

立法會
Legislative Council

LC Paper No. CB(1)2275/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 11 July 2005, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP

Members attending : Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon CHEUNG Man-kwong
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon Ronny TONG Ka-wah, SC

Member absent : Hon Timothy FOK Tsun-ting, GBS, JP

Public officers attending : Agenda Items III - V

Mrs Marion LAI, JP
Acting Permanent Secretary for Commerce, Industry
and Technology
(Communications and Technology)

Mr Eddie CHEUNG
Principal Assistant Secretary for Commerce, Industry
and Technology
(Communications and Technology) A

Agenda Items III and VI

Mr Tony LI
Principal Assistant Secretary for Commerce, Industry
and Technology
(Communications and Technology) B

Mr M H AU
Director-General of Telecommunications

Agenda Item III

Mr K S WONG
Assistant Director of Telecommunications (Support)

Miss Katherine WONG
Legal Adviser
Office of the Telecommunications Authority

Agenda Item IV

Mr CHU Pui-hing, JP
Director of Broadcasting

Agenda Item V

Mr T Y CHAN
Acting Assistant Director of Telecommunications
(Operations)

Attendance by invitation : Agenda Item IV

Radio Television Hong Kong Programme Staff Union

Ms Janet MAK Lai-ching
Chairperson

Ms Echo WAI Pui-man
Exco Member

Agenda Item V

Hong Kong Cable Television Ltd

Mr Eric LO
Executive Director
Cable Subscription Services

Mr Desmond CHAN
Corporate Lawyer

Mr Garmen CHAN
Vice President
External Affairs

Cable and Satellite Broadcasting Association of Asia

Mr Simon Twiston DAVIES
Chief Executive Officer

Mr John MEDEIROS
Vice President
Government Relations and Regulatory Affairs

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1986/04-05 -- Minutes of meeting held on
13 June 2005

The minutes of the meeting held on 13 June 2005 were confirmed.

II Paper issued since last meeting

2. Members noted that no paper had been issued since last meeting.

III Proposed anti-spam legislation

LC Paper No. CB(1)1985/04-05(01) -- Information paper provided by
Administration

LC Paper No CB(1)1978/04-05 -- Background brief on proposals to
contain the problem of
unsolicited electronic messages
prepared by the Secretariat

LC Paper No CB(1)2035/04-05(01) -- Power-point presentation
(*tabled and subsequently issued on* material on "Proposed anti-spam
12 July 2005) legislation" (Chinese version
only)

3. At the invitation of the Chairman, the Acting Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) (Acting PSCIT(CT)) briefed members on the background of the proposed anti-spam legislation in Hong Kong. With the aid of power-point presentation, the Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) B (PASCIT(CT)B) introduced the objectives and the guiding principles of the proposed legislation. He also outlined the draft framework of the proposals, including the scope, the right of recipients, the activities to be prohibited, the proposed penalty framework and the rights to commence legal actions. Members noted that the Administration would proceed to formulate the details of the legislation by end 2005, which would form the basis for public consultation around end 2005 or early 2006. The Administration intended to introduce the bill into the Council within 2006.

Extra-territorial jurisdiction

4. Noting that the proposed anti-spam legislation would be applicable to the act of sending the unsolicited electronic messages (UEMs) if the initiator or agent of the initiator of the UEM was physically in Hong Kong, irrespective of where the sending server was located or at which geographic location the spammer targeted, Ms Emily LAU was concerned about the enforceability of the proposed legislation against spams originated from overseas.

5. In response, Acting PSCIT(CT) pointed out that most forms of spam in Hong Kong, including faxes, SMS/MMS and voice/multi-media messages generated by automated means (e.g. pre-recorded voice messages sent through Interactive Voice Response System (IVRS)) actually originated locally. Hence, the proposed legislation could tackle them effectively. For emails spam the majority of which originated from overseas, the Administration would seek international cooperation in curbing the problem. As regards extra-territorial jurisdiction, Acting PSCIT(CT) informed members that currently, Australia was the only jurisdiction where there were relevant extra-territorial provisions in the anti-spam legislation but they were not actively enforced. The Administration would consider the issue of extra-territorial application of the proposed legislation having regard to overseas practices. Ms Emily LAU urged that careful consideration should be given to the practicability and enforceability of legislative provisions seeking to have extra-territorial effect.

6. Regarding cross-border gambling activities which still took place on the Internet despite the enactment of the Gambling (Amendment) Ordinance 2002, Ms Audrey EU enquired about the actions that had been taken by the Administration to curb these activities some of which also originated from outside Hong Kong. She asked whether the enforcement of measures against online gambling would shed light on tackling the problem of UEMs.

Admin 7. On actions to curb cross-border gambling activities, Acting PSCIT(CT) undertook to provide the Panel with relevant information after obtaining it from the Bureau concerned. She stressed that the enactment of the proposed anti-spam legislation aimed at deterring illicit spamming activities within the territory. For extra-territorial illicit acts, the Administration would need to seek the co-operation of other jurisdictions where similar legislation was in place. In fact, Hong Kong was a signatory to a multilateral Memorandum of Understanding initiated by South Korea and Australia. Nevertheless, the Administration would examine carefully the issues of enforceability and reciprocity in considering whether extra-territorial jurisdiction should be provided for in the proposed anti-spam legislation.

Freedom of speech and expression

8. Noting that one of the guiding principles of the proposed legislation was that freedom of speech and expression must not be impeded, Ms Emily LAU was concerned whether the Administration would include express provisions in the

bill to safeguard such freedom. She stressed the importance of the freedom of speech and expression in Hong Kong and pointed out that any proposals to contain the problem of UEMs should in no way compromise such freedom. As such, Ms LAU considered that it was appropriate to target regulatory action at UEMs of a commercial nature. She was keen to ensure that all non-commercial messages, in particular those reflecting the views of the general public, would not be subject to regulation in the proposed legislation.

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9. In response, Acting PSCIT(CT) highlighted that since most UEMs in Hong Kong were of a commercial nature, the Administration had proposed to regulate only commercial UEMs, which was consistent with the approach adopted by other major jurisdictions. Having regard to the objective and scope of the proposed legislation, the Administration did not envisage that freedom of speech and expression would be impeded by the enactment of the anti-spam legislation. Nevertheless, the Administration noted Ms LAU's concern about the need to safeguard such freedom in the bill. Acting PSCIT(CT) further said that the Administration would draw on overseas experience as well as local legislation such as the Personal Data (Privacy) Ordinance (Cap 486) in defining what constituted commercial UEMs. This would help ensure that only electronic messages the primary purpose of which was promoting commercial products or services would be regulated while non-commercial UEMs such as communications from political parties and Government-to-citizen communications would not be covered in the proposed legislation.

Consultation

10. Ms Emily LAU enquired whether human rights organizations had been consulted on the proposed anti-spam legislation. In reply, Acting PSCIT(CT) advised that the consultation on "Proposals to contain the problem of UEMs" launched in June 2004 was a public consultation exercise to which any interested parties could respond. Acting PSCIT(CT) supplemented that the Administration would proceed to formulate the details of the legislation and conduct another round of public consultation around end 2005 or early 2006 to enable interested parties to express their views.

11. Ms Emily LAU further enquired about the feedbacks of Small and Medium Enterprises (SMEs) collected in the public consultation exercise and the possible impact, if any, of the anti-spam legislation on their business activities. In reply, Acting PSCIT(CT) highlighted the importance of SMEs to Hong Kong's economy as 98% of Hong Kong's business establishments were SMEs providing employment to 60% of the workforce. As SMEs, particularly start-ups, generally did not have a strong customer base and might not have the resources to undertake costly promotional activities, electronic communication was a low cost means for SMEs to promote their products and services. As such, the Administration had balanced their interests and proposed to adopt an "opt-out" regime which would provide SMEs with more room for promotional effort. In general, representatives of SMEs consulted on the draft framework of the proposed legislation considered the Administration's proposals acceptable but

requested that before the proposed legislation providing the "opt-out" regime commenced operation, they should be given reasonable lead-time to set up the necessary systems to ensure effective operation. Acting PSCIT(CT) assured members that the Administration would continue to actively involve SMEs during the forthcoming public consultation in end 2005 or early 2006.

12. Summing up, the Chairman requested the Administration to revert to the Panel on further details of the proposed legislation when they were ready.

IV Broadcasting services of Radio Television Hong Kong (RTHK)

Meeting with the Administration

LC Paper No. CB(1)1985/04-05(03) -- Information paper provided by Administration

LC Paper No. CB(1)1985/04-05(02) -- Letter (in Chinese only) dated 4 July 2005 from Hon Emily LAU

LC Paper No CB(1)2010/04-05 -- Updated background brief on broadcasting services of Radio Television Hong Kong prepared by the Secretariat

LC Paper No CB(1)2016/04-05(01) -- Framework agreement between the Secretary for Commerce, Industry and Technology and Director of Broadcasting

LC Paper No CB(1)2035/04-05(03) -- Press releases of the Administration and the Radio Television of Hong Kong (RTHK) relating to the broadcasting services of RTHK
(tabled and subsequently issued on 12 July 2005)

LC Paper No CB(1)2035/04-05(04) -- A chronology of the newspaper reports on the broadcasting services of RTHK for the period between 18 January 2005 and 11 July 2005 (Chinese version only)
(tabled and subsequently issued on 12 July 2005)

Opening remarks

13. The Chairman informed members that this item had been proposed by Ms Emily LAU following open remarks made by top government officials about the role of RTHK. He said that the Panel had invited Mr John TSANG, Secretary for Commerce, Industry and Technology (SCIT) and Mr Francis HO, PSCIT(CT)

to join the discussion of this item but they were unable to attend the meeting because both of them were out of town. Notwithstanding, the Chairman said that he had decided to add this item onto the agenda in order to provide an early opportunity for Members to express their views on the matter. He also thanked the Secretariat for preparing at very short notice a chronology of relevant newspaper reports for Members' reference.

Introduction by the Administration

14. At the invitation of the Chairman, Acting PSCIT(CT) highlighted that RTHK was a government department that served the role of a public service broadcaster (PSB). Its aim was to inform, educate and entertain the general public and specific target audiences through a balanced mix of high quality programming. She remarked that RTHK was editorially independent to ensure the provision of fair, balanced and objective news and public affairs programmes. Acting PSCIT(CT) also introduced the Framework Agreement (FA) between SCIT and the Director of Broadcasting (D of B) which specified the respective responsibilities of both parties in relation to each other. She pointed out that to strive for continuous improvement, SCIT and D of B would keep RTHK's service under constant review to enable RTHK to fulfil its role as a PSB.

15. Referring to the recent controversies surrounding RTHK's programming policy, in particular its decision to stop live broadcast of horse-racing, which had been widely reported by the media, D of B remarked that to put things in proper perspective, RTHK had issued a press release on 9 July and on 10 July 2005. He stressed that before the decision was made, the subject of live broadcast of horse-racing had been thoroughly discussed by RTHK internally at different levels. He then gave an account on the chronology of the deliberative process as set out in the press release issued on 10 July 2005, and said that there was no question of keeping RTHK staff and the public in the dark.

Presentation of views by the Radio Television Hong Kong Programme Staff Union

LC Paper No CB(1)2016/04-05(02) -- Submission from Radio Television Hong Kong Programme Staff Union

16. The Chairman welcomed the representatives of the RTHK Programme Staff Union and invited them to give their views. Ms Janet MAK, Chairman of the RTHK Programme Staff Union remarked that staff members of RTHK were gravely alarmed by the views given by top government officials in turn on the types of programmes that RTHK should produce. She considered the incident unprecedented and disturbing. She presented the Union's views on the role of RTHK, its editorial independence, programming policy and corporatization of RTHK. She also shared with the Panel the present difficulties faced by RTHK, in particular the need for reprovisioning to a new Broadcasting House, outdated equipment, and RTHK's lagging behind in the implementation of digital broadcasting. Ms MAK nevertheless confirmed that notwithstanding the

pressure caused by the recent remarks on RTHK, its staff members would continue to do their best in performing their duties.

Issues arising from the decision to scrap live broadcast of horse-racing

Remarks made by top government officials

17. Noting the chronology of events as depicted by D of B and outlined in the press release of 10 July 2005, Ms Emily LAU considered that Mr Donald TSANG, now Chief Executive (CE), should have been aware of RTHK's preliminary decision in May this year in his capacity as the Acting CE. She queried why Mr TSANG had still expressed his dislike of RTHK's live broadcast of horse-racing during his election campaign in June when it was apparent that an internal decision to scrap the programme had already been made at that time.

18. On programming, D of B stressed that RTHK was editorially independent in deciding on the types of programmes to be produced and in making the necessary changes, such as shelving a programme after careful review. He recapped that in April/May this year, he had verbally informed SCIT of RTHK's intention to scrap live horse-racing coverage and its plan to finalize and announce the decision in June after the current race season ended. D of B said that he was not in a position to tell whether Mr Donald TSANG, as the Acting CE, had been briefed on RTHK's decision there and then. He remarked that subsequent developments in June were totally beyond his anticipation and had caused some concern within RTHK. Nevertheless, D of B confirmed that after thorough internal deliberation, RTHK maintained its decision to shelve the programme when the racing sessions resumed in September and was prepared to formally announce the decision on 11 July 2005.

19. Mr Martin LEE remarked that by virtue of his official capacity as Acting CE, Mr Donald TSANG could have access to information on public policies not yet publicly announced (such as RTHK's decision to stop live broadcast of horse-racing) and could choose to make use of such information to facilitate his campaigning for the CE post. He considered this very unfair to the other two CE candidates who had no access to such government information and hence, not in such a good position to state their views. In this regard, Acting PSCIT(CT) said that during the CE election campaign, each candidate was free to express his personal views on public policies.

20. Referring to paragraph 2.2 of the FA that SCIT would provide D of B with policy guidance and support, Mr Andrew CHENG was concerned whether the recent remarks by top government officials had gone beyond the scope of guidance as provided under the FA. He was worried that if RTHK continued to be subject to such instructions, it would soon become the mouthpiece of the Government. Mr CHENG noted that many horse-racing supporters were not in favour of RTHK's move to scrap live broadcast of horse-racing and questioned whether RTHK had given any consideration to the views of the listeners, given that RTHK should also be accountable to the public.

21. In response, D of B highlighted that under the FA and as Chief Editor of RTHK, he was responsible to SCIT for managing the activities in each programme of activity on a day to day basis. While RTHK was editorially independent in planning and implementing its programming, D of B said that there could be further improvement for RTHK to undertake more discussion on policy matters with SCIT and to strengthen communication with its staff so as to increase transparency.

22. Mr LEE Wing-tat recalled that all along, there had been calls from various quarters to "tidy up" RTHK. He believed that the decision in question had been made in a top-down manner as the first step to erode RTHK's editorial freedom. Dr Kwok Ka-ki echoed his view and considered that in future, there might be further constraint on freedom of speech. Noting that under paragraph 2.3(vii) of the FA, D of B would review annually, at a set time, with SCIT the achievement of targets, and using this as a basis for developing objectives and targets for the next 12 months, Dr Kwok enquired whether the decision against live broadcast of horse-racing had been made in the light of paragraph 2.3(vii) of the FA. He also sought clarification on whether there were past occasions on which top officials had expressed critical views about the programming of RTHK.

23. Mr Albert HO queried whether it was envisaged in the FA that the exchange of views between SCIT and D of B on programming also included the former's instruction to shelve or produce certain programmes and whether there had been any precedent of SCIT giving programming instructions to D of B. Mr HO was keen to ensure that similar situation would not happen again.

24. In response, D of B said that RTHK and the Commerce, Industry and Technology Bureau (CITB) would exchange views on issues pertaining to RTHK's mission, objectives and targets. As he had mentioned earlier on, D of B hoped that communication between CITB and RTHK could be more interactive. On remarks by top government officials, D of B recalled that the former CE had once given some critical remarks on RTHK's programme "Headliners". He also said that RTHK had not received any written instruction from CITB regarding programming except in 1996-97 when there was a policy decision to convert one of RTHK's channels into a Putonghua channel.

25. Acting PSCIT(CT) supplemented that under the FA, SCIT was responsible for providing policy guidance to D of B in defining the programmes of activities in the provision of radio, television and new media services. SCIT also had the responsibility to review the policy and operational objectives of these programmes of activities. D of B, on the other hand, was responsible for managing the activities of each programme of activity, and helping SCIT to review and re-define the policy aspects of each programme to achieve the aims and mission of RTHK. Acting PSCIT(CT) pointed out that a long-standing programme would also be subject to review in order to ascertain whether its continued broadcast would best serve the needs of the audiences.

26. Dr Fernando CHEUNG was concerned about the decision-making process to scrap live broadcast of horse-racing, which apparently had been made by top government officials in the policy bureau in conjunction with senior management of RTHK but without the participation of the programme production staff of RTHK. He also enquired about measures to prevent recurrence of similar top-down decisions which might encroach upon RTHK's editorial freedom.

27. On staff participation in the decision-making process, D of B assured members that before RTHK had finalized the decision, there was thorough internal discussion at different forums. He also recapped his earlier remarks that making the discussion more interactive and transparent would dispel doubt about the decision-making process.

Cost of production

28. Noting that the production cost of the live broadcast of horse-racing was around \$1.5 million, Mr Martin LEE enquired whether the present decision could be reversed if sufficient sponsorship could be secured to cover the production cost. In this connection, Mr Tommy CHEUNG was concerned whether RTHK would continue the live broadcast of horse-racing if the Hong Kong Jockey Club (HKJC) would take up the production cost or reduce the licence fees for such live broadcast.

29. D of B explained that the decision to scrap live horse-racing broadcast had been made based on programming and cost considerations. It was RTHK's programming strategy to gradually position RTHK 1 as a current affairs/information channel. In fact, the feasibility of stopping horse-racing coverage was raised as early as October 2002 when RTHK had to consider how to cope with the reduction in resources allocation for the next five years. On the suggestion of sponsorship by HKJC to cover the production cost of the live broadcast, D of B confirmed that this option would not be appropriate for RTHK because its horse-racing coverage had received such popularity due to fair and unbiased reporting which was free from any commercial influence. He further said that RTHK had informed HKJC in May this year of its intention to scrap the live broadcast and subsequently confirmed its decision in June. On licence fees, D of B remarked that about three years ago, a request had been put up to HKJC informally to lower the level of licence fees but RTHK had not received a positive response.

Future programming strategy

30. Mr Martin LEE and Mr LEE Wing-tat enquired whether Mr WONG Yuk-man, whose contract with Commercial Radio was recently terminated, would be offered to host a programme for RTHK on a regular basis. While believing that there was room for co-operation between RTHK and Mr WONG Yuk-man, D of B stressed that the senior management of RTHK would not interfere with the selection of programme hosts as this was primarily a matter to be decided by the respective programme directors. Nevertheless, D of B noted

the popularity of Mr WONG as a programme host and hoped that Mr WONG would continue to work in the media. He also recalled that Mr WONG had appeared in RTHK's TV and radio programmes before.

31. On top officials' remarks about possible duplication of programmes produced by RTHK and commercial broadcasters, Mr Albert CHAN put forward his view that RTHK might consider broadcasting horse-racing in Putonghua or English instead. He also enquired whether RTHK would take over the production of certain programmes which were scrapped by commercial broadcasters in order that programme diversity and freedom of expression would be provided on the airwaves.

32. D of B took note of members' questions and suggestions which had arisen from their concerns about freedom of speech and expression in Hong Kong. While he pointed out that RTHK could not be expected to take over the production of a programme scrapped by another broadcaster, RTHK would seek co-operation with various programme hosts where appropriate.

33. Mr Martin LEE was very concerned whether policy makers would exert similar pressure on RTHK with regard to the production of the Top Ten Chinese Golden Songs Awards. In response, D of B recalled that in January 2005, RTHK's senior management had examined whether to continue the production of the programmes on horse-racing and Top Ten Chinese Golden Songs Awards. It was subsequently decided to retain the latter because RTHK was able to raise funds for charity each year, as well as cover the production costs of the programmes through ticket sales for the Award Ceremonies. Moreover, the Award Ceremonies hosted by RTHK were supported by the industry concerned for their impartiality and being free from commercial influence.

34. Ms Audrey EU enquired whether the decision to scrap the live broadcast of horse-racing had been made due to poor ratings for the programme and what types of programmes would be produced as a replacement. In reply, D of B understood that long-time supporters of the horse-racing programme might find it difficult to adjust to the change, but he hoped they could appreciate RTHK's considerations. On possible replacement programmes, D of B informed members that other popular productions such as phone-in programmes and those featuring health, travel and business management etc, could be considered.

The role of RTHK as a public service broadcaster

35. Noting SCIT's remark that RTHK should not compete with commercial broadcasters in producing programmes which were supplied in abundance by commercial broadcasters, but should cater to the needs of minority interest groups, Mr Ronny TONG enquired whether, in the Administration's view, popular phone-in programmes on current affairs produced by RTHK were competing with similar programmes produced by other commercial broadcasters.

36. Dr Fernando CHEUNG shared similar concern. He was worried that if RTHK should not produce programmes which were supplied by commercial broadcasters, then, most of the existing programmes of RTHK, including phone-in programmes on current affairs, should also be terminated because such programmes were also produced by other commercial broadcasters.

37. In response, Acting PSCIT(CT) pointed out that in fulfilling its role and mission as a PSB, RTHK should, in line with other PSBs worldwide, produce core programmes such as news, informational and current affairs programmes. She said that in the light of budgetary constraint, it was understandable that RTHK might need to adjust its programming strategy. It was generally accepted that PSBs should not compete with the private sector by producing programmes which were already popular productions among commercial broadcasters. Indeed, PSBs and commercial broadcasters complemented each other in catering to different needs of the public. In this regard, Mr Ronny TONG was pleased to note that RTHK would continue to produce phone-in programmes on current affairs.

38. In reply to Dr Kwok Ka-ki on how RTHK was catering to the needs and interests of minority groups, D of B advised that currently, about half of RTHK's productions targeted at minority interest groups. Typical examples of these programmes included classical music, Chinese opera, cultural and educational programmes, as well as programmes for elderly audience.

39. Mr Andrew CHENG queried the Administration's view that RTHK and commercial broadcasters should complement, instead of compete, with each other. In this connection, Acting PSCIT(CT) advised that since RTHK was a government department with a stable source of funding, it should not compete with the private sector in the provision of services. Moreover, the concurrent production of similar programmes, such as horse-racing broadcasts by different broadcasters, was not conducive to programme diversity. Like other PSBs worldwide, RTHK should play a distinctive role by enriching programme choice for the public in terms of genre and types. She further said that RTHK was already providing a variety of programmes, some of which served a broad spectrum of audiences, while others catered to minority interest. To fulfil its role of providing public service, RTHK should strengthen programming output on life-long learning, civic education, culture and arts, science and technology in addition to news, current affairs and information programmes.

Editorial independence

40. Noting the recent open remarks by top government officials on the programming of RTHK, Dr YEUNG Sum queried whether RTHK was still able to maintain editorial independence as provided under the FA, and whether RTHK staff suffered great pressure as a result.

41. Ms Janet MAK of RTHK Programme Staff Union expressed the worry that after ending live broadcast of horse-racing, RTHK might be further advised to end other entertainment programmes, followed by financial and current affairs programmes. She said that RTHK staff felt pressurized because unlike previous occasions when views on RTHK's programming were expressed by members of the public, the recent remarks were made by top government officials and this had indeed caused unease.

42. In response, Acting PSCIT(CT) assured members that pursuant to the FA, RTHK was editorially independent to ensure provision of fair, balanced and objective news and public affairs programmes. In fact, both SCIT and D of B had acted in accordance with the FA and either party could bring up relevant issues for discussion when necessary.

43. Mr CHEUNG Man-kwong did not subscribe to the Administration's explanation. He considered that editorial independence of RTHK was merely a concept on paper. In practice, since RTHK was one of the many government departments, the Administration could seek to undermine RTHK's editorial independence by manipulating the level of resources allocation and the posting of top management staff. Mr CHEUNG was concerned that the reduction in resources allocation would affect the output and standard of RTHK's services. Eventually, it might need to scale down some of its popular programmes such as those on news or current affairs in order to cope with a reduced budget. Moreover, Mr CHEUNG considered that the Administration might replace top management staff of RTHK through posting or other means if they did not adopt a programming approach which was agreeable to the Administration. As such, Mr CHEUNG questioned what mechanism was in place to ensure that RTHK could enjoy genuine editorial independence.

44. In response, Acting PSCIT(CT) remarked that RTHK's editorial independence was stated in the FA. Moreover, the community at large would be in the best position to judge for themselves the performance of RTHK as a public service broadcaster, and whether it had been delivering its services to meet the needs of the public. She pointed out that RTHK was currently providing a wide range of programmes, some of which served a broad spectrum of audience or encompassed views of different stakeholders. On staffing matters, Acting PSCIT(CT) said that similar to other government departments, RTHK also undertook various efficiency initiatives such as streamlining its establishment structure to improve cost-effectiveness.

45. In this connection, D of B expressed the view that while RTHK should be editorially independent, it must be seen or perceived to be so. This could only be achieved if RTHK was organizationally independent from, and not part of, the Government. He pointed out that as the FA was not a legally binding document, editorial independence of RTHK would be better safeguarded by other means such as corporatization, as in the case of PSBs in many other advanced economies. He therefore considered that issues relating to corporatization might be worth-revisiting.

46. Noting that the FA would soon be renewed in August 2005 and various concerns about editorial autonomy, Ms Emily LAU considered that specific provisions could be included in the FA to safeguard RTHK's editorial independence. In this regard, D of B advised that the FA was subject to review and renewal by SCIT in consultation with D of B every two years. Past revisions had not been controversial and new provisions were added upon mutual agreement. He confirmed that discussion on the review of the existing FA would commence in August this year.

47. Mr Jasper TSANG enquired about the respective role of the Government, the senior management of RTHK, its programme producers and the public when RTHK was considering to scrap an existing programme or produce a new one.

48. Referring to RTHK's Producers' Guidelines, D of B highlighted that the Guidelines helped codify RTHK's well-trying and tested editorial practices and enhance the transparency and accountability of its operation. D of B said that RTHK adopted a bottom-up production approach whereby frontline producers would initiate programming proposals for the endorsement of the relevant channel heads or senior management. There were also occasions on which senior management put forth suggestions on programming for discussion among the production staff concerned. Nevertheless, D of B stressed that RTHK would strengthen staff communication within programme teams. On the roles played by the Government on RTHK's programming, D of B recapped that RTHK was editorially independent in programme planning and implementation. Regarding interaction with the public, apart from daily contact with the public through phone-in programmes, RTHK had set up the Radio Audience Panel, various focus groups, channel heads' hotlines, and popularity ratings to canvass public feedbacks on its programme quality. As such, D of B highlighted that RTHK was editorially independent and accountable to the public for its programming decisions. On account of D of B's explanation, Mr Jasper TSANG considered that the views expressed by top government officials on RTHK's programming should be taken for reference only.

RTHK's annual provision

49. Dr YEUNG Sum was very concerned about the impact of the continuous reduction in annual financial provision for RTHK. In response, Acting PSCIT(CT) recapped the Administration's explanation given at previous Panel meetings and Special Finance Committee meetings that the reduction in operating expenditure had been implemented service-wide due to fiscal deficits in the past few years. The extent of reduction in annual allocation for departments under the purview of the Communications and Technology Branch of the Commerce, Industry and Technology Bureau was broadly consistent. She pointed out that according to the statistics provided earlier on by the Treasury Branch of the Financial Services and the Treasury Bureau, the extent of reduction in annual provision for RTHK was not the greatest among departments.

50. D of B supplemented that RTHK understood that all government departments had been required to reduce operating expenditure and RTHK was no exception. The main concern of RTHK was how it could plan for future development in the face of the reduction in provision, in particular the need for reprovisioning to a new Broadcasting House, replacement of outdated equipment, and the implementation of digital broadcasting. At the request of Dr Kwok Ka-ki to quantify the impact of further reduction in annual provision, D of B said that RTHK might need to consider reducing the number of hours of programme production. Besides, RTHK's future development, such as RTHK ON INTERNET and digital broadcasting, might also be affected.

51. Noting that the accumulated reduction in annual provision for RTHK in the past three years was about 15% (i.e. about \$100 million), Mr Ronny TONG did not fully agree with the Administration that RTHK had an assured source of funding as the level of funding might be diminished. He recapped the Government's proposal to abolish estate duty, which might lead to a foregone annual revenue of around \$1.5 billion, and urged the Administration to consider increasing RTHK's resources allocation by \$100 million for the next financial year to relieve its financial burden and to facilitate the development of digital broadcasting. Ms Audrey EU also expressed similar concern that adequate funding should be provided to RTHK for the development of digital broadcasting.

52. In response, Acting PSCIT(CT) advised that unlike commercial broadcasters the sustainability of which relied heavily on advertising revenue, RTHK's source of funding was relatively stable although the level of resources might need to be adjusted in the light of the Government's fiscal position over the past years. On the allocation of resources for the next financial year, Acting PSCIT(CT) noted the concern of Mr Ronny TONG and Ms Audrey EU but said that no firm commitment could be made at this stage because the budgetary cycle had not commenced yet.

53. On digital audio (DA) broadcasting, Acting PSCIT(CT) advised that the Administration adopted a market-led approach in launching the service. She said that the two commercial radio broadcasters did not consider it viable to launch the service until the digital receivers became more affordable for consumers. D of B added that RTHK would also keep in view recent developments of DA broadcasting in Europe and South Korea. On digital terrestrial television (DTT) broadcasting, D of B said that the two commercial TV broadcasters would start simulcasting both analogue and DTT services in 2007 while the Mainland had already announced that the 2008 Beijing Olympic Games would be broadcast digitally. However, RTHK had not initiated any action yet as DA broadcasting and DTT for RTHK were subject to resources availability.

54. In reply to the Deputy Chairman on the resources allocation within RTHK, D of B remarked that as a government department, about half of RTHK's annual provision of \$428 million for 2005-06 was for staff salaries while \$56.4 million

was for the Technical Services Agreement. The remaining would be used to cover overheads and allocated for different programmes areas, i.e. radio, public affairs television, school educational television production and new media. Individual programme director would be allocated a production budget for programmes under his/her purview.

55. As far as radio services were concerned, the Deputy Chairman was gravely concerned that as he estimated, less than 10% of RTHK's annual provision was allocated to a radio channel, such as RTHK 1 which was the most popular among the RTHK channels; and out of the allocation, only a very small amount was actually used on programme production. He was worried that this unproportionate distribution of resources was not cost-effective and not conducive to the quality of RTHK's productions. Given that RTHK was currently operating seven radio channels round-the-clock, the Deputy Chairman pointed out that it should produce 148 hours of programmes each day. However, in reality, RTHK only produced about 120 hours of programme each day by merging the broadcast of the same programme by different radio channels, thus reducing the capacity output to that of five channels. As such, the Deputy Chairman considered that RTHK had not made the optimal use of its channels and urged the Administration to make available the surplus radio channels for public use.

RTHK

56. On resources allocation for programme production, D of B pointed out that staff salaries should also be regarded as part of the production costs because some of RTHK's permanent staff also served as programme hosts. On merging the broadcast of certain programmes by different channels, D of B said that this was a measure to cope with the reduction in provision. To facilitate members' reference, D of B undertook to provide a detailed breakdown of its 2005-06 approved estimate, with particular reference to the budget for Chinese radio programme production.

(post-meeting note: The said information provided by RTHK has been issued to all Members on 20 July 2005 vide LC Paper No CB(1)2103/04-05(01))

Further meeting

57. Ms Emily LAU, Ms Audrey EU and Mr Albert HO expressed their regret that SCIT, who was the principal official under the accountability system, did not attend the meeting to answer Members' questions on this important subject. Mr Martin LEE urged that SCIT should be requested to attend a special meeting of the Panel in the following week to discuss the broadcasting services of RTHK.

58. The Chairman agreed with Members' suggestion and requested the Clerk to liaise with the Administration and arrange for a special meeting on an early date.

(*post-meeting note*: A special meeting has subsequently been scheduled to be held on 21 July 2005.)

V Domestic/private pirated viewing of subscription television programmes

Presentation by the Administration

LC Paper No. CB(1)1985/04-05(04) -- Information paper provided by Administration

LC Paper No CB(1)1984/04-05 -- Background brief on issues related to domestic/private pirated viewing of subscription television programmes prepared by the Secretariat

59. At the invitation of the Chairman, Acting PSCIT(CT) briefed members on the implementation of the Broadcasting (Amendment) Ordinance 2004 (the Ordinance), the effectiveness of digitisation in deterring pirated viewing of pay television (TV) services licensed in Hong Kong and the enforcement situation. She said that the Administration had also examined whether the sentences imposed by the Court on decoder-related offences could achieve deterrence. Having regard to the latest situation as detailed in the Administration's paper (CB(1)1985/04-05(04)), the Administration concluded that civil remedies rather than criminal sanctions were the proportionate legislative measure against end-users of unauthorized decoders for domestic/private purposes.

Presentation by the deputations

Hong Kong Cable Television Limited (HKCTV)
(LC Paper No. CB(1)2016/04-05(03))

60. Mr Eric LO, Executive Director of Cable Subscription Services of HKCTV highlighted that HKCTV had taken their best effort to deter pirated viewing activities in the past year. It had completed the migration from analogue to digital transmission in end 2004, a few months ahead of the original schedule. It had also applied the latest technology to maintain a robust security system, including the implementation of daily key changes, to safeguard against unauthorized access to its pay TV services. However, Mr LO noted that the problem of domestic/private pirated viewing remained rampant because the operation of the illegal vendors, in terms of both technology and marketing efforts, had become more sophisticated. He then outlined the main types of current hacking devices/methods available in the market, including auto roll receivers, receivers with programmable smartcard and modified Cable TV smartcards. Mr LO observed that illegal vendors still remained active despite an increased number of raids by enforcement agencies at black-spots of illicit

decoders trading and that arrests were made in every raid. As such, he considered that existing legislation which subjected domestic/private end-users of pirated TV viewing to civil liability only was inadequate in containing the problem. Mr LO urged the Administration to proceed with the introduction of criminal sanction against domestic/private end-users of pirated TV viewing.

Cable and Satellite Broadcasting Association of Asia (CASBAA)
(LC Paper No. CB(1)2016/04-05(04))

61. Mr Simon DAVIES, Chief Executive Officer of CASBAA highlighted that the forms of pirated viewing of subscription TV programmes were many and varied and they were proliferating rapidly. He pointed out that other developed jurisdictions, including Japan, South Korea, Singapore and New Zealand, had made end-user theft of subscription TV services a criminal offence. Australia had also announced in June 2005 that it would introduce legislation to criminalize the act of unauthorized access to pay TV services. As such, Mr DAVIES urged that Hong Kong, which had developed a generally strong network of intellectual property protection, should set a good example by making all types of pirated viewing of pay TV programmes a criminal offence. He said that while Hong Kong had developed itself as an important producer and consumer of TV and other entertainment products, the interests of local content producers and multinational broadcasters should be well protected. He considered that it was crucial for Hong Kong to adopt a consistent approach under which both commercial and domestic/private unauthorized access to pay TV programmes should be criminalized.

Discussion with deputations and the Administration

Effectiveness of digitization in containing the problem of pirated viewing

62. Mr Howard YOUNG recalled that during the deliberation of the Bills Committee on Broadcasting (Amendment) Bill 2003 on whether domestic/private pirated viewing should be made a criminal offence, the Administration had held the view that digitization would help contain the problem. He sought information from the Administration on the effectiveness of digitization in combating pirated viewing since completion of HKCTV's digital migration.

63. In response, Acting PSCIT(CT) pointed out that digital transmissions had made circumvention of pay TV operators' conditional access technologies more difficult and costly. However, the Administration understood that digitization alone would not eradicate domestic/private pirated viewing of pay TV programme services. Hence it had stepped up enforcement against upstream dealers. As a result of digitization and effective enforcement actions, selling of illicit decoders at blackspots had decreased substantially. To further contain the problem of pirated viewing, Acting PSCIT(CT) highlighted the responsibilities of pay TV operators in safeguarding the integrity of their signals by using the best available encryption technology. She therefore urged that HKCTV should continue its effort in upgrading its protective technologies regularly.

64. In reply to Mr Howard YOUNG's enquiry on the extent of digitization in jurisdictions where domestic/private pirated viewing was a criminal offence, Mr Simon DAVIES informed members that both the United Kingdom (UK) and Australia had completely migrated to digital transmission. However, piracy in Australia remained rampant while there had been intermittent cases of piracy in the UK. In his opinion, on-going investment in technical solutions, such as digitization, made by pay TV operators could only help reduce the problem to a certain extent but could not eliminate it.

65. Noting from HKCTV's submission that notwithstanding its continuous effort to maintain a robust security system after digitization, the problem of pirated domestic/private viewing remained rampant, Mr Jasper TSANG was concerned whether this was due to technological constraints or the high cost involved in introducing new encryption technology.

66. In response, Mr Eric LO said that HKCTV had strived to upgrade its transmission security system at considerable costs but it was still vulnerable to being hacked into by highly sophisticated illicit devices. For example, HKCTV had once introduced key changes up to six times daily to interfere pirated viewing. However, with the new security digital key codes provided by the vendors of illicit devices, the domestic/private end-users could quickly resume unauthorized viewing. Furthermore, shortly after HKCTV had devised measures against the latest illicit auto-roll smartcard promoted as "Everlasting Card", vendors could make available counter-solutions promptly on the Internet. Moreover, Mr LO was worried about the drop in the retail prices of the illicit decoding devices, thereby increasing their attraction to illegal viewers. Thus, he maintained his view that technology was not an effective solution to eradicate domestic/private pirated viewing.

Civil remedy vis-à-vis criminal sanction

67. Mr Jasper TSANG sought information from HKCTV on the number of civil cases it had instituted against domestic/private pirated viewing and the efficacy of civil remedies. In response, Mr Eric LO highlighted the difficulties in instituting civil proceedings against pirated viewing. He informed the Panel that in the course of investigation, it might not be possible for HKCTV to collect relevant evidence, such as the name and address of the person who had purchased an illicit decoder. HKCTV had attempted to commence civil actions on three cases but without much success. Mr Jasper TSANG appreciated the difficulties faced by TV operators in initiating civil actions as the Administration had also explained the difficulties in detecting the use of unauthorized decoders outside the relevant domestic premises.

68. In examining the suggestion to introduce criminal sanction against domestic/private pirated viewing for domestic purposes, Acting PSCIT(CT) highlighted the proportionality of legislative measures and the operators' role. She said that legislative sanction should be proportional to the harm caused by

the misdeed in question. Enforcement of legislative provisions with criminal sanction would entail intrusive action like entering into domestic premises, search and seizure as well as arrest. She stressed that the Administration was not convinced that the wrongdoing in question warranted such treatment. Moreover, if pay TV operators which possessed the required technologies and equipment also experienced difficulties in collecting prima facie evidence for civil actions, it might even be harder for enforcement agencies to identify the target. In fact, even in jurisdictions where criminal provisions against domestic/private end-users were in place, there was no active enforcement. Acting PSCIT(CT) recapped that pay TV operators had the responsibility to safeguard their interest by using the best available encryption technology. Indeed, the selling of unauthorised decoders had decreased substantially since HKCTV had commenced digital migration. Summing up, she said that taking into account the degree of harm, enforcement considerations, and the fact that digitization had substantially contained the problem, the Administration considered that civil remedies rather than criminal sanctions were the proportionate legislative measure to address the problem of pirated viewing for domestic purposes.

69. Mr Simon DAVIES expressed a different view. Citing jurisdictions which had put in place criminal provisions against domestic/private end-users of pirated pay TV services, he pointed out that the governments concerned could send a clear message to the community that the wrongdoing of pirated viewing of pay TV services was not to be condoned. He further opined that criminalizing domestic/private end-users was part and parcel of the overall protection of intellectual property rights.

70. In response to the Deputy Chairman's request for information to assess the extent of the problem of domestic/private pirated viewing of pay TV programmes, Mr Eric LO said that while he did not have an accurate figure in hand, he could ascertain the extent of the problem from the market situation. According to his observation, there was an increasing number of illegal vendors selling illicit decoders or accessories in Apliu Street and Shenzhen. Moreover, the number of HKCTV's long-time subscribers who had discontinued their subscriptions without specifying the reason was rising. Mr Simon DAVIS supplemented that the estimated loss in annual revenue of pay TV operators due to signal theft in Hong Kong as at October 2004 was in the region of HK\$200 million and that such loss was on an upward trend.

71. Referring to the figure given by Mr DAVIS, the Deputy Chairman remarked that there might be about 10 000 households engaged in pirated viewing in Hong Kong. Compared with the overall number of pay TV subscribers, which he estimated to be in the region of 1.5 million, he did not consider that the situation justified the compromising of civil liberties and intrusion into domestic premises. He was worried that if domestic/private pirated viewing was criminalized, this might trigger a trend of criminalizing all acts of copyright infringement, regardless of their severity.

72. In response, Mr Eric LO said that the estimated figure given by CASBBA in October 2004 was made before HKCTV had completed its digitization. He noted that illegal vending activities had subsided for a while after HKCTV had commenced digital migration but they had revived and become even more active soon after the illegal dealers devised hacking devices/methods to circumvent HKCTV's digital security system. Mr LO considered that unauthorized reception of subscription TV services was analogous to abstraction of electricity or water. The harm done was criminal in nature and warranted proper sanctions.

73. Having regard to the possible implications for human rights if criminal sanction was to be imposed on domestic/private end-users of pay TV services, the Deputy Chairman expressed his disagreement with HKCTV's viewpoint. He considered that stepping up enforcement against upstream dealers and imposing heavier penalties on them would be a more effective solution. Mr LEUNG Kwok-hung shared the Deputy Chairman's view and opined that illegal vendors, rather than domestic/private end-users many of whom were the less well-off groups, should be criminalized.

Enforcement actions in collaboration with the Mainland authorities

74. The Chairman asked whether the Administration had solicited the assistance of the Shenzhen authorities through the Hong Kong/Guangdong Cooperation Joint Conference (JCC) in combating the selling of illicit decoders across the border.

75. In response, the Acting Assistant Director of Telecommunications (Operations) (Atg AD/Tel(O)) informed members that the Customs and Excise Department had stepped up enforcement at all boundary control points and confiscated illicit decoders upon detection. So far, four suspected illicit decoders had been seized. On co-operation with the Mainland authorities for enforcement purpose, he said that pursuant to regular meetings held between the two sides, enforcement action had been taken frequently at the blackspots of illicit decoder trading in Lo Wu. Atg AD/Tel(O) undertook to further strengthen co-operation with the Mainland authorities against the trading of illicit decoders across the border.

Summing up

Admin

76. Noting the Administration's report that six and 13 raids against the illegal sale of unauthorized decoders were mounted in 2003 and 2004 respectively, the Chairman considered that the Administration should further step up enforcement actions. He also said that heavier penalties imposed by the court would help deter pirated viewing. He also urged the Administration to seek the assistance of Hong Kong/Guangdong JCC to crack down on illicit decoder trading at blackspots in Shenzhen and Huanggang. The Chairman also requested the

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VI Consultation exercise on the regulation of Internet Protocol (IP) Telephony

- LC Paper No. CB(1)1985/04-05(05) -- Information paper provided by Administration
- LC Paper No CB(1)1979/04-05 -- Background brief on consultation exercise on the regulation of Internet Protocol Telephony prepared by the Secretariat
- LC Paper No. CB(1)1889/04-05(01) -- Statement of the Telecommunications Authority on Regulation of Internet Protocol Telephony
- LC Paper No. CB(1)1889/04-05(02) -- Press release on Regulation of Internet Protocol Telephony
- LC Paper No CB(1)2035/04-05(02) -- Power-point presentation material on "Regulation of Internet Protocol Telephony: Conclusions of Public Consultation" (*tabled and subsequently issued on 12 July 2005*)

77. With the aid of power-point presentation, DG/Tel briefed members on the conclusions on the public consultation on the regulation of Internet Protocol (IP) Telephony (or "Voice over IP"). In gist, he said that the Telecommunications Authority (TA) issued a statement on 20 June 2005 explaining the regulatory framework of IP Telephony, in which a two-class licensing approach would be adopted. He outlined the licensing conditions and services provided under Class 1 and Class 2 IP Telephony services, numbering issues and number portability, the modes of provision of IP Telephony services and interconnection/other charges, access to emergency services, back-up power supply, directory enquiry service, the quality of service requirements and consumer protection and education. Members noted that the new service-based operator licence (for Class 2 IP Telephony services) was expected to be ready by end of this year.

Numbering issues

78. In view of the present proliferation of mobile phone services and in anticipation that there would be a rise in demand for IP Telephony services, Mr Howard YOUNG was worried that the existing limited 8-digit numbering resources would be exhausted very soon and additional costs for the community would be incurred if an additional digit had to be added to each existing telephone number in order to cope with the rising demand. As such, Mr

YOUNG urged the TA to consider adopting a 9-digit numbering approach for IP Telephony while the service was still at its initial stage of development. He also asked whether future users of IP Telephony services with Hong Kong telephone numbers would need to dial country/area codes when making calls back to Hong Kong from overseas.

79. In response, DG/Tel acknowledged that the use of IP Telephony services might put pressure on the existing 8-digit numbering plan. However, it was the intention of TA to make use of the remaining resources of the existing 8-digit numbering plan for as long as possible to avoid having to switch to a 9-digit numbering plan in the next few years. Nevertheless, OFTA would monitor the situation closely. In the event that the 8-digit numbering plan could not meet the demand, OFTA would consider requiring certain kind of services such as Class 2 services to use longer digit numbers so as to minimizing the inconvenience caused to current subscribers of conventional telephony services. DG/Tel further advised that one of the characteristics of IP Telephony services was that the number was not assigned to a fixed location but to the user for using the service in a nomadic way, i.e. at any location which had access to a broadband connection. As such, users could use their Hong Kong numbers overseas (without incurring IDD charges) as if they were being used in Hong Kong.

Licensing

80. The Chairman enquired whether existing IP Telephony service providers could already meet relevant licensing conditions under the two-class licensing regime. In reply, DG/Tel confirmed that according to the assessment of OFTA, all existing IP Telephony service providers were providing Class 1 service and they could fulfil the relevant licensing conditions applicable to Fixed Telecommunications Network Service/Fixed Carrier licences.

81. Noting that Class 2 service would only be required to meet minimal licence conditions, the Chairman was concerned that Class 2 service could thus be offered at a lower price but with a lower quality of service. He enquired about the estimated number of Class 2 service licences to be issued by the TA.

82. In response, DG/Tel said that the Administration had not made such an estimation. However, he pointed out that IP Telephony service was not meant to serve as a substitute for conventional telephony voice service. Instead, IP Telephony service would mark the beginning of the "Next Generation Networks" era, in which IP technology would be deployed to deliver integrated voice, data, fax, video and multi-media services to users.

83. On the way forward, DG/Tel recapped that OFTA would follow up and conduct a consultation on the terms and conditions of the new service-based operator licence with a view to finalizing the new licence by end 2005.

Summing up

84. The Deputy Chairman expressed his support for the development and launch of IP Telephony services in Hong Kong which would help strengthen its status as an international telecommunications hub. The Chairman also expressed his support but urged the Administration to ensure that consumers' interests would be safeguarded amidst market liberalization.

VII Proposal from Hon LEE Wing-tat to hold a special meeting

Letter dated 7 July 2005 from Hon LEE Wing-tat (LC Paper No. CB(1)2016/04-05(05).

85. Members noted the letter. The Chairman suggested that a special meeting should be arranged to discuss this subject (as well as the broadcasting services of RTHK), and that the Panel should invite SCIT, representatives from the Broadcasting Authority and Hong Kong Commercial Broadcasting Company Limited to attend the meeting. Members agreed.

(post-meeting note: A special meeting has subsequently been scheduled to be held on 21 July 2005.)

VIII Any other business

86. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 1
Legislative Council Secretariat
15 September 2005