

**For discussion on  
2 November 2000**

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

**Draft Competition Guidelines under the Broadcasting Ordinance**

**Purpose**

This paper outlines the *Draft Competition Investigation Procedures and Draft Guidelines to the Application of the Competition Provisions of the Broadcasting Ordinance* (the Draft Competition Guidelines) issued by the Broadcasting Authority (BA) for public consultation during the period from 15 September to 27 October 2000.

**Background**

2. To safeguard fair competition in the television market, the Broadcasting Ordinance (Cap. 562) (the Ordinance) contains provisions prohibiting anti-competitive conduct<sup>1</sup> and abuse of dominance<sup>2</sup>, which will be enforced by the BA. To facilitate the industry in understanding these new provisions, the BA intends to issue guidelines, pursuant to section 4 of the Ordinance, indicating the manner in which it proposes to perform the statutory functions under the competition provisions. The competition provisions will come into operation on a date to be appointed by the Secretary for Information Technology and Broadcasting, after the BA has

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<sup>1</sup> Section 13(1) of Cap. 562 prohibits a licensee from engaging in conduct which, in the opinion of the BA, has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.

<sup>2</sup> Section 14(1) of Cap. 562 provides that a licensee in a dominant position in a television programme service market shall not abuse its position.

consulted the industry and the community on the competition guidelines.

### **Draft Competition Guidelines**

3. The Draft Competition Guidelines are intended to set out how and the circumstances under which the BA will enforce the competition provisions. They are modelled along the guidelines currently in force in overseas jurisdictions. Specifically, references have been drawn from the competition guidelines issued by the Office of Fair Trading and the Independent Television Commission of the UK.

4. The objective is to balance protection of viewer interests with the successful and dynamic development of the television broadcasting industry. Through the effective enforcement of the competition provisions, the community would have a wider choice of quality programmes while all operators in the market can freely compete on a level-playing field.

5. The BA has issued two sets of draft guidelines for consultation, namely, *Draft Competition Investigation Procedures* and *Draft Guidelines to the Application of the Competition Provisions of the Broadcasting Ordinance*. (Copies of the Draft Competition Guidelines have been sent to Members through the Legislative Council Secretariat.) The former describes the procedures that the BA will adopt when dealing with competition complaints. These procedures are drawn up based on the principle that complainants and licensees will have a reasonable opportunity to make representations regarding the complaint in a fair and open manner.

6. The second document explains the analytical approach that the BA will adopt in assessing cases that may have breached the competition provisions. The approach adopted is in line with those used in overseas jurisdictions where there is a long history of competition law.

### Competition Analysis

7. In broad terms, there are three stages in the competition analysis proposed to be adopted by the BA. The first stage is the definition of the market relevant to the alleged anti-competitive practice. Market definitions can and do change over time as new opportunities for demand and supply-

side substitution arise, and should therefore be done only on a case-by-case basis.

8. The next stage is to assess whether licensees in those markets have the potential ability to behave in an anti-competitive manner, i.e. whether one is dominant or whether they have market power. Only a licensee with market power (or a group of licensees acting together that jointly possess market power) can behave in a potentially anti-competitive manner.

9. The third stage is to ascertain whether there is an abuse of a dominant position or whether the agreement/conduct under complaint has or is capable of having an appreciable adverse effect on competition.

### **Public Consultation**

10. The Draft Competition Guidelines were issued on 15 September 2000 for a six-week public consultation. A briefing for the licensees was held on 18 September 2000. As at 26 October 2000, the BA has received a total of 3 submissions.

11. The BA is in the process of examining the submissions received. The BA welcomes comments from the Panel on the Draft Competition Guidelines before finalising them for promulgation, following which the competition provisions will come into operation.

### **Television and Entertainment Licensing Authority**

27 October 2000