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Panel on Information Technology and Broadcasting

Special meeting on 21 July 2005

**Background Brief on
Freedom of expression and other issues related to
personal view programmes of sound broadcasting licensees**

Purpose

This paper summarizes the concerns expressed by Members over the freedom of expression in the sound broadcasting industry, with particular reference to the existing licensing arrangements for commercial sound broadcasters and the licence renewal of Hong Kong Commercial Broadcasting Company Limited (CRHK) in 2003.

The legal framework

2. The sound broadcasting licensing regime is set out in Part IIIA of the Telecommunications Ordinance (Cap. 106) (TO). According to section 13E(1) of the TO, the Broadcasting Authority (BA) shall submit recommendations to the Chief Executive in Council (CE in Council) concerning the renewal of a licence and the terms and conditions to be imposed not less than 15 months before the expiry date of the licence or such shorter period as the CE in Council may permit. Having considered BA's recommendations, CE in Council may renew or refuse to renew the licence. In case CE in Council refuses to renew the licence, a 12-month advance notice should be given to the licensee under 13E(3) of TO. The Ordinance does not contain express provisions on the duration of a sound broadcasting licence.

Licence renewal for Hong Kong Commercial Broadcasting Company Limited

Past arrangements

3. The sound broadcasting licence held by CRHK was granted under section 13C of the TO. Past licence renewals since 1989 were mostly for a period of 12 years.

4. From 1998 to 1999, the three local sound broadcasters, namely CRHK, Metro Broadcast Corporation Limited (Metro) and Radio Television Hong Kong, jointly conducted a technical trial of digital audio broadcasting while the former Information Technology and Broadcasting Bureau had also commissioned a consultancy study to assess the economic and market potential of digital audio broadcasting. Pending finalization of the Government's policy on digital audio broadcasting which would have a significant impact on CRHK's business plans, CRHK submitted to BA an application for a three-year short-term sound broadcasting licence on 27 August 1999. At the recommendation of BA, CE in Council approved on 2 May 2000 the renewal of CRHK's licence for three years from 26 August 2001 to 25 August 2004.¹

Licence renewal in 2003

5. In considering CRHK's application for licence renewal, BA collected public views on the licensee's services by conducting a Broadcasting Services Survey in the first quarter of 2002 and held a public hearing on 5 November 2002. Having regard also to CRHK's compliance record with relevant statutory requirements, licence conditions, Codes of Practice and investment commitments, BA submitted its recommendation on CRHK's licence renewal to the CE in C in May 2003.

6. Thereafter, controversies surrounding CRHK's licence renewal were widely reported in the media, giving rise to widespread concern as to whether there were impediments to the approval of licence renewal. At the special meeting held by the Panel on Information Technology and Broadcasting on 27 June 2003 to discuss the matter, Members raised a number of concerns :

- (a) Noting that in response to complaints received, BA had issued warnings to CRHK in respect of two editions of its programme "Teacup in the Storm" broadcast on 24 and 25 April 2003, Members queried whether the warnings issued had adversely affected BA's consideration of CRHK's licence renewal.

¹ On 26 February 2002, CE in Council approved the recommendations of BA, inter alia, that the period of validity of the licence of Metro be extended until 25 August 2004 to tally with the expiry date of the renewed sound broadcasting licence of CRHK.

- (b) Pending the outcome of the licence renewal, there was concern about the Government's exercising tighter control over programmes which were critical of government policies through sound broadcasting licensing arrangements, thereby restricting freedom of expression on air.
- (c) Given that radio frequency spectrum was a scarce public asset, some members pointed out that it must not be used to serve the interests of those who owned or controlled the radio station. They considered that sound broadcasting licensees should ensure and uphold editorial plurality and programming diversity in their productions.

7. The Administration's stance was that BA would consider applications for licence renewal with regard to public views, the licensee's performance in respect of compliance with the relevant statutory requirements, licence conditions, Codes of Practice and investment commitments. Neither the Administration nor BA would seek to micro-manage how individual broadcasters would manage their affairs. It would be up to the audience to choose their preferred radio programmes or lodge a complaint to BA in case of biased coverage or other breaches of the Code of Practice on Programme Standards. The minutes of the special meeting held on 27 June 2003 can be browsed at the following link : <http://www.legco.gov.hk/yr02-03/english/panels/itb/minutes/it030627.pdf>.

8. On 22 July 2003, CE in Council approved, inter alia, the renewal of the licences of CRHK and Metro for a period of 12 years from 26 August 2004 to 25 August 2016 (both dates inclusive), subject to a mid-term review in 2010.

Latest developments

9. In the wake of the contract termination of Mr WONG Yuk-man with CRHK in early July 2005, some Members have expressed concern about the implications, if any, on the freedom of expression in the broadcasting industry. They are also concerned whether the incident may amount to a deviation from the Codes of Practice issued by BA, or whether it is inconsistent with any statutory provisions or licence conditions applicable to sound broadcasting licensees. Question has also been raised as to whether the present incident has any bearing on BA's consideration of licence renewal of sound broadcasters.

10. The Panel has invited the Administration and BA to give their views from the policy and regulatory perspectives respectively. It has also invited CRHK to give its comments on the matter. The three parties have been invited to attend the special meeting on 21 July 2005. The replies from BA and CRHK have been circulated to Members vide LC Paper No. CB(1)2107/04-05.