

Miss Polly Yeung
Clerk to LegCo Panel on
Information Technology and Broadcasting
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Central, Hong Kong

24 October 2000

Dear Miss Yeung,

Re : Consultation on the Draft Competition Investigation Procedures
and
Draft Guidelines to the Application of the Competition Provisions
of the Broadcasting Ordinance

We refer to the above consultation exercise and attach our comments on the Draft Competition Investigation Procedures for the Panel's information and discussion. We do not have any substantive comments on the Draft Guidelines to the Application of the Competition Provisions.

We would also like to take this opportunity to raise our concern on the current limited appeal avenue available for a licensee if it is aggrieved by a decision of the Broadcasting Authority. We have raised this concern with the Government at the time when the Broadcasting Bill was being drafted. The Broadcasting Ordinance only allows a licensee to make an appeal by way of petition to the Chief Executive in Council. In complex cases, in particular those concerning the competition provisions, we do not believe the Chief Executive in Council should be burdened with such cases which would involve the review of voluminous amount of documents submitted by the complainant and the respondent and the information analysis and advices from the Broadcasting Authority. The Chief Executive in Council is clearly not an appropriate forum to deal with an appeal of this nature. As far as we are aware, there is no other jurisdiction with competition regulation that confers the Government or its administrative body to be involved in determining appeal of a similar nature.

We would urge re-consideration be given to establishing a separate and independent appeal board on the competition provisions, similar to that under the Telecommunication Ordinance, should be established and necessary amendments be made to the Broadcasting Ordinance. Sections 32L to 32U of the Telecommunication Ordinance are relevant. We believe that these provisions would be more in line with the appeal mechanism in other jurisdictions.

Yours sincerely,

Stephen Chan

TVB's Comments on the Draft Competition Investigation Procedures

Investigation stage

Paragraph 29 – It is stated that the party complained against will normally be given 7 working days to respond in writing unless the urgency of the case or the nature of the reply justifies a shorter period. We believe a period of 7 working days is rather short for the party complained against (the respondent) to give response. In particular, unlike complaints in relation to the breach of any particular provisions in the Codes of Practice, any allegation and investigation of a breach of the competition provisions will involve complex analysis of the relevant market, the economics and the effect of the alleged anti-competitive conduct. The respondent may need to engage expert consultants to undertake certain research on matters that the BA may consider in its investigation. We also note that the Independent Television Commission's code of competition policy procedures has given 4 weeks for the respondent to respond to any complaint of this nature. We would therefore suggest that the current draft should provide flexibility for the BA to give at least 21 working days for the respondent to respond in writing.

Meetings

Paragraph 35 – We suggest the respondent should also be given the opportunity to make oral representations to the BA if the respondent so desires and not only at the invitation of the BA. The respondent should also be allowed to engage outside consultants to make representation on its behalf at any meeting.

Final Assessment

Paragraph 37 – It is not clear whether the preliminary draft report to be prepared will include any recommended sanctions and/or remedies to be implemented. We feel that it is desirable for those matters to be included in the preliminary draft report so that the parties to the investigation can also make comment on any proposed sanctions and/or remedies. Further,

it is not clear how long the parties will be given the time to make any final representations on the preliminary draft report. We suggest at least 21 working days should be allowed.

ENDS