

**For information
on 11 June 2001**

**Legislative Council
Panel on Information Technology and Broadcasting**

**Implementation of Competition Provisions
under the Broadcasting Ordinance**

Purpose

This paper briefs Members on our plan to strengthen the expertise of the Television and Entertainment Licensing Authority (TELA) to assist and advise the Broadcasting Authority (BA) in the enforcement of the competition provisions in the Broadcasting Ordinance (BO) (Cap. 562).

Implementation Plan

2. TELA intends to engage competition consultancy services to –
 - (a) assist and advise the BA in the handling of competition related complaints; and
 - (b) draw up an accounting manual for compliance by licensees.

Background

3. With the full support of the Legislative Council, competition provisions¹ have been incorporated into the BO, which was enacted in June

¹ Section 13 of the BO prohibits a licensee from engaging in conduct which has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market. Section 14 prohibits a licensee in a dominant position in a television programme service market from abusing its position. Section 17 requires a broadcasting licensee who also holds a telecommunications licence to adopt separate accounting for the two types of activities.

2000 and came into operation on 7 July 2000². The competition provisions seek to provide a level-playing field for all the licensees on the television programme service market. The policy objectives are to provide a regulatory environment conducive to investment in the broadcasting industry and to ensure that consumers can obtain the best services at competitive prices.

Need for expertise in overseas competition regimes

4. “Competition” is a completely new statutory requirement for the broadcasting sector in Hong Kong. There is no precedent case in the broadcasting sector in Hong Kong as to how complaints against anti-competitive behavior or abuse of dominance should be investigated and subsequently determined. According to the experience of overseas jurisdictions where there is a long history of competition law, it is likely that the authorities concerned would have to conduct a full-scale assessment of all the relevant issues involved in the course of investigating such complaints. In particular, the investigation would need to have specific regard to the telecommunications sector because of converging technologies. We anticipate that the BA may need to examine complex regulatory issues and draw reference from precedent cases in overseas jurisdictions with similar competition provisions, as well as precedent cases in the telecommunications sector. It is therefore crucial for TELA to have access to expertise in overseas competition law in order to assist the BA to enforce the competition provisions effectively.

Need for professional economic analyses

5. Competition regulation also calls for detailed economic analyses for the purpose of making a determination as to whether the conduct complained against has an effect on competition. In conducting such economic analyses, account has to be taken of the economic context in which the licensees operate, the products or services affected by the conduct at issue and the structure of the market concerned. The professional advice of economists is therefore crucial and indispensable in helping the BA to arrive at a considered view.

² Except the competition provisions, which came into effect on 16 February 2001.

Need for accountancy expertise

6. Under section 17 of the BO, the BA may direct a licensee which also holds a licence under the Telecommunications Ordinance (Cap. 106) to adopt specified accounting practices to ensure that activities in relation to its broadcasting licence can be readily understood without reference to its activities in relation to its telecommunications licence. For better enforcement, the BA intends to issue an accounting manual to the licensees to provide guidance on this matter for general compliance. It is therefore necessary for TELA to acquire expertise in the accountancy field to assist the BA in this respect.

7. In view of the complexity of the above regulatory, economic and accounting issues involved, TELA will procure competition consultancy service to assist the BA, with a view to ensuring open, fair and effective enforcement of the competition provisions in the BO and the discharge of other competition duties effectively. A brief description of the consultancy service required is at Enclosure 1.

Encl. 1

8. TELA will procure the required consultancy service from the Office of the Telecommunications Authority (OFTA) for the following reasons -

- (a) **Experience and expertise** - Apart from the BA, the Telecommunications Authority, which is supported by the OFTA, is the only other authority empowered by statute to administer competition provisions. OFTA has had the experience of enforcing competition provisions for a number of years. It has engaged a full range of professionals including competition consultants, economists, legal advisers and treasury accountants with experience in dealing with competition matters;
- (b) **Economies of scale** - There will be economies of scale at the initial stage for TELA to hire consultancy service from OFTA instead of commissioning outside consultants or employing an in-house team of expertise comprising its own

professional staff. This is because it is too early, at this stage, to make an accurate assessment of the extent to which the anticipated caseload and workload involved in enforcing the competition provisions under the BO could justify the provision of long-term manpower under TELA. We will review the situation in four years' time, having regard to the caseload, workload and the development in the broadcasting market in the new regulatory environment, to see whether it is necessary to hire outside consultancy service or to employ additional full-time professional staff;

- (c) **Convergence in technologies** - In the light of convergence in technologies, the boundary between telecommunications and broadcasting is rapidly disappearing. Today a telecommunication network can carry both telecommunication and broadcasting signals. It is highly desirable that the principles of defining a market, determining a dominant player, developing an accounting manual and designing codes of practice on various anti-competitive behaviour in the two closely related markets are complementary. Procuring the service from the OFTA will have this advantage; and
- (d) **Consistency in enforcement** - The converging markets and the development of a multi-media environment have made it necessary for the Administration to ensure the consistent enforcement of competition regulations between the broadcasting and telecommunications sectors. Moreover, we have already engaged OFTA's consultancy service in drawing up the competition guidelines on the enforcement of the competition provisions in the BO. The continued engagement of OFTA's consultancy services could help ensure that the BA's implementation of competition provisions would not be divergent from OFTA's approach.

Encl. 2 9. An estimate of the expenditure required for procuring the consultancy services is at Enclosure 2.

Television and Entertainment Licensing Authority
June 2001

Scope of Consultancy Services

The consultancy services would, inter-alia, cover the following –

- (1) advising on the handling of competition-related inquiries and in particular the application of the competition provisions of the BO and the guidelines issued;
- (2) providing expert advice from the competition angle in respect of competition-related investigations;
- (3) carrying out preliminary analyses in response to competition complaints;
- (4) identifying the information to be sought from the subjects of the complaints as well as third parties for investigation of a complaint;
- (5) analysing all information supplied and advising on the application of relevant law and licence conditions, drawing reference, where appropriate, to similar cases and applications in overseas jurisdictions;
- (6) dealing with and, where appropriate, leading such other advisors (e.g. economic or technical consultants) as TELA may consider necessary in dealing with competition related investigations;
- (7) providing input to papers and reports for the consideration of the BA to assist it in determining whether there has been a breach of the relevant competition provisions;
- (8) defining the relevant market for each complaint case, assessing the market power of the subject of complaint and the effect of the conduct complained against on competition; and
- (9) preparing an accounting manual on the principles and practices that a licensee is required to follow if it holds a licence under the Telecommunications Ordinance at the same time.

Enclosure 2

**Estimated Expenditure on
Competition Consultancy Services**

\$(Million)

- | | |
|---|--------------|
| (a) Investigation of competition complaints | 2.2 per year |
| (b) Preparation of accounting manual | 2.5 |