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Legislative Council

LC Paper No. CB(1)2064/99-00
(These minutes have been seen by the Administration and cleared by the Chairman)

Ref : CB1/BC/18/98/2

Legislative Council
Bills Committee on Telecommunication (Amendment) Bill 1999

Minutes of meeting
held on Wednesday, 1 March 2000, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present	**:**	Hon SIN Chung-kai (Chairman) Hon David CHU Yu-lin Hon HO Sai-chu, SBS, JP Hon Eric LI Ka-cheung, JP Hon Fred LI Wah-ming, JP Dr Hon Philip WONG Yu-hong Hon Howard YOUNG, JP Hon YEUNG Yiu-chung Hon Mrs Miriam LAU Kin-yee, JP
Members absent	**:**	Hon MA Fung-kwok Hon CHOY So-yuk
Public officers attending	**:**	Ms Eva CHENG, JP Deputy Secretary for Information Technology and Broadcasting Mr M H AU Senior Assistant Director of Telecommunications Ms Gracie FOO Principal Assistant Secretary for Information Technology and Broadcasting

Miss Priscilla TO
Assistant Secretary for Information Technology and Broadcasting

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Clerk in attendance **:** Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance **:** Miss Connie FUNG
Assistant Legal Adviser 3

Ms Anita SIT
Senior Assistant Secretary (1)8

I Confirmation of minutes and matters arising

The minutes of the meeting on 15 December 1999 (CB(1)1021/99-00) were confirmed without amendments.

2. The Deputy Secretary for Information Technology and Broadcasting (DS/ITB) briefed members on the paper "A comparison of the existing licence conditions and the improved regulatory regime proposed in the Telecommunication (Amendment) Bill 1999" (CB(1)1098/99-00(01)) tabled at the meeting.

3. Noting that the existing Public Radiocommunication Service (PRS) licence did not contain any condition similar to proposed section 7L on "Abuse of position", Mrs Miriam LAU enquired whether at present, any PRS licensee was a dominant operator as determined by TA and how proposed section 7L would affect PRS licensees. In reply, the Senior Assistant Director, Office of Telecommunications Authority (SAD/OFTA) advised that at present, none of the PRS licensees was regarded by TA as a dominant operator in the relevant market. However, if after the Bill was enacted, TA formed an opinion that an existing PRS licensee had become a dominant operator in the relevant market and the licensee had been so notified by TA, the licensee would have to abide by the enacted provisions applicable to dominant operators which included proposed section 7L.

II Paper issued since last meeting

4. Members noted that a "Summary of issues requiring follow-up action/consideration by the Administration (up to 23 February 2000)" had been issued to members for information vide paper CB(1)1053/99-00 dated 29 February 2000.

III Meeting with the Administration

Clause-by-clause examination of the Bill

Clause 16
Proposed section 32G - Spectrum management
Proposed section 32H - Power to allocate frequency

5. Members noted that the term "radio spectrum" in the Bill as provided under proposed section 2 meant the range of frequencies within which radiocommunications were capable of being carried out. Mr David CHU said that the Chinese term "無線電頻譜" should correspond to the English term "electromagnetic spectrum" rather than the term "radio spectrum". In response, SAD/OFTA advised that the Chinese and English versions of the term "radio spectrum" and other related terms in the Bill were adopted from the glossary of terms used by the International Telecommunication Union (ITU).

6. The Chairman sought clarification on the interpretation of the term "radio waves" under proposed section 2. In reply, SAD/OFTA advised that “electromagnetic waves” was a broader term including radio waves, visible light and X-ray etc. The interpretation of the term "radio waves" in the Bill was based on the definition of the term adopted by ITU. Mr David CHU said that according to his understanding, electromagnetic waves of frequency higher than 3000 GHz would become visible light.

7. Mr Howard YOUNG enquired whether the allocation and use of radio spectrum for purposes other than the provision of telecommunications services was subject to the regulation of TA, and thus was also covered by Part VB of the Bill. SAD/OFTA confirmed that Part VB of the Bill covered the use of radio spectrum for all purposes in Hong Kong and TA was the responsible authority in this regard. All along, TA had worked in co-ordination with relevant Government departments and agencies in respect of the allocation and use of radio spectrum for specific purposes such as aviation and navigation uses. Representatives of relevant departments and agencies also sat on the Advisory Committee on Spectrum Management set up under the Office of the Telecommunications Authority. SAD/OFTA also advised that TA followed the relevant regulations established by ITU in allocating radio frequencies for

aviation and navigation purposes.

8. In reply to the Chairman's enquiry, SAD/OFTA advised that in some countries such as the United Kingdom, the provision of telecommunications facilities/services and the allocation and use of radio spectrum were regulated by two different authorities while in some other countries such as the United States, they were regulated by one single authority.

9. Referring to proposed section 32G(2), Mrs Miriam LAU expressed concern about the scope of "telecommunications industry" referred to in the section and the extent of the consultation required in order that the statutory requirement under proposed section 32G(2) could be fulfilled. She pointed out that the term "telecommunications industry" was very broadly defined under proposed section 2, i.e. the industry comprising persons who provided or supplied telecommunications networks, systems, installations, customer equipment or services. She thus enquired how TA would conduct consultation for the purposes of proposed section 32G(2) to ensure that the consultation requirement was duly fulfilled.

10. In response, DS/ITB said that under the existing practices of TA, there would be public announcements for any consultation conducted by TA and the relevant consultation paper would be made available in the public domain, including on the Internet. Depending on the complexity of the subject, seminars might also be held for the licensees concerned and interested organizations/individuals. If the proposals concerned were complicated and there were diverse views in the community, TA might conduct two to more rounds of consultation. Similarly, any consultation to be conducted in compliance with proposed section 32G would be very open and the telecommunications industry would be given adequate opportunities to express their views on the subjects in question. She added that during past consultations, TA often received submissions from interested individuals including investors and employees in the telecommunications sector.

11. Mr Howard YOUNG shared Mrs Miriam LAU's concern. He enquired whether there were recognized industry associations which were representative of the telecommunications industry, and if the answer was affirmative, he would suggest that these associations should be specifically referred to in proposed section 32G(2) so that the scope and extent of consultation could be clearly defined.

12. In reply, SAD/OFTA advised that although there were a number of associations of telecommunications operators, the membership of these associations might not be inclusive of all the licensees of the relevant markets. Hence, while TA usually invited views from these associations in his consultation exercises, TA would also make available to the public the consultation paper and procedures so that any interested persons in the industry

could have access to the relevant consultation document and have adequate opportunities to express views to TA.

13. Mrs Miriam LAU considered that consultation by way of public announcements and publishing the consultation papers should be regarded as public consultation rather than consultation with a particular industry. She maintained that given the very broad definition of the term "telecommunications industry" in the Bill, any member of the telecommunications industry as defined in the Bill could challenge TA's exercise of power under proposed sections 32H(2)(a) and (b) and 32I(1) on the grounds that TA had not duly consulted all members of the industry as required under proposed section 32G(2). In this connection, she enquired whether there were similar provisions in other ordinances that required a regulatory authority to consult the relevant industry before exercising certain statutory powers.

14. The Senior Assistant Law Draftsman (SALD) concurred that while the legislative intent for proposed section 32G(2) was that TA should carry out consultation with the telecommunications industry as was reasonable in all circumstances of the case, the current drafting of the provision was not specific as to the scope and extent of consultation required. As far as he understood, the consultation requirement in other ordinances usually referred to specific organizations or were qualified by expressions such as "appropriate representatives of the industry". He suggested that CSA be made to clarify the provision having regard to the existing modes of consultation carried out by TA. DS/ITB agreed to consider whether CSA should be made to improve the clarity of proposed section 32G(2).

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15. Mr Howard YOUNG enquired why the consultation requirement under proposed section 32G(2) only applied to TA's exercise of powers under proposed sections 32H(2)(a) and (b), but not that under proposed section 32H(2)(c). In reply, SAD/OFTA explained that before assigning frequencies and bands of frequencies to specific users, TA would draw up a spectrum management plan. Proposed sections 32H(2)(a) and (b) were concerned with the spectrum management plan which included the division of the radio spectrum into bands of frequencies, the division of individual frequency bands into channels and the specification of the general purpose for which each band and each channel might be used. As these matters related to the principles on the management of radio spectrum as a public resource, the Bill provided that TA should consult the telecommunications industry in drawing up the spectrum management plan. On the other hand, the assignment of frequencies or band of frequencies to specific users under proposed section 32H(2)(c) was a routine function of TA, and TA would consider each application for frequency assignment on its own merits. It would be impracticable for TA to consult the industry on each occasion of assigning frequencies or band of frequencies to specific users. Moreover, some applications contained sensitive commercial

information and it would not be appropriate for TA to disclose the details of these applications.

16. Noting from SAD/OFTA that proposed sections 32H(2)(a) and (b) covered all the uses of the radio spectrum in Hong Kong including aviation and navigation uses, Mr Howard YOUNG questioned why the subjects for consultation under the spectrum allocation plan were confined to the telecommunications industry as provided under proposed section 32G(2). In response, SAD/OFTA said that in practice, TA would consult the relevant Government departments and agencies involved in operating facilities/services that required the use of radio frequencies. He considered that the term "telecommunications industry" as defined in the Bill would also include these Government departments and agencies.

17. Taking note of the definition of the term "telecommunications industry" under proposed section 2, Mr Howard YOUNG pointed out that the term only covered those persons who provided or supplied telecommunications networks, systems, etc. but not the users of these networks and systems. In the case of the aviation industry, the interest of the suppliers were very different from that of the users of telecommunications networks and systems. He therefore considered that there were no good grounds for TA to consult only the suppliers but not the users on the said spectrum management plan.

18. DS/ITB confirmed that the Administration's policy intention was to ensure that the interests of all relevant parties would be duly taken into account in drawing up the spectrum management plan. She agreed to consider whether CSAs should be made to better reflect this intention.

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(*Post-meeting note*: The Administration has proposed CSA to proposed section 32G vide paper CB(1)1138/99-00 issued on 8 March 2000.)

19. In reply to the Chairman's enquiry, SAD/OFTA clarified that Part VB of the Bill covered the use of radio frequencies within the bounds of Hong Kong by any person and the use of frequencies outside Hong Kong by vessels, aircraft or space objects registered or licensed in Hong Kong. For example, a ship registered in Hong Kong would be subject to the provisions in Part VB irrespective of where it was operating, while a ship registered outside Hong Kong would be subject to those provisions when using radio frequencies within the bounds of Hong Kong. He confirmed that this was a standard international practice as far as the regulation of radio spectrum was concerned.

Clause 16 - Proposed section 32I
Spectrum utilization fee

20. Members noted that the issue of spectrum utilization fee had been discussed at a previous meeting (6 October 1999) and the Administration had

provided a paper (CB(1)141/99-00(02) issued on 20 October 1999) in response to the concerns raised by members at the meeting.

21. The Administration briefly explained that the radio frequency spectrum was a limited community resource. At present, users of the spectrum were charged on a cost recovery basis and this charging method did not encourage users to use the allocated frequencies efficiently. The proposal in the Bill to levy spectrum utilization fees in excess of cost recovery or "spectrum pricing" was widely recognized amongst liberalized telecommunications regimes as an arrangement based on sound economic principles to manage the radio spectrum efficiently. As pointed out in the aforesaid paper, the spectrum for certain uses such as private mobile radio systems and links between fixed points maintained by telecommunications network operators or utilities companies were congested at present. Therefore, there might be appropriate grounds for introducing a spectrum utilization fee in excess of cost recovery if the Bill was enacted.

22. Mrs Miriam LAU enquired how TA would allocate the radio frequency spectrum to different users and how the spectrum utilization fee would be determined. In reply, DS/ITB said that while the allocation of frequency bands or related licences by auctioning would be a feasible option, the Administration did not have a confirmed view on the auctioning arrangement at this stage. Instead, TA would conduct a thorough consultation with relevant parties before making a decision on the matter.

Clause 16
Proposed section 32J - Interference
Proposed section 32K - Examination, certification and authorization of operating personnel

23. DS/ITB advised that at present, provisions similar to proposed sections 32J and 32K were subsidiary legislation to the Telecommunication Ordinance. The Administration considered it appropriate to incorporate these provisions into the principal ordinance to consolidate TA's regulatory powers. She also advised that these two proposed sections and proposed section 32A were interrelated as they were concerned with preventing direct or indirect harmful interference caused by unauthorized or improper use of radio frequencies. She also highlighted that under proposed section 32J(7), TA was required to obtain a magistrate order before he could enter into premises etc. for investigation into any suspected breach of the provisions under section 32J.

24. The Chairman enquired whether TA would organize examinations of competence for personnel operating radiocommunications apparatus on his own or whether TA would work in collaboration with recognized overseas/international bodies in this regard. In reply, SAD/OFTA advised that the usual practice amongst telecommunications regulatory regimes was for the

local authority to conduct these examinations. On the other hand, TA might authorize a person to operate a particular class of radiocommunications apparatus if the person had obtained a relevant certificate of competency issued by an overseas authority the standards of which were recognized by TA.

Clause 17 - Proposed section 34
General provisions as to licences, etc.

25. DS/ITB advised that proposed section 34(7) sought to provide the flexibility for the relevant authority to cancel, withdraw or suspend any part of a licence, permit etc. without affecting the validity of the remaining part of the licence, permit etc. She explained that a licensee might be authorized under its licence to operate more than one class of services or facilities. Under proposed section 34(7), if the licensee was found in breach of a licence condition or statutory provision in respect of a class of services/facilities, the authority might cancel, withdraw or suspend the relevant part of the licence while the licensee could continue to operate the other services or facilities under the remaining part of the licence.

Clause 18 - proposed section 35A
Inspection of records, documents and accounts

26. DS/ITB advised that the Administration had provided papers (CB(1)141 and 830/99-00 issued on 20 October 1999 and 19 January 2000 respectively) to address members' concerns raised earlier on about proposed sections 7I, 35A and 36D on TA's powers to obtain and disclose information. She further advised that as in the case of proposed section 7I, the Administration was prepared to propose CSAs to proposed section 35A for the following purposes -

(a) to circumscribe the scope of application of proposed section 35A(1);

(b) to afford more protection for the affected parties for any proposed disclosure of information; and

(c) to make it explicit that TA would not compel production of information which a person could not have been compelled to give in evidence in civil proceedings before the Court of First Instance.

27. Mrs Miriam LAU recalled that members had expressed concern that proposed section 35A conferred extensive powers on TA to obtain information from licensees and such powers were not subject to the scrutiny of the courts. The Administration had also been requested to provide information on comparable provisions in other local ordinances.

28. In response, DS/ITB advised that in the aforesaid papers, the Administration had made a comparison between proposed section 35A and the statutory powers of the telecommunications regulators in overseas jurisdictions. It was found that the regulators in other liberalized regulatory regimes were given similar statutory powers to request, and enter premises to inspect documents and information relevant to the exercise of their functions and powers. The Administration considered that with the proposed CSAs, there would be sufficient safeguards for licensees and other affected parties. DS/ITB added that proposed section 35A as presently drafted had been a general licence condition in existing licences.

29. Mr Eric LI said that he would reserve his right to raise further queries on proposed section 35A pending the provision of the relevant CSAs by the Administration.

Clause 18 - Proposed section 35B
Universal service obligation

30. SAD/OFTA advised that at present, there was only one fixed carrier licensee having a universal service obligation (USO). Proposed section 35B would empower TA to impose a USO to one or more fixed carrier licensees and the main objective of so doing was to lower the cost of providing universal service coverage. In imposing a USO, TA would specify the coverage area and the class of service to which the obligation would apply. For example, a licensee might be required to meet the obligation in respect of a service for the entire territory or only for a particular district. If the obligation was imposed on different licensees for different districts, TA would ensure that all the districts in Hong Kong would be provided with the service(s) concerned.

31. As to whether and how the TA would change the existing arrangement for the imposition of the USO upon the enactment of the Bill, SAD/OFTA advised that this would be worked out at a later stage. One option was to tender for the provision of universal service in individual districts. The licensee who offered the lowest price for performing the obligation would be awarded the right to provide the universal service and receive the universal service contribution.

32. In reply to Mr Howard YOUNG, SAD/OFTA advised that it was necessary for the licensee concerned to provide a universal network coverage for a specified area in order to fulfill a universal service obligation for the area.

33. Referring to proposed section 35B(4) which provided that a fund might be established by TA to hold the contributions towards the cost of providing USO, the Chairman enquired about the relevant arrangement at present. In reply, SAD/OFTA advised that currently, the fixed carrier licensee who had a USO collected a fee on other licensees for performing the obligation through an

intermediary appointed by TA. As regards the accountability of TA for the management of the fund, SAD/OFTA advised that pursuant to proposed section 35B(4), the fund must be used for payment to the carrier licensee(s) concerned as a contribution to defray its cost for providing the USO and for managing the fund established under proposed section 35B(4). The Administration confirmed that the operation of the fund in question would be under the purview of the Director of Audit.

Clause 19 - Proposed section 36A
Authority may determine terms of interconnection

34. DS/ITB stressed that interconnection was critical for ensuring fair competition and quality services to consumers. The proposed amendments to section 36A sought to clarify the powers of TA on interconnection such that TA would be given unequivocal powers to make a determination on interconnection at any technically feasible point if TA considered that it was in the interest of the public to do so. These provisions were necessary to enable speedy roll-out for the forthcoming new telecommunications services such as the third-generation mobile phone services and non-wireline fixed telecommunications network services.

35. Mrs Miriam LAU sought clarification on the applicability of proposed section 36A to railways and tunnels. In response, DS/ITB said that proposed section 36A was concerned with interconnection between networks of telecommunications licensees. If a railway or tunnel maintained its own telecommunications network and had obtained a licence for the purpose, proposed section 36A would apply in the case of an interconnection between the railway's or tunnel's network and another licensee's network. She confirmed that the two local railway corporations maintained their own networks at present and had obtained licences for the purpose.

36. Mrs Miriam LAU enquired whether the Administration would propose CSA to proposed section 36A(3B) to address the concerns of deputations about TA's determination of charges for interconnection. In reply, DS/ITB confirmed that the term "reasonable costs" in proposed section 36A(3B) already implied that the interconnection charges in a determination would also cover the capital cost of the network facilities in question where it was relevant to the interconnection apart from the cost incurred for the interconnection. The Administration therefore considered that it might not be necessary to introduce CSAs to the proposed section to this effect. However, under existing section 36A(8), TA would issue guidelines upon consultation with the telecommunications industry to set out the principles governing the criteria for any determination of the terms and conditions of interconnection.

37. The Chairman sought clarification on whether the guidelines referred to in section 36A(8) would cover the manner in which TA would determine charges for interconnection. SAD/OFTA replied in the affirmative and pointed out that interconnection charges were an integral part of the terms and conditions of interconnection in any determination under proposed section 36A.

38. In this regard, the Assistant Legal Adviser 3 (ALA3) advised that the terms and conditions of interconnection referred to in proposed section 36A(1) were further elaborated in proposed sections 36A(3) and 36A(3A). Proposed section 36A(3A) stipulated that the terms and conditions in a determination on interconnection might include the level of, and the method of calculating, the charges that any party would pay to another. Proposed section 36A(3B) stipulated how TA should determine the charges. Therefore, by cross-referencing, the guidelines to be issued by TA under section 36A(8) should cover the manner in which TA would determine the charges for interconnection.

39. Mrs Miriam LAU commented that the drafting of proposed section 36A should be improved so that the coverage of the guidelines to be issued by TA under section 36A(8) would be clearly reflected in one or two provisions.

Admin

40. Taking note of members' comments, the Administration agreed to consider whether the drafting of proposed sections 36A should be improved to reflect more clearly the coverage of the guidelines referred to in subsection (8), without the need to make so many cross references. SALD further recalled that in response to the suggestion of Mr Ronald ARCULLI made at a previous meeting, the Administration had undertaken to propose CSAs to consolidate TA's power of issuing guidelines under a general empowering provision which would also specify the sections for the purpose of which guidelines had to be issued.

41. Mrs Miriam LAU enquired about the extent to which TA would be bound by the guidelines issued under section 36A(8) and the procedure for making amendments to the guidelines. In reply, DS/ITB advised that the Administration had undertaken in the paper "Policy paper on Procedural Safeguards" (CB(1)873/99-00(01) issued on 24 January 2000) that CSAs would be proposed to add the requirement that TA should not depart from the guidelines issued under any provision of the Ordinance without giving reasons for so doing. CSAs would also be made to the effect that before the issuing of certain guidelines, TA would have to consult relevant parties. Mrs Miriam LAU opined that TA should also be required to consult relevant parties before making amendments to any guidelines issued under the Ordinance/Bill. The Administration took note of Mrs LAU's view.

(*Post-meeting note*: The Administration has proposed CSAs to proposed section 36A vide paper CB(1)1138/99-00 issued on 8 March 2000.)

42. On the publication of interconnection agreements under proposed section 36A(5C), the Chairman opined that to enhance transparency and to ensure fair competition, it might be more appropriate to impose a statutory requirement on TA to publish all interconnection agreements for public information rather than giving TA the discretion to decide whether any part of interconnection agreements should be published as currently proposed.

43. In response, SAD/OFTA advised that in the past, TA had published the interconnection charges on all occasions of his determination on interconnection, but not the details of cost data supplied by operators based on which the charges were calculated, as the latter might involve sensitive commercial information. He explained that interconnection agreements were essentially commercial agreements and the disclosure of details involving sensitive commercial information might jeopardize the interests of the licensees concerned. Moreover, most of the details in these agreements had no public interest implications. Hence, the Administration was of the view that it was not appropriate to impose a general obligation on TA to publish all interconnection agreements.

44. The Chairman maintained his view that as a matter of fairness to all licensees and to ensure fair competition, TA should be obliged to publish interconnection agreements so long as sensitive commercial information was protected. SAD/OFTA reiterated that interconnection agreements were essentially agreements between two commercial parties and therefore any part of these agreements should be published only if there was strong justification on public interest grounds. Moreover, a licensee might be required to produce interconnection agreements to TA under proposed section 7I and as such, the handling of these agreements under proposed section 36A(5C) should be consistent with that under proposed section 7I.

45. Referring to proposed section 36A(5D) which provided that a determination took effect even though it was under review or appeal unless stayed by a court of competent jurisdiction, Mrs Miriam LAU pointed out that the expression "review or appeal" appeared to imply that the Ordinance/Bill had provided a statutory mechanism other than judicial review for appeal against TA's determination, which however was not the case. SALD shared the view that unless the Ordinance/Bill provided a legal appeal mechanism other than judicial review, the term "appeal" should not be included. The Administration agreed to propose CSA to delete the term "appeal" in proposed section 36A(5D).

Admin

(*Post-meeting note*: The Administration has proposed CSAs to proposed section 36A vide paper CB(1)1138/99-00 issued on 8 March 2000.)

Clause 21 - Proposed section 36B
Directions by Authority

46. Members did not raise any query.

Clause 22 - Proposed section 36C
Authority or court may impose financial penalties

47. The Administration advised that the monetary amount specified in proposed section 36C(5) would be consequentially amended to reflect the revised financial jurisdictional limit of the District Court to $600,000 as a result of the enactment of the District Court (Amendment) Bill 1999.

Clause 23 - Proposed section 36D
Authority may obtain information

48. Mr Eric LI said that the Hong Kong Society of Accountants (HKSA) held strong reservation on proposed section 36D. HKSA was most concerned that the powers conferred on TA were so broad that TA could legitimately exercise his powers in the form of "fishing expedition". HKSA considered that TA's powers to obtain information should be duly circumscribed by specifying in the proposed section the circumstances under which a non-licensee would be required to produce a certain type of information. If the target of regulatory action was anti-competitive behaviours of licensees, it should be so specified in the provision.

49. In response, DS/ITB clarified that in the course of performing his statutory powers and functions, TA might have to obtain information from non-licensees and this should not be confined to the investigation of anti-competitive practices. She stressed that the requirement to obtain a magistrate order was intended to serve as a safeguard to restrict TA's power in obtaining information from non-licensees. If the magistrate considered that TA's application was not justified, he could refuse to grant an order.

50. Mr Eric LI commented that as proposed section 36D(1) was drafted in very broad terms, a magistrate could hardly refuse to grant the order on TA's application as he needed only to be satisfied that the information sought by TA was relevant to any of his functions or powers. He considered that the requirement of a magistrate order would not afford much protection to non-licensees. Mr LI further said that as far as he understood, comparable legislation of overseas countries usually confined the authority's power to obtain information from non-licensees to specific purposes. He therefore

reiterated that the application of proposed section 36D was too broad to be acceptable.

51. In this connection, Mr Eric LI also expressed concern that under proposed section 7I, although the person producing information to TA would be given an opportunity to make representations to TA for a proposed disclosure of information, there was no provision for the person concerned to be notified of TA's final decision and to be given an opportunity to challenge TA's decision in court before the disclosure of such information. He urged the Administration to introduce further safeguards for the parties concerned.

52. Mr Howard YOUNG and Mr Fred LI shared Mr Eric LI's concern that the application of section 36D(1) was too broad in scope and thus the provision was susceptible to abuse. Mr Fred LI referred to ALA3's comments on this provision in the paper "Summary of deputations' views and relevant comments on major clauses of the Telecommunications (Amendment) Bill 1999" (CB(1)372/99-00(02)) and suggested that TA's power to obtain information from non-licensees should be limited to specific regulatory functions, as in the case of the United Kingdom.

Admin

53. Taking note of members' concerns and comments, the Administration agreed to consider whether CSAs should be introduced -

(a) to spell out the circumstances relating to breaches of the Ordinance under which TA could apply for a magistrate order to obtain information from non-licensees; and

(b) to address concerns about disclosure of third party information under S7I(3) and (4), i.e. whether the non-licensee concerned would be provided with a reasonable opportunity to challenge TA's decision to disclose information obtained from him.

IV Any other business

54. Members agreed that the Bills Committee would continue to examine the Bill clause by clause in conjunction with the CSAs to be proposed by the Administration at the next three meetings to be held on 7, 10 and 15 March 2000. Members also agreed that the Bills Committee would defer the examination of proposed sections 14 and 36AA pending further deliberation on the legal and constitutional issues arising from the Bill at the meetings to be held on 5 April 2000.

55. The meeting ended at 10:40 am.

Legislative Council Secretariat
22 September 2000