

**For discussion
on 9 May 2005**

**Legislative Council Panel
On Information Technology and Broadcasting**

**Non-civil service appointment of
Assistant Commissioner (Broadcasting) in the
Television and Entertainment Licensing Authority**

PURPOSE

This paper invites Members' views on the proposed creation of a non-civil service position of an Assistant Commissioner (Broadcasting) (AC (Broadcasting)), at the equivalent rank of D2, in the Broadcasting Division of the Television and Entertainment Licensing Authority (TELA) for three years.

PROPOSAL

2. In view of rapid technological and market developments in the broadcasting industry, the level of technical expertise required of the post of AC (Broadcasting) in supporting the Broadcasting Authority (BA), the regulator for the television industry, to discharge its functions can no longer be met by a general grade officer.

3. We propose to make a non-civil service appointment of AC (Broadcasting) at the equivalent rank of D2, in the Broadcasting Division of TELA for an initial period of three years, subject to review in the light of operational needs and experience.

JUSTIFICATION

Main duties of AC (Broadcasting)

4. There are currently two Divisions in TELA, under the direct supervision of the Commissioner for Television and Entertainment Licensing (CTEL), namely, the Broadcasting Division and the

Entertainment Division, each headed by an AC, ranked at AOSGC (D2). An organisation chart showing their latest division of work is at Enclosure 1 and 2 respectively.

Encls. 1-2

5. The primary duty of AC (Broadcasting) is to serve as Secretary to the BA and heads the Division which acts as the executive arm of the BA. This post was created in 1987 and its latest job description is at Enclosure 3.

Encl. 3

Recent developments

6. The broadcasting industry in Hong Kong has undergone momentous changes in the past few years. These are mainly brought about by liberalisation of the television market and technological convergence. As the industry regulator, the BA has to reposition its regulatory approach to ensure that it is in line with the best practices adopted by comparable regulators overseas.

7. The opening up of the local TV market has brought in a few new pay TV operators, making the television market more competitive. The BA is responsible for enforcing the competition provisions in the Broadcasting Ordinance (Cap. 562). Since the competition provisions in the Ordinance came into operation in 2001, the BA has investigated five such complaints, mostly on sports broadcasting rights. Given the high stakes involved in these rights, pay TV operators compete intensely for these premium contents. With the newcomers becoming more established in the pay TV market, competition is likely to intensify. To ensure that these cases are fairly and properly investigated, reference to competition rulings in comparable overseas jurisdictions will have to be made. The heightened competition in the TV market has created unprecedented demands on the BA as a broadcasting industry regulator and the BA's role as both an impartial regulator and a guardian of public interest will be under close scrutiny. In order to provide the BA with effective support on competition regulation, expert legal input and professional economic analysis are required, and this has rendered the duties of AC (Broadcasting) more demanding.

8. Apart from competition regulation, technological advances have also exerted new pressures on the BA as a regulator. Worldwide,

including Hong Kong, telecommunications and broadcasting are converging at the technological and business levels. More telecommunications networks are capable of carrying broadcasting services and they are therefore increasingly substitutable, giving rise to proliferation of new media outlets, innovative services and new business models. Rapid convergence has brought challenges to regulators worldwide as they need to update the regulatory regime constantly in response to emerging services and new cross-sector business models. In response to this development, some jurisdictions such as the UK and Australia are merging the broadcasting regulator and telecommunications regulator into a unified body to ensure that the regulator has the necessary horizon in discharging its functions in a converging and increasingly complex environment. With advanced telecommunications infrastructure and a high broadband penetration rate, Hong Kong is recognised as a world leader in the development of television services through broadband networks. The advent of digital terrestrial television broadcasting will further facilitate convergence. The Government has already proposed the establishment of a unified regulator by merging the Telecommunications Authority and the BA. We need to recruit someone with exposure to a unified regulatory set-up to prepare the Broadcasting Division for the transition to a unified regulator.

Need to make a non-civil service appointment of AC (Broadcasting)

9. TELA has made strenuous efforts to fill knowledge gaps in the legal, technological and economics arena arising from the changing operating environment described above, including recruitment of non-civil service contract staff with legal, accounting and economics qualifications, engagement of external competition consultants to undertake competition investigation and analysis, and staff training. However, this “re-institution” process will not be complete without engaging appropriate professional input with wide overseas regulatory experience and exposure at the top level of the Division (i.e. the AC), as the challenges mentioned above have grown beyond the capabilities of a general grade officer.

10. We therefore propose to engage an external expert through open recruitment to fill the post of AC (Broadcasting) to achieve two main

strategic objectives: (a) to assist the BA in developing core competencies in discharging its regulatory role under the converging, digital environment; and (b) to develop best regulatory practices for the BA by making reference to overseas broadcasting regulators.

11. The funding for the proposed non-civil service appointment of AC (Broadcasting) at the equivalent rank of D2 will be offset by the savings from the AOSGC post to be frozen in the Broadcasting Division. Having considered the magnitude of challenges mentioned in paragraphs 6 to 8, we propose that the non-civil service appointment should last for an initial period of three years, subject to review. If this proposal is approved and subject to successful recruitment, we expect the new AC (Broadcasting) will assume duties in late 2005. The proposed job description of the non-civil service AC (Broadcasting) is at Enclosure 4.

Encl. 4

ALTERNATIVES CONSIDERED

12. The manpower at the directorate level of TELA is already fully committed. Also, having considered the professional expertise and exposure now required to take on the challenges facing the Broadcasting Division, we consider that hiring an outside expert as proposed is the only viable alternative.

FINANCIAL IMPLICATIONS

13. The proposed non-civil service position of AC (Broadcasting) is broadly comparable to the rank of D2. Its staff cost will be fully offset by the savings from one existing permanent AOSGC post (D2) to be frozen –

		Notional annual salary cost at mid-point (\$)	No. of Post
	Non-civil service AC (Broadcasting) (D2)	1,360,800	1
Less:	AOSGC (D2)	1,360,800	1
		0	0
		0	0

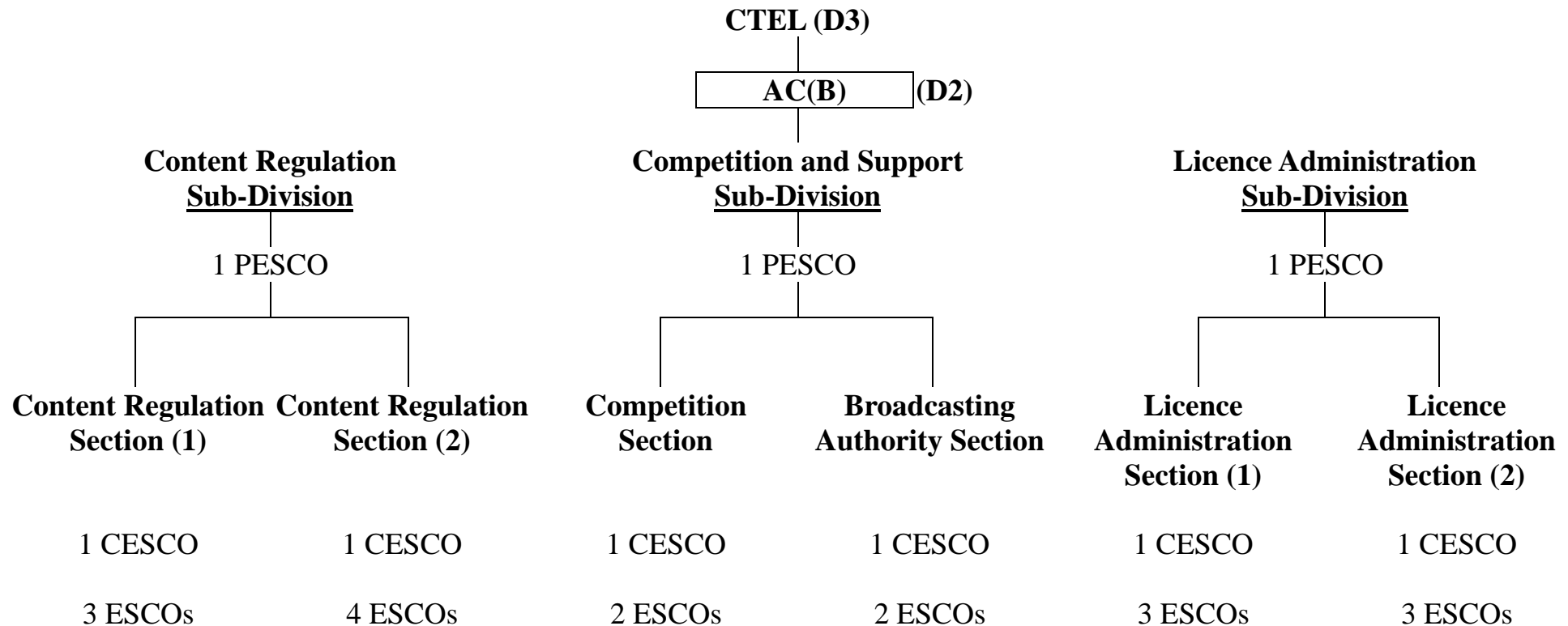
14. We have included sufficient provision in the 2005-06 Estimates to meet the cost of this proposal.

ADVICE SOUGHT

15. Members are invited to advise on the above proposal. Subject to Members' views, we intend to invite the Establishment Subcommittee to consider our proposal on 2 June 2005.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
April 2005

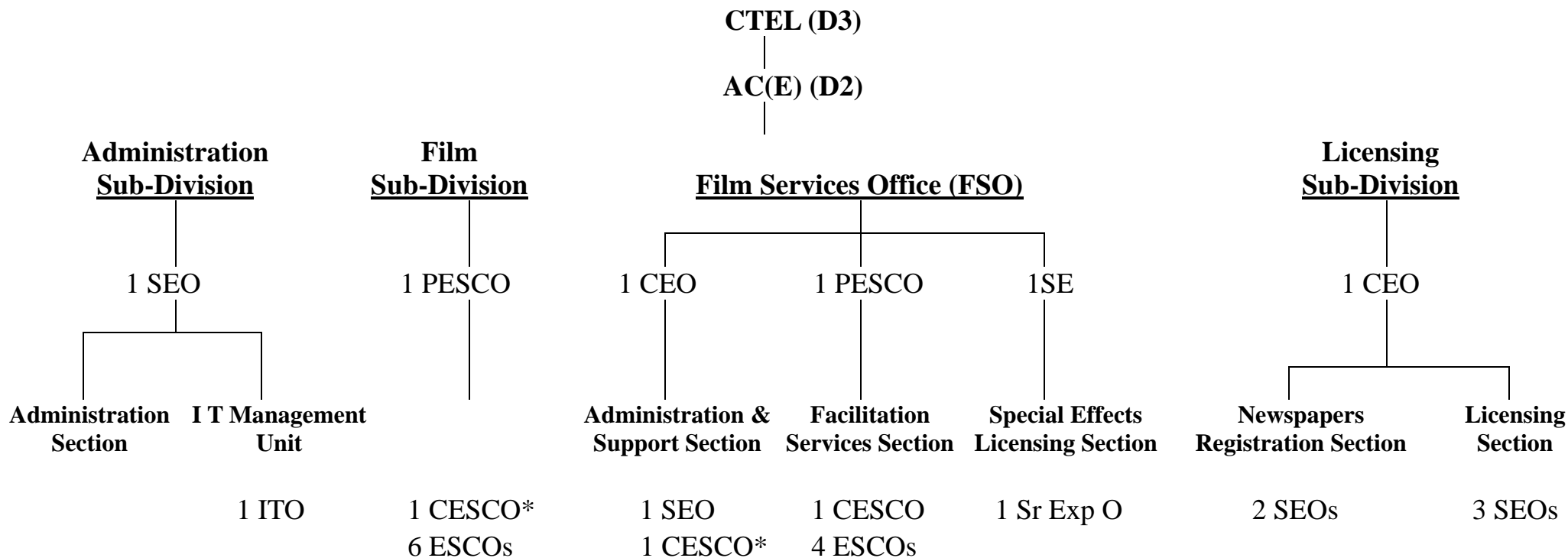
Organisation Chart of the Broadcasting Division



Legend :

- CTEL – Commissioner, Television and Entertainment Licensing
- AC(B) – Assistant Commissioner (Broadcasting), a permanent AOSGC post now proposed to be frozen for 3 years for the non-civil service appointment of AC(B) at the equivalent rank of D2
- PESCO – Principal Entertainment Standards Control Officer
- CESCO – Chief Entertainment Standards Control Officer
- ESCO – Entertainment Standards Control Officer

Organisation Chart of the Entertainment Division



*1 CESCO performing duties in both the Film Sub-Division and the FSO

Legend :

CTEL – Commissioner, Television and Entertainment Licensing

AC(E) – Assistant Commissioner (Entertainment)

CEO – Chief Executive Officer

PESCO (Principal Entertainment Standards Control Officer)

SE(Senior Engineer)

ITO (IT Officer)(NCSC post)

SEO – Senior Executive Officer

CESCO (Chief Entertainment Standards Control Officer)

Sr Exp O (Senior Explosives Officer)

ESCO (Entertainment Standards Control Officer)

Current Job Description of Assistant Commissioner (Broadcasting)
(as at April 2005)

Responsibilities and objectives

- 1 Act as Secretary to the Broadcasting Authority (BA) – to prepare agenda, papers, minutes and publicity arrangements for the monthly BA meetings; to prepare the BA annual reports and to oversee other housekeeping matters including BA visits and the maintenance of the BA website.
- 2 Assist in discharging the statutory functions of the BA – to process the renewal of various categories of TV licences including the licence of HKCTV; to process new applications for non-domestic TV licences and other licensable TV licences; to process applications for compliance of milestone requirements and deviations from licensees' proposals.
- 3 Assist in the implementation and enforcement of the Broadcasting Ordinance – to monitor licensees' compliance with licence conditions including the firewall provisions between TVB and Galaxy Satellite Broadcasting Limited; to help process competition complaints and the engagement of competition consultants; to develop an accounting manual for broadcasting licensees; and to review the Codes of Practice and to undertake the review of licence fees, etc.
- 4 Assist in the vetting of complaint cases.
- 5 Vet the draft papers for the BA Complaints Committee and for the BA Codes of Practice Committee and in overseeing the Broadcasting Division.
- 6 Provide support on various broadcasting issues such as providing input to Bureau on the review on broadcasting regulatory regime, digital terrestrial television, CEPA and the broadcasting survey, etc.

Job Description

Post Title : Assistant Commissioner for Television and Entertainment Licensing (Broadcasting)

Rank : Non-civil service position (D2-equivalent)

Responsible to: Commissioner for Television and Entertainment Licensing

Duties and Responsibilities –

1. Act as Secretary to the Broadcasting Authority (BA) to assist in discharging the statutory functions of the BA and the implementation and enforcement of the Broadcasting Ordinance.
2. Assist in identifying the core competencies of a broadcasting regulator and equipping the future converged regulator with such competencies.
3. Assist in designing and coordinating a structured research programme for the Broadcasting Division with the purpose of developing a research and evidenced-based approach for the BA in discharging its regulatory functions.
4. Identify knowledge gaps (e.g. legal, competition analysis, technological, etc.) in the Broadcasting Division in meeting the demands of a converged regulator and to formulate strategies to fill these gaps.
5. Propose appropriate strategies for the BA's consideration in facilitating a smooth migration from analogue to digital broadcasting.
6. Develop best practices in processing content and competition complaints and license administration with reference to other broadcasting regulators.
7. Improve the effectiveness of the content complaint system and to assist in the development of a co-regulatory mechanism for the regulation of programme content.
8. Develop meaningful performance indicators with reference to the experience of Ofcom and other broadcasting regulators.