions in respect of possession or use of such apparatus be continued so as to minimize the impact on the existing users.</p> <p>The Administration advised that most telecommunications apparatus certified by the Communications Authority ("CA") carried a label issued by the CA, and a search engine for certified telecommunications equipment for use in Hong Kong was provided on the website of OFCA. Members of the public who were unsure whether a telecommunications equipment was allowed to be</p>	

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		<p>used in Hong Kong were welcomed to bring the equipment to OFCA for free checking. A publicity campaign would be launched to educate the public on the implementation of the Amendment Order. However, the Administration considered that continuing the licensing exemptions in respect of possession or use of such apparatus would not be desirable, as the radio signals generated by such apparatus might cause interference to licenced telecommunications apparatus.</p> <p>In response to Mr Wong Ting-kwong's enquiry on prosecution policy in relation to the possession or use of PHS apparatus after the withdrawal of the licensing exemptions upon the coming into effect of the Amendment Order, the Administration confirmed that a person, who committed without knowledge the offence in relation to the illegal possession or use of PHS apparatus for domestic purpose, would not be prosecuted. Only the PHS apparatus would be confiscated. The Administration advised that this practice would not apply to persons who knowingly did so.</p> <p>ALA advised that there was no statutory defence in relation to an offence of possession or use under section 8(1)(b) of TO.</p>	
005021 – 005808	Chairman Mr Wu Chi-wai Administration	Discussion on the interference caused by PHS apparatus to 3G and 4G telecommunications services.	
005809 – 010518	Chairman Mr James TO Administration ALA	<p>Mr James TO suggested that the 3-year transitional period allowed for the possession or use of PHS apparatus after the commencement of the Amendment Order be extended to 5 or 7 years, as the interference caused by PHS apparatus to 3G and 4G telecommunication services was not as serious as envisaged.</p> <p>The Administration advised that it was not desirable to extend the transitional period as radio spectrum was a scarce public resource. It was the Administration's policy objective to facilitate the most efficient use of radio spectrum. In fact, the potential interference caused by PHS apparatus to 3G and 4G telecommunications services was not limited to indoor environment. Signals from 3G and 4G base stations might also be subject to such interference.</p>	

Time marker	Speaker	Subject(s)	Action required
010519 – 011820	Chairman Mr Ronny TONG Administration	<p>Discussion on policy and figures of prosecution and confiscation in relation to the possession or use of illegal telecommunications apparatus.</p> <p>In response to the Chairman's enquiry, the Administration advised that there was no precedence of removing any type of telecommunications apparatus from the exemption order to make available radio spectrum for other use in Hong Kong.</p> <p>Discussion on possible timing for release of the returned spectrum within the 1895 - 1906.1 MHz band to the market as a result of the implementation of the Amendment Order.</p>	The Administration to follow up as stated in paragraph 3(c) of the minutes.
011821 – 012120	Chairman Mr Ronny TONG Mr James TO Administration	<p>Invitation of views</p> <p>Members agreed that the need to invite public views on the Amendment Order would be determined after the provision of information on the consultation conducted by the Administration as requested by members.</p>	
012121 – 012230	Chairman	Legislative timetable and extension of the scrutiny period	
012231 – 012330	Chairman Mr Ronny TONG	Date of next meeting	