

Draft Competition Guidelines of the Broadcasting Authority

2.11.2000

Purpose of Guidelines

- Ensure compliance by assisting the industry in understanding
 - the way BA will deal with competition cases;
 - what behaviour is prohibited under the law;and
 - how to file a complaint effectively.

Not the purpose of Guidelines to

- deal with all eventualities;
- deal with specific cases; or
- assess the market in the abstract.

Preliminary Enquiry Stage

Complete within
30-60 working days

(i) Complaint received by TELA/BA

TELA acknowledges letter (within 6 working days)

I. INITIAL ANALYSIS OF COMPLAINT

Is the case within the jurisdiction of BA?
Is there a case to answer?
- Examine what complainant said
- Seek clarifications,
- Meetings with parties if necessary.

If evident that the case merits full investigation

If advice is needed by TELA as to whether to close case or to proceed

II PRELIMINARY ENQUIRY REPORT

Prepare report summarising finding etc
Submission to BA with recommendation
(a) close case or
(b) proceed to full investigation

If decision of BA is (a)
CASE CLOSED
Notify parties

If decision of BA is (b)

Proceed to FULL INVESTIGATION

Investigation Stage

Stage II
Complete within
6 months

FULL INVESTIGATION

- establish full fact from parties, 3rd parties etc
- provide full analysis – economic, legal etc
- discuss with parties
- clarify all relevant issues
- consider if a breach has been committed
- possible remedies
- consider disclosure issues
- consider publicity issues

FINAL ASSESSMENT

- Prepare Final Paper for BA
- set out issues
 - facts
 - full economic, legal and other analysis
- Recommendation

Circulate to BA before meeting

BA DECISION at meeting

NO BREACH

- Case closed
- Notify parties
- Publish decision

FOUND BREACH

Decide on penalty

Warning or
serious
warning

Direction

Financial
Penalties

Suspension or
revocation of
Licence

- Notify parties
- Issue formal decision
- Publish decision

Anti-competitive conduct

Section 13 of Broadcasting Ordinance

Anti-competitive behaviour - S.13

- conduct
- purpose or effect of :
 - preventing
 - distorting
 - substantially restricting
- competition in a television programme service market in Hong Kong.

In a television programme service market...

■ How to define market

- demand side
- supply side
- geographic
- temporal

Types of behaviour

- In most case it will deal with agreements etc
 - do not have to be formal agreements;
 - can be understandings.
- Non-dominant players, if acting alone, usually cannot have such effect.

In practice...

- cartels;
 - market sharing;
 - bid rigging;
 - etc.
- **BUT MAY BE SUBJECT TO EXEMPTIONS PROVIDED FOR BY S. 13(4) & (5)**
 - own programme for own service;
 - approval by BA on a prescribed ground (sub. legislation to be made if and when necessary).

Abuse of Dominance

Section 14 of Broadcasting Ordinance

Abuse of Dominance - S.14

- Prohibition of abuse and NOT holding of a dominant position.
- Test - can the licensee act without significant competitive restraint ?
- Deemed to have abused if action has purpose or effect of distorting competition.

Dominance indicators

■ Market share

- persistently $> 50\%$ - presume dominant
- persistently $< 40\%$ - presume non-dominant

■ For conduct - parties (usually) must have 25%+ for it to have effect.

■ **BUT OTHER FACTORS MAY CHANGE THE ABOVE RULE OF THUMB.**

Other factors

- potential competitors;
- market structure;
- buyers' power;
- churn of customers;
- entry barriers
 - absolute, e.g regulatory restrictions - spectrum limitations;
 - strategic, e.g first mover in market /intellectual property/branding.

Abuse examples

- predatory pricing;
- cross subsidy;
- refusal to supply - essential facilities;
- bundling;
- etc.

Market Definition

What is the Market - Definition

Two Tests

- What are the choices available to consumers
(Demand Side)
- Who are the possible competitors
(Supply Side)

Demand Side

- Alternative products for customer

- Look at:

- price

- quality

- content

- switching costs

- etc

- Cable TV - Satellite TV ?

- Pay TV - Free-to-Air TV ?

Supply Side

- Who can be an alternative supplier ?
 - easy to switch production
 - easy to enter
 - what are the costs
 - technical barriers
 - regulatory barriers
- producer of news channel - produce weather channel

Product Market

- Sets product parameters
- Demand or Supply depends on case
- But to define **RELEVANT MARKET** must also consider...

Other market parameters

■ **Geographic market**

- what is the physical area of the market?
- e.g., Hong Kong? Asia-Pacific?

■ **Temporal market**

- is there a time element?
- e.g., live sports ?
- e.g., peak or off peak advertising?

The Guidelines aim to ensure that

- The rights of licensees and consumers are protected
- The decision
 - takes into account commercial realities but does not forget consumers;
 - is in line with guidelines **UNLESS GOOD** reasons;
 - has regard to local and overseas experience....

BUT ...relevant to the Hong Kong market.

End