

立法會
Legislative Council

LC Paper No. CB(1)218/00-01
(These minutes have been
seen by the Administration)

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Legislative Council
Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Thursday, 2 November 2000, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Howard YOUNG, JP (Deputy Chairman)
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Dr Hon Philip WONG Yu-hong
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon LAW Chi-kwong, JP
- Non-Panel Members attending** : Hon Andrew CHENG Kar-foo
Hon Albert CHAN Wai-yip
- Member absent** : Hon Kenneth TING Woo-shou, JP
- Public officers attending** : Ms Eva CHENG, JP
Deputy Secretary for Information Technology and
Broadcasting (1)
- Mr Eddy CHAN
Commissioner for Television and Entertainment
Licensing

Mr Eddie MAK
Principal Assistant Secretary for Information
Technology and Broadcasting (A)

Ms Ava CHIU
Assistant Commissioner for Television and
Entertainment Licensing (Broadcasting)

Mr Andreas AVGOUSTI
Senior Consultant, Office of the
Telecommunications Authority

**Attendance by
invitation** : Consumer Council

Mr Ron CAMERON
Principal Trade Practices Officer

Mr Victor HUNG
Chief Trade Practices Officer

Yes Television

Ms Lanny Albina HUANG
Content Director

Mr Nigel HARPER
Vice President, Technology

Hong Kong Cable Television Ltd

Ms CHAN So-kuen
Senior External Affairs Manager

Mr Desmond CHAN
Company Lawyer

Hong Kong Network TV Ltd

Mr John SHAM
Chief Operating Officer

Mr Giovanni CHAN
Vice-President, Channel Operations

Radio Television Hong Kong

Mr SHIU Lo-sin
Assistant Director of Broadcasting (Radio)

Mr SZE Wing-yuen
Senior Executive Producer
(Public & Current Affairs)

Television Broadcasts Limited

Mr Stephen CHAN
Controller (Programme Division
& External Affairs Division)

Mr Alan HOO
Senior Manager (Standards & Practices)

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

Staff in attendance : Ms Sarah YUEN
Senior Assistant Secretary (1)4

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- I. (a) Draft Generic Codes of Practice for Television and Draft Radio Codes of Practice**
- (b) Draft Competition Investigation Procedures and Draft Guidelines to the Application of the Competition Provisions of the Broadcasting Ordinance**

Meeting with the Administration

(LC Paper Nos. CB(1)40/00-01, 106/00-01(01) and (02), as well as two sets of power-point presentation material and a summary of submissions on each of (a) and (b) tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)133/00-01)

The Codes of Practice

With the aid of power-point presentation, the Commissioner for Television and Entertainment Licensing (C for T&EL) briefed members on the Draft Generic Codes of Practice for Television and Draft Radio Codes of Practice.

2. In reply to the Deputy Chairman on why the Administration did not consider it necessary to achieve impartiality in one single programme, C for T&EL pointed out that both local and overseas experience indicated that it would not be appropriate or practicable to require a licensee to achieve impartiality in one single programme. In the experience of overseas regulators, due impartiality could be achieved over time and over a series of programmes of either a similar or different nature. He also pointed out that since impartiality was not an exact science, it would not be appropriate to devise a rigid formula for its determination. In making a determination as to whether a programme was partial or otherwise, due regard should be given among others to the nature of the subject and the type of programme concerned. For example, a narrower range of views might be appropriate within 'personal view programmes' provided the viewers/listeners recognized that the opinions expressed were personal views. As such, the Administration was of the view that to enable licensees to enjoy a higher degree of flexibility in seeking to achieve impartiality, it would be more appropriate to consider a series of programmes as a whole instead of just one single programme in considering whether impartiality had been achieved.

3. On the procedure for assessing whether a broadcaster could achieve impartiality, C for T&EL elaborated that upon promulgation of the Codes of Practice, the Broadcasting Authority (BA) would need to consider a wide range of factors as mentioned in the draft Code before arriving at a firm view. This might involve the BA reviewing a series of the relevant programmes. Members noted that where there was prima facie evidence of a breach, the complaint would be referred to the Broadcasting Authority Complaints Committee (BACC) which comprised BA members as well as co-opted members. The licensee being complained against would be given an opportunity to make representations to the BACC before the latter made a recommendation to the BA. Before the BA made the final decision, the licensee would also be given another opportunity to make representations to it.

4. Dr Philip WONG was of the view that every licensee had its own stance and cast doubt on whether impartiality could really be achieved. In response, C for T&EL emphasized that the Draft Codes did not aim at preventing broadcasters from expressing their views or taking their own positions. Their main aim was to ensure that while broadcasters might state their own views and positions, they would nevertheless allow a sufficiently broad range of views to be expressed in their programmes to give viewers/listeners a balanced account of the issues.

5. Noting that the register of declaration of interests by programme presenters to be set up by the licensee was not information in the public domain, Miss Emily LAU highlighted the need for public access to this register to facilitate public monitoring. She also enquired about the action/sanction to be taken if there was a conflict of interests.

6. In response, the Deputy Secretary for Information Technology and Broadcasting (DS/ITB) assured members that when BA considered it necessary for an investigation into a complaint, it would require the licensee to make available the register for inspection. As findings of the BA were made public, information relating to declaration of the interests in question would also be known in due course. Hence, there was transparency in the case concerned. She added that to avoid unnecessary intervention into the activities of the licensees, it had been the practice of BA to act on complaint instead of initiating investigation every now and then.

7. As for actions the licensee should take should there be a potential conflict of interest, C for T&EL advised that it would be up to the licensee to exercise its editorial judgement as to how conflict of interest could be avoided. This might require the relevant programme presenter to refrain from taking part in discussion of the issues in question, or to make a disclosure announcement on the existence of the relevant commercial interests at the time of broadcast of the programme material, or any other measures as deemed appropriate by the licensees.

Competition Guidelines

8. With the aid of power-point presentation, the Senior Consultant, Office of the Telecommunications Authority (SC/OFTA) briefed members on the Draft Competition Investigation Procedures and Draft Guidelines to the Application of the Competition Provisions of the Broadcasting Ordinance.

9. Mr YEUNG Yiu-chung enquired about the reason for adopting 50% market share as the threshold for presuming market dominance. In reply, SC/OFTA confirmed that this percentage was the yardstick adopted in many overseas jurisdictions and had been developed from years of experience. A higher percentage of market share was required to establish market dominance in some countries such as the United States (US) because some provisions of these jurisdictions involved criminal offences and the penalties imposed were also heavier and a proof beyond reasonable doubt was also required in substantiating the offence. SC/OFTA further clarified that the percentage of market share adopted in the Guidelines was an indication of what might constitute market dominance. He stressed that it was necessary to take into account all other relevant factors as well in determining whether there was market dominance. DS/ITB supplemented that even with a market share persistently over 50%, the licensee concerned would only be presumed to have market dominance and the burden would be on the licensee to prove otherwise.

Meeting with deputations

10. The Chairman welcomed the deputations and invited their views on the Draft Codes of Practice and the Draft Competition Guidelines.

Meeting with Consumer Council(CC)
(LC Paper No. CB(1)106/00-01(03))

11. Members noted that CC welcomed the Draft Competition Procedures and Guidelines but had the following major concerns -

- (a) CC was concerned about possible jurisdictional loopholes in the event that at the initial stage of investigation, the BA found that an allegation of anti-competitive conduct was not within its jurisdiction. As such, it should be clearly indicated in BA's procedures that such a case would be referred to the appropriate government bureau or department or at the very least, to the Competition Policy Advisory Group (COMPAG) for further referral as necessary.
- (b) Since the originally proposed exemption on the imposition of restrictions on artistes' contracts had been changed to a wide-ranging discretionary provision that allowed the BA to prescribe certain conduct as exempt, CC was keen to ensure that certain public benefits tests would be applied to limit such exemptions. In this connection, reference might be made to Article 81(3) of the European Community Treaty, which provided that the prohibitions against anti-competitive agreements could be declared inapplicable if the agreements contributed to improving the production or distribution of goods, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit.

Meeting with Yes Television (Yes TV)
(LC Paper No. CB(1)116/00-01(01))

12. Ms Lanny Albina HUANG stated that Yes TV found the details in the Draft Competition Procedures and Guidelines and the Draft Codes of Practice very useful and reassuring, and looked forward to their early adoption by the BA.

Meeting with Hong Kong Cable Television Ltd (HKCTV)
(LC Paper No. CB(1)116/00-01(02))

13. Mr Desmond CHAN briefed members on the major concerns of HKCTV on the Draft Competition Guidelines as follows -

- (a) The "firewall" proposed to address concerns about dominance by the Television Broadcasts Limited (TVB) Group resulting from Galaxy securing an additional domestic pay TV licence should undergo public consultation. As the firewall was unprecedented and hence its effectiveness unknown, the relevant safeguards

should be reviewed and, if necessary, amended on an annual basis for the first five years of operation and as required thereafter.

- (b) Where the definition of the relevant market was concerned, instead of just referring to overseas examples, due regard should be given to the specific circumstances in Hong Kong. For example, Hong Kong was a small place where the population could not afford to spend too much time on watching TV, both pay TV and free-to-air TV were in fact competing for the same group of viewers and advertisers, and the relatively limited number of programme types and artistes. Hence, it might not be appropriate to sub-divide the TV market in Hong Kong into the pay TV market and the free-to-air TV market as was the case in most overseas countries. A too narrow definition should be avoided as it would appear that there was more market power than what in fact existed and might prompt the authorities to over-regulate.

Meeting with Hong Kong Network TV Ltd (NETV)
(LC Paper No. CB(1)106/00-01(04))

14. Mr John SHAM welcomed the Draft Competition Guidelines which in his view were long overdue for ensuring fair competition. He nevertheless expressed concern that pay TV operators who had their own networks might have an advantage over other operators and urged the BA to ensure that they could not compete unfairly. He stressed the importance of a regulatory system in view that anti-competitive agreements were often tacit and difficult to detect. Hence, there was a need for the BA to act proactively rather than merely responding to complaints.

Meeting with Radio Television Hong Kong (RTHK)
(LC Paper No. CB(1)106/00-01(05))

15. Mr SHIU Lo-sin took members through RTHK's comments on the Draft Generic Codes of Practice for Television and Radio. RTHK advocated self-regulation by the industry, especially in relation to impartiality. As programmes might not be easily categorized as personal view or non-personal view programmes, RTHK also opined that broadcasters should be left with the flexibility as to how they might identify programmes. Where conflicts of interest of programme presenters were concerned, RTHK considered the measures proposed too stringent although it accepted that audiences must be able to trust the integrity of programme presenters and that their outside activities should not influence, or be thought to influence, programmes in which they appeared.

Meeting with Television Broadcasts Limited (TVB)
(LC Paper Nos. CB(1)106/00-01(06) and (07))

16. Mr. Stephen CHAN highlighted the following three points of TVB's submission -

- (a) While supporting the Codes of Practice in principle, TVB was of the view that the additional requirement on half-hourly announcement on personal view programmes should be deleted.
- (b) The disclosure of interests should be dealt with in licensees' own operational guidelines rather than as a requirement in the Codes of Practice, having regard that the effectiveness of such a requirement was questionable due to difficulties in verifying the disclosed interests.
- (c) Where the Competition Guidelines were concerned, TVB would urge the Administration to re-consider its proposal to establish a separate and independent appeal board on competition provisions.

General discussion

The Draft Codes of Practice

General comments

17. The Chairman enquired whether the Administration/BA had made references to the practices in the US when drawing up the Draft Codes of Practice. He said that as he understood, the US adopted a freer approach probably because of the existence of a large number of channels. In his view, since the number of channels in Hong Kong would likely increase due to developments in electronic means such as the Internet, content control should be relaxed rather than stepped up.

18. In reply, DS/ITB clarified that the Draft Codes of Practice were intended to clarify existing requirements and reduce the scope of subjective interpretation in the enforcement of the Codes. She pointed out that the Codes would actually relax or remove existing restrictions which were obsolete or no longer applicable under the new regulatory regime provided for in the Broadcasting Ordinance. She remarked that there was also a need for a complaint mechanism as evidenced by the large number of complaints recently filed against a particular advertisement on TV. Notwithstanding, she agreed with the Chairman that the regulatory framework of broadcasting services should be kept under review in response to the growing penetration of the Internet.

19. Mr Alan HOO of TVB reiterated that although TVB agreed that it was the responsibility of the broadcaster to ensure impartiality and guard against conflicts of interest, it was of the view that disclosure of interests and privacy should be dealt with in the licensee's own operational guidelines rather than in the Codes of Practice. This was because there were practical difficulties in the enforcement of the relevant provisions and other laws were available for handling misleading views made by programme presenters.

20. In reply to Mr YEUNG Yiu-chung on the difference between the Codes of Practice and the operational guidelines proposed by TVB, DS/ITB explained that non-compliance with licensees' own operational guidelines would not carry penalties. In this connection, the Chairman commented that the adverse publicity generated from a programme host's conflict of interests might have a much stronger deterrent effect than any proposed penalties under the Codes of Practice. In response, DS/ITB advised that the most important objective was to ensure that licensees would deal with situations involving conflict of interest appropriately. As to whether the Codes should carry penalties, DS/ITB said that this should be carefully examined in the light of the above objective.

Feasibility of self-regulation

21. While supporting self-regulation by the industry, Miss Emily LAU was keen to ensure that such a self-regulatory system should be credible, transparent and independent. She also sought deputations' view on whether this mechanism would materialize in the near future to take over the BA's role. In response, Mr SHIU Lo-sin of RTHK advised that RTHK had already required non-staff presenters to declare their outside interests to guard against conflicts of interest. As to how the impartiality of programmes could be achieved, he opined that an internal regulatory mechanism based on the long-established, solid working relationship between the programme maker and the programme host would work more effectively than the BA because the latter only played the remedial role of handling complaints.

22. In this connection, DS/ITB clarified that the draft Codes were intended to provide some broad principles to broadcasters as to how impartiality could be achieved. Licensees were encouraged to put in place their own internal mechanism such as by establishing editorial guidelines for programme makers. She confirmed that the Administration had no intention whatsoever to act as media editors and BA would not intervene unless there were complaints. She further assured members that the BA was open to any comments on the proposals in the Draft Codes.

23. On the importance or otherwise of having a separate and independent body like the BA to safeguard impartiality, Mr SHIU Lo-sin of RTHK pointed out that it would be difficult for a public body like the BA to decide whether a programme host's views on a certain topic were impartial or not and, even if feasible, the criteria for making such decisions would need to be carefully

examined. Moreover, in recognition that programme hosts with commercial interests also represented a certain point of view, RTHK was not against their commenting on issues over which they had interests as long as there would be a disclosure announcement to enable viewers/listeners to take this into account when assessing the programme hosts' comments on the issues.

Conflict of interest of programme presenters

24. On the suggestion that guest programme presenters should first declare their various interests, Mr SHIU Lo-sin of RTHK expressed his reservation on such an arrangement as it might discourage individuals from hosting programmes and hence, the diversity of views available to the public would shrink as a result. He also cast doubt on the practicability of requiring presenters to declare all interests in a timely manner having regard to the quick pace of change nowadays and the intricate nature of commercial interests. He therefore did not support making the register of interests public unless there were complaints. In this regard, he also highlighted RTHK's view that complaints directed at a certain broadcaster should be handled by the broadcaster himself although the process and outcome should be made known to the public.

25. Miss Emily LAU did not subscribe to the view that guest programme presenters might be discouraged from hosting programmes if they were required to first disclose all outside interests and sought clarification in this respect. Mr SHIU Lo-sin of RTHK pointed out that some professionals or academics might prefer not to host programmes due to uncertainties about the consequences of failure to declare their interests in full. In fact, some academics had already expressed such concerns. In this connection, DS/ITB commented that the requirement to disclose interests might in effect protect programme presenters and licensees from being unduly criticized. She also stressed the need to safeguard the public's right to know and to complain about conflicts of interest, and to handle such complaints properly. This was because radio spectrum was a public asset and must not be abused. DS/ITB referred to a case in Australia where a famous programme presenter was found to have refrained from giving critical comments on certain issues because he had entered into agreements with the Bankers' Association.

26. Referring to difficulties quoted by TVB in verifying declared interests, DS/ITB assured members that before sanctions were imposed, the BA would take into account whether the licensee had exercised due diligence when dealing with the question of conflicts of interest which might impact on the programme's impartiality.

The Competition Guidelines

27. Miss Emily LAU questioned the usefulness of referring complaints about anti-competitive activities outside BA's jurisdiction to COMPAG in the

absence of a general competition law. In response, Mr Ron CAMERON of CC pointed out that pending the introduction of any competition law, complaints outside the BA's jurisdiction could only be referred to COMPAG for further referral to the relevant government agencies for follow-up action. In this regard, DS/ITB also reminded members that the BA's powers were laid down in law. In the meantime, the Administration would continue to adopt a sector-specific approach in dealing with competition matters.

28. Miss Emily LAU shared HKCTV's view that the proposed TVB/Galaxy firewall should undergo public consultation. In response, DS/ITB pointed out that the principles of the firewall as approved by ExCo had already been announced as part of the conditions of granting a licence to Galaxy. It was now a matter of legal drafting to translate the firewall into specific licence conditions.

Admin

29. On the way forward, DS/ITB assured members that a paper each responding to submissions on the Draft Codes of Practice and the Draft Competition Guidelines respectively would be provided to the Panel later this year. Members noted that the Administration/BA's plan was to finalize the Codes of Practice and Competition Procedures/Guidelines in late 2000 or early 2001.

II Any other business

- Discussion on the proposed terms of reference (TOR) of the Panel (LC Paper No. CB(1)106/00-01(08) and the marked-up copy of the Panel's proposed TOR tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)133/00-01(06))

30. The Chairman drew members' attention to the marked-up copy of the Panel's proposed TOR. Members noted that the proposed amendments were mostly textual in nature. Members agreed that the word "censorship" should be deleted from item 1 of the TOR because the expression "film services" already covered film censorship and "film services" had also been promulgated as one of the policy objectives of the Information Technology and Broadcasting Bureau.

31. The meeting ended at 4:00 p.m.