

立法會
Legislative Council

LC Paper No.CB(2)2593/99-00

(These minutes have been seen by
the Administration and cleared with
the Chairman)

Ref : CB2/BC/12/99

Bills Committee on Broadcasting Bill
Minutes of Meeting
held on Wednesday, 5 April 2000 at 10:45 am
in the Chamber of the Legislative Council Building

Members : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Present Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon MA Fung-kwok
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Members : Hon Ronald ARCULLI, JP
Absent Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

Public Officers : Mr Eddy CHAN
Attending Acting Deputy Secretary for Information
Technology and Broadcasting (1)

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

Ms Ava CHIU
Assistant Commissioner for Television and Entertainment

Licensing (Broadcasting)

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Betty MA
Senior Assistant Secretary (2) 1

I. Meeting with the Administration

Licensing criteria for television programme service licences
[Paper No. CB(2)1568/99-00(01)]

At the invitation of the Chairman, Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) briefed members on the Administration's paper which explained the criteria for the Chief Executive in Council (CE in C) in consideration of a licence application. He said that licensing criteria for television programme service licences would be set out in the Broadcasting Bill (the Bill) and guidance notes to be issued by the Broadcasting Authority (BA). The statutory criteria set out in the Bill included the following -

- (a) the applicant must be a local company within the meaning of the Companies Ordinance;
- (b) except for non-domestic and other licensable service licences, the majority of the directors and the majority of principal officers of the company must satisfy the residency requirements, i.e. they must have resided in Hong Kong for a continuous period of not less than 7 years;
- (c) no disqualified person should exercise control of a domestic free or domestic pay television programme service licensee unless his disqualification was disclosed in the application;
- (d) restriction on unqualified voting controllers; and
- (e) restriction on persons not regarded as fit and proper for the purpose of the Bill.

DS(ITB)(Ag) said that, in addition to these statutory requirements, there were other assessment criteria which were contingent upon the prevailing market condition or

technological developments. The existing assessment criteria were set out in the Guidance Note issued in August 1999, as detailed in paragraph 7 of the Administration's paper. To provide flexibility in the licensing framework to cater for the fast-changing broadcasting environment, the Administration considered it more appropriate to set out the assessment criteria in the form of guidance notes to be issued by BA.

2. Ms Cyd HO said that one main objective of the Bill was to ensure fair and effective competition in the provision of broadcasting services. She was concerned that a licensee holding a dominant position might seek to abuse its position in the television programme service market if he was also granted a licence for another category of television programme service. She therefore queried why the assessment criteria did not include anti-competitive practices or dominant position of a licensee.

3. DS(ITB)(Ag) explained that if an applicant was an existing licensee of a television programme service, he would be regarded as a disqualified person and was already subject to the restriction on cross-media ownership. He added that "disqualified persons" included licensees under the Bill (except that a Non-Domestic television programme service licensee was not a disqualified person in relation to a Domestic Pay licence), sound broadcasting licensees, advertising agents and proprietors of local newspapers, and their controllers. The associates of these persons were also disqualified persons. Under the Bill, disqualified persons were prohibited from exercising control of Domestic Free and Domestic Pay service licensees except with the prior approval of CE in C on grounds of public interest. A person was regarded to be "exercising control" of a company if he was the owner or voting controller holding more than 15% of the voting shares of that company.

4. Referring to paragraph 5(c) in the Administration's paper, Ms Cyd HO sought clarification on the circumstances where a disqualified person could be granted a licence for Domestic Pay or Domestic Free television programme service by CE in C.

5. DS(ITB)(Ag) responded that CE in C would take into account factors such as the effect on competition in the relevant service market, the impact on the development of the broadcasting industry and the overall benefits to the economy, before allowing a disqualified person to hold a licence or to exercise control of a licensee.

6. Ms Cyd HO was of the view that these factors should be expressly stated as part of the licensing or assessment criteria. DS(ITB)(Ag) reiterated that it was necessary to allow flexibility in the licensing system to enable the Administration and BA to respond quickly to the fast-changing broadcasting environment.

7. The Chairman suggested that consideration could be given to specifying the factors for granting exemption to disqualified persons in the Guidance Note. The arrangement could still provide sufficient flexibility for the approving authorities to

revise the Guidance Note whenever necessary. Referring to the written submission of the Hong Kong Cable Television Limited [Paper No. CB(2) 1541/99-00(01)], the Chairman said that the industry was concerned about the rationale of the licensing criteria and the transparency of the licencing process. In this connection, the Chairman asked whether BA would consult the public before revising the Guidance Note.

8. Miss Emily LAU supported the Chairman's suggestion that there should be prior consultation on any revision to the Guidance Note. While she appreciated the need to enact the Bill as early as possible, she considered that the assessment criteria should be formulated in the form of subsidiary legislation subject to the negative vetting procedure of the Legislative Council (LegCo).

9. DS(ITB)(Ag) acknowledged members' concerns. He stressed that setting out the assessment criteria in the form of guidance notes was preferred in order to provide the necessary flexibility to cope with the rapid changes in the market.

10. In response to the Chairman, DS(ITB)(Ag) said that upon enactment of the Bill, the existing Guidance Note would have to be revised since there would be four categories of television programme service licences under the Bill.

11. Ms Cyd HO said that the Administration should provide the draft Guidance Note for the Bills Committee's consideration before the passage of the Bill as Members would need to know the licence assessment criteria before approving the Bill. She was also of the view that there should be public consultation on the Guidance Note.

Admin

12. In view of members' concern, the Chairman advised the Administration to further consider members' views on the need for consultation and specifying the assessment criteria in the form of subsidiary legislation.

13. To prevent abuse of dominant position by a licensee, Ms LAU asked whether clause 8 should be amended so that the approving authorities should take into account whether a licensee had breached the competition provisions in clauses 13 and 14 when considering his application for another category of licence.

14. DS(ITB)(Ag) clarified that clause 8 dealt with the licensing procedures while Schedule 1 gave more details on the disqualification for holding licence and voting control. He reminded members that the objectives of the Bill were to widen programme choices for consumers and to promote the development of Hong Kong as a regional broadcasting and communications hub. Subject to statutory and regulatory requirements, the Administration would not prohibit any persons from entering the television programme service market. The only concern was whether there would be effective and fair competition. In this respect, the Administration believed that there were sufficient safeguards, such as the restrictions on disqualified persons, to prevent abuse of dominant position.

15. Miss Emily LAU referred to the submission of the Hong Kong Cable Television Limited that a loophole might exist in that a Domestic Free licensee could indirectly hold a Domestic Pay licence via an intermediary Non-Domestic licensee, especially if these companies were associates belonging to the same group. Miss CHOY So-yuk expressed similar concern and sought clarification on the situation.

16. Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) explained that a Domestic Free licensee, being a disqualified person, was prohibited from exercising control of a Domestic Pay licensee by holding, directly or indirectly, more than 15% of the voting shares of a Domestic Pay licensee without the approval of CE in C. He further pointed out that a disqualified person included an associate of a licensee. As regards the exclusion of Non-Domestic television programme service licence from the list of disqualified persons, DS(ITB)(Ag) explained that Non-Domestic television programme services did not primarily target Hong Kong. The exclusion would assist promoting the development of Hong Kong as a regional broadcasting and communications hub and providing diversified programmes to viewers.

17. Miss Emily LAU said that despite the restriction on voting control, she remained concerned about the way CE in C would exercise his discretionary power to grant exemptions.

18. DS(ITB)(Ag) said that the Administration would make reference to the assessment criteria stipulated in the 1999 Guidance Note when assessing the ten applications for Domestic Pay television programme service licences. The Administration expected that the assessment could be completed within this year.

19. Miss CHOY So-yuk asked about the licence renewal criteria. DS(ITB)(Ag) responded that the approving authorities would take into account the performance of the licensees, quality of programmes, proven managerial and technical expertise, etc in considering renewal applications. The quality of service required of a licensee would be specified in the licence, and prior approval was required for changes to the television programme service.

X X X X X X X X X X X X X X X X X X