

立法會
Legislative Council

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the Administration)

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Panel on Information Technology and Broadcasting

**Minutes of the special meeting
held on Monday, 5 October 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Member attending : Dr Hon Margaret NG

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

Public officers attending : Agenda Item I

Mrs Rita LAU, JP
Secretary for Commerce and Economic Development

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Agenda Item II

Mrs Rita LAU, JP
Secretary for Commerce and Economic Development

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Ms Maisie CHENG, JP
Commissioner for Television and Entertainment
Licensing

Attendance by invitation : Agenda Item I
Radio Television Hong Kong
Mr Franklin WONG
Director of Broadcasting

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Advisor 1

Miss Winnie LO
Assistant Legal Advisor 7

Ms Annette LAM
Senior Council Secretary (1)3

Mr Joey LO
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)6

Action

I. Public service broadcasting and the future of Radio Television Hong Kong

(File Ref: CTB(CR) 9/17/9 -- Legislative Council Brief on public service broadcasting and the future of Radio Television Hong Kong

LC Paper No. CB(1)2663/08-09(01) -- Paper on public service broadcasting prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(1)2700/08-09 -- Administration's paper on public service broadcasting and the future of Radio Television Hong Kong (power-point presentation materials)
(tabled at the meeting and subsequently issued via e-mail on 5 October 2009)

LC Paper No. CB(1)2722/08-09 -- Submission from RTHK Programme Staff Union dated 30 September 2009 (Chinese version only)
(tabled at the meeting and subsequently issued via e-mail on 5 October 2009)

LC Paper No. CB(1)2726/06-07(01) -- Public consultation paper on the new Radio Television Hong Kong: Fulfilling its mission as a public service broadcaster)
(tabled at the meeting and subsequently issued on 6 October 2009)

Briefing by the Administration

At the invitation of the Chairman, the Secretary for Commerce and Economic Development (SCED) briefed members on the Government's decision on the way forward in respect of public service broadcasting (PSB) in Hong Kong and the future of Radio Television Hong Kong (RTHK) as announced on 22 September 2009. In gist, RTHK would remain as a Government department with key

recommendations in the report of the Committee on Review of Public Service Broadcasting (Review Committee) implemented to allow it to fulfill the role of a public service broadcaster serving with specific public purposes, strengthened corporate governance and greater accountability to the community. Appropriate resources would be provided for service enhancement to enable RTHK to expand its scope of service to better serve the community. With the aid of power-point, the Deputy Secretary for Commerce and Economic Development (Communications and Technology) (DSCED(CT)) briefed members on the two-month public consultation exercise launched to gauge public views on how best RTHK should operate to achieve its mission as a public service broadcaster. The consultation would cover areas such as the public purposes of the new RTHK, the proposed establishment of a Board of Advisors (the Advisory Board) to enhance corporate governance and accountability, the proposed contents of the Charter to be signed by the Chief Secretary for Administration (CS) and the Director of Broadcasting (D of B), as well as the proposed performance evaluation and new programming opportunities. Details on the proposed operation of RTHK and the public consultation exercise were set out in the Legislative Council Brief (file Ref: CTB(CR)9/17/9) and the Public Consultation Paper on the New RTHK (LC Paper No. CB(1)2726/08-09(01)).

Discussion

Financial and staffing implications for the new RTHK

2. Mr WONG Ting-kwong said that the Democratic Alliance for Betterment of Hong Kong and Progress of Hong Kong welcomed the Chief Executive (CE)-in-Council's decision on RTHK as it would put an end to the uncertainty surrounding the future of RTHK, and give RTHK new impetus to build on its strong reputation for providing quality broadcasting service to the community. Noting that additional staff and financial resources would be required for RTHK to expand its scope of service, Mr WONG enquired about the staffing and financial implications for the new RTHK.

3. The Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)) advised that D of B was currently undertaking an internal re-structuring review to assess the optimal mix of civil servants and non-civil service contract staff required for expanding RTHK's services. A clearer picture on the additional manpower required would be available upon the completion of the internal re-structuring review. He added that the proposed expansion of RTHK's service in the areas of digitization of programme archive, provision of digital audio broadcasting (DAB) services and the launch of digital TV services, would entail additional capital and recurrent resources. The exact requirements would depend on the re-provisioning of RTHK's headquarters to the new Broadcasting House in Tseung Kwan O, and the technical requirements as well as the number of DAB radio channels, high-definition and standard-definition TV channels to be operated which could only be determined after public consultation. Subject to the detailed architectural design and accommodation requirements, a rough estimation for the new

Broadcasting House, the construction of which would require a lead time of around five years, would be in the region of \$1.5 billion.

Public consultation

4. Ms Emily LAU expressed grave disappointment that after protracted discussions in the past and despite the Administration's repeated pledge to widely consult the public before deciding on the way forward for the development of PSB and the future of RTHK, the CE-in-Council had, in the absence of any public consultation, rejected the Review Committee's recommendation to set up an independent public service broadcaster and decided to retain RTHK's status as a Government department while performing the role of a public service broadcaster. She said that the Administration had not kept its promise to consult the public and was irresponsible in making such a hasty decision. Mr LEE Wing-tat, Ms Emily LAU and Mr WONG Yuk-man held the view that the consultation was a show and a sham as a pre-conceived decision had already been made for RTHK to continue to operate as a Government department with a public service broadcaster role. Ms Emily LAU further criticized that the scope of the consultation was too narrow as it was confined to how the new RTHK should operate to fulfill its mission as a public service broadcaster.

5. In reply, SCED said that the development of PSB in Hong Kong and the future of RTHK were inter-related issues that should be addressed in one go. She recapitulated that the Review Committee, when formulating its recommendations, had extensively consulted the public and various stakeholders in 2006 and 2007, and the matter had been widely discussed by the community, the Panel, and various other stakeholders. In particular, the Review Committee's view that RTHK should not be transformed into a new public service broadcaster had triggered a heated debate in the community.

6. SCED further said that RTHK had been consistently ranked in public surveys as the most credible electronic media in Hong Kong and was best placed to assume the role of a public service broadcaster. A recent Government survey showed that 60% of the respondents considered RTHK should maintain its status quo or enhance its operation while only 20% were in favour of establishing a new organization to replace RTHK. Public service broadcasting and the future of RTHK had been the subject of debate in Hong Kong for many years. Given the considerable public support for RTHK to maintain its status quo and the urge of RTHK staff for a clear decision on the way forward, it was considered appropriate to address the various staffing issues once and for all and to give certainty to the further development of RTHK. She highlighted that the CE-in-Council's decision was a well-balanced set of proposals to address the concerns of various stakeholders. It would bring the long-running debate to an end for the benefit of the RTHK and the staff concerned. The Government would consult the 18 District Boards and the Panel and launch a two-month public consultation exercise to seek public views on how best RTHK should fulfill its new mission. Focus group discussions and other public engagement activities including a public opinion survey would be conducted. She appealed to the public and Legislative Council

(LegCo) Members to support the proposal to strengthen RTHK's role as the public service broadcaster.

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7. Members considered the two-month consultation period too short for the public to express their views, and strongly urged the Administration to lengthen the two-month consultation period to at least three months. In response, SCED said that a two-month consultation period was set having regard to the critical timeframe for the preparation of annual budget for the next financial year. She however undertook to consider extending the consultation period, if necessary.

Corporate governance and editorial independence

8. Ms Emily LAU noted that none of the public service broadcasters in any of the advanced economies was a government department funded by the government. Referring to the United Nations Educational, Scientific and Cultural Organization's definition of PSB, Mr LEE Wing-tat shared a similar view. He expressed doubt whether RTHK, as a Government department dependent on the Government's funding and manpower resources, would have the true freedom and autonomy to competently perform its role as an independent public service broadcaster.

9. Mr Paul TSE pointed out that despite paying lip-service to implement the Review Committee's recommendations, the governance structure and funding arrangements proposed for the new RTHK had differed greatly from the model recommended by the Review Committee. The proposal had failed to meet public expectations of an independent public service broadcaster that would be independent in its editorial policy issues, transparent in its operation, and be accountable to the public. He questioned how the proposed Advisory Board with no executive power would be able to enhance the corporate governance of RTHK and improve its accountability to the community. Mr CHAN Kam-lam also sought explanation from the Administration on how the Advisory Board would operate to improve the governance and public accountability of RTHK without interfering with its editorial independence.

10. Given that RTHK already had its own advisory panel and was subject to the regulatory oversight of the Broadcasting Authority (BA) and the Director of Audit (D of A) within the terms of the proposed Charter to be signed with the CS, Mr Ronny TONG questioned the need for setting up the Advisory Board. He considered the Advisory Board, with its members to be appointed by the CE, a political tool to exert political and financial pressure on RTHK to toe the line of the Government. Sharing a similar view, Mr LEE Wing-tat opined that the Advisory Board which gave the public the impression that the Government was trying to interfere with RTHK's editorial independence should be scrapped.

11. In reply, SCED said that the Advisory Board was an advisory body to advise the D of B on all matters pertaining to editorial policy, programme standards and the quality of RTHK programmes as well as community participation in broadcasting on radio and TV channels. Public hearings, regular public standards reviews and survey of public satisfaction level would be conducted to track how

well RTHK programming standard had measured up to public expectations. She highlighted that the Advisory Board had no executive power and would not interfere with the daily operation and editorial decision of RTHK which would be the task of the D of B and his team. She assured members that RTHK would continue to enjoy editorial independence and freedom of press and be accountable to the public and the LegCo. The Advisory Board would only have an advisory role in respect of editorial issues, and the D of B remained ultimately responsible for the editorial decision of RTHK. The proposed Charter would set out the relationship between the Government and the new RTHK and entrench the importance of editorial independence. She further pointed out that the setting up of advisory boards was a standard practice for Government departments and was not targeting RTHK. While subject to the administrative oversight of the BA and the D of A as well as public scrutiny through a set of key performance indicators, RTHK, as a Government department using public money, would also be subject to the established annual budgeting control mechanism, stringent internal procedures and standards for making editorial and programming decisions.

12. Mr WONG Yuk-man criticized the Government's broadcasting policy as ultra ineffective and backward, void of any improvement in the past 25 years. He observed that although the existing Framework Agreement between the Commerce and Economic Development Bureau and RTHK would be elevated to a Charter to be signed between CS and the D of B, and its Board elevated to a high-level advisory body to be appointed by the CE, RTHK was still torn between its conflicting role of a Government department and a public service broadcaster. He said that the public wanted an independent public service broadcaster which was transparent in its operation and accountable to the public, not a Government department cum public service broadcaster.

13. Ms Cyd HO opined that a public broadcaster should be independent and free from any political and financial pressure as well as government influences. Its governance structure should be underpinned by legislation to uphold organizational and editorial independence, and to ensure transparency and accountability to the public. She objected that RTHK should remain a Government department relying upon Government funding. She questioned the Government's motive in setting up the Advisory Board and feared that the Advisory Board would be used to exert political and financial pressure on RTHK thereby undermining its editorial independence. She further pointed out that as the proposed Charter was only a formal document not legislated under the law, there was no statutory provision for judicial review to seek redress in the event its editorial independence was threatened.

14. Ms Cyd HO observed that editorial independence was not amongst the proposed public purposes for PSB nor adopted as a performance indicator as basis for evaluation. In this regard, Dr Margaret NG expressed grave concern that the proposed PSB public purposes which RTHK was tasked to achieve and upon which its performance would be evaluated would undermine RTHK's editorial independence and freedom of press. She questioned why RTHK was not made directly accountable to the public, and disputed the need for the Advisory Board to

advise RTHK on editorial policy and programme standards.

15. In response, SCED said that the proposed four public purposes for PSB were in line with the recommendations of the Review Committee, and it was common for overseas public service broadcasters to have clearly defined missions or public purposes which were often used to evaluate their performance and the adequacy of services provided to the community. She reiterated that the Advisory Board would provide a standing platform to systematically gauge public views and expectations on programme standards and quality.

16. Mr CHAN Kam-lam enquired whether RTHK's existing programme advisory panel would be replaced by the proposed Advisory Board. He also enquired about the use of the airtime dedicated by the two free TV broadcasters for the broadcast of RTHK programmes after RTHK had set up its own TV channels. In response, SCED said that the current advisory panel could exist in parallel with the Advisory Board, and members of the advisory panel would be considered for appointment to the Advisory Board. A decision had yet to be made on the future allocation of TV airtime taken up by the broadcast of RTHK programmes and discussions would be held with the BA in this regard.

Community participation in broadcasting

17. Mr LEE Wing-tat and Mr Paul TSE said that Hong Kong, despite its claim of being an open and culturally diversified society, was lagging behind many advanced and developing economies in respect of community participation in broadcasting. They opined that the Administration should respond to the community's repeated and strong calls for opening up airwaves for community and public access broadcasting and provide more platforms for participation by the community, ethnic minority groups, religious bodies and non-governmental organizations. Referring to the arrangement for community groups to broadcast and to express their views in their programmes on RTHK's channel with RTHK's programme hosts moderating the productions, Mr LEE Wing-tat criticized that such arrangement would give RTHK the means to censor the content of the programmes, thus compromising the freedom of speech. He queried why community groups were not granted the requisite licence to operate their own channels direct as digitization would free up spectrum resources that could be deployed for community broadcasting.

18. In reply, SCED said that in addition to the 4 AM channels and 3 FM channels that RTHK was currently providing, new DAB services would be provided through the use of a Band III multiplex. One digital terrestrial television multiplex in the UHF Band capable of providing both high-definition and standard-definition TV services would also be provided. She highlighted that the Administration recognized strong calls from some sectors of the community for more community participation in broadcasting. In line with the Government's general mission to foster freedom of expression and encourage a plurality of voices in the community, RTHK would be tasked to devote part of its airtime and resources within the development of its digital services to provide a platform for

community participation in broadcasting. Apart from dedicating more airtime for public affairs programmes to provide a platform for individuals and community groups to express and exchange their views, with RTHK's programme hosts moderating the productions, community groups could also produce their own programmes on specific themes or topics for broadcast on RTHK's channels, with different levels of support to be provided by RTHK. A Community Broadcasting Involvement Fund would be set up under RTHK to promote and facilitate local original content production and provide financial support for community groups to participate in broadcasting and programme content production.

19. SCED assured members that RTHK would not curtail freedom of speech and expression. While due respect would be accorded to the content of the original programmes produced by community groups, subject to the RTHK's Producers' Guidelines, RTHK would have to uphold the principles of impartiality and objectivity to ensure fair exchange of views in its public affairs programmes, and to fulfill its social responsibility to ensure that the programme content and quality complied with all relevant regulatory requirements and codes of practice on programme standards issued by the BA.

Way forward

20. Members agreed to hold a further meeting in November 2009 to receive views from deputations and members of the public on the subject.

(Post-meeting note: A special meeting had been scheduled for Thursday, 19 November 2009 from 9:00 am to 12:45 pm in the Chamber of the Legislative Council Building to receive views from deputations and interested parties on the subject. Members were informed of the meeting arrangements vide LC Paper No. CB(1)86/09-10 issued on 21 October 2009.)

II. Telecommunications (Amendment) Bill 2009

(File Ref: CTB(CR)9/19/15 (09) Pt. 3 -- Legislative Council Brief on Telecommunications (Amendment) Bill 2009

LC Paper No. CB(1)2663/08-09(02) -- Administration's paper on Telecommunications (Amendment) Bill 2009

LC Paper No. CB(1)2663/08-09(03) -- Paper on the regulatory regime for sound broadcasting services prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

21. At the invitation of the Chairman, SCED briefed members on the promulgation of the licensing criteria for the grant of sound broadcasting licences and the proposed legislative amendments to prescribe these criteria under the Telecommunications Ordinance (the Ordinance) (Cap.106) through the introduction of the Telecommunications (Amendment) Bill 2009 (the Bill). SCED said that the proposed criteria were not new and were merely a replication of the administrative guidelines that had hitherto been used by the BA and CE-in-Council in precedent cases and were in line with international best practices. The Bill was gazetted on 17 July 2009 and would be introduced into LegCo during the 2009-2010 legislative session after the summer recess. Details of the legislative amendments were set out in the Legislative Council Brief (File Ref: CTB(CR)9/19/15(09) Pt. 3) and the Administration Paper (LC Paper No. CB(1)2663/08-09(02)).

Discussion

Consultation on the proposed legislative amendments

22. Ms Emily LAU expressed regret that the Panel had not been consulted on the legislative proposal before gazettal of the Bill. In response, SCED and PSCED(CT) said that the Administration had no intention to bypass the Panel. The objective of the Bill was to provide for legal certainty and to enhance transparency of the existing sound broadcasting licensing regime by prescribing under the law the set of licensing criteria for the grant of licences, and to enable the BA to issue guidelines indicating how it proposed to perform its function of making recommendations to the CE-in-Council on sound broadcasting licence applications. SCED said that the legislative proposal was in line with public expectation that the licensing regime should be transparent and also in line with Members' views expressed in past LegCo discussions that called for clear licensing criteria to be included under the law. LegCo Members might consider setting up a Bills Committee to study the Bill in detail. Mr LEE Wing-tat considered that a Bills Committee should be formed to scrutinize the Bill.

Community broadcasting

23. Mr LEE Wing-tat said that despite its claim to be a pluralistic and culturally vibrant society, Hong Kong lagged behind many other advanced jurisdictions and developing economies in the opening up of airwaves for community and public access broadcasting. He opined that the Government should be more open-minded to community participation in broadcasting, providing more platforms and channels for different community organizations, social groups, religious bodies, minority groups and non-governmental organizations to express diverse views. Mr Paul TSE shared Mr LEE's view and opined that different sectors of the community should be given more opportunities to participate in community broadcasting to allow a plurality of voices so that the public could have more programming choices. Noting that Hong Kong had fewer

radio channels than other jurisdictions, Mr WONG Yuk-man criticized the Administration for not responding to the public's clear and strong demand for increased community participation in broadcasting.

24. In response, PSCED(CT) said that the Administration was keenly aware of calls on the Government to open up the airwaves to allow for more community participation in public access broadcasting. He highlighted that the existing wave bands were presently congested and there was no spare capacity to expand radio broadcasting services until after digitization whereby each band III multiplex would support up to seven channels, depending on the technologies used. As such, the Administration was currently looking into the process of digitization and the deployment of the additional spectrum to be released. He pointed out that standalone community or public access broadcasting services required substantial resources in terms of capital and recurrent expenditure as well as human resources and technical expertise which might pose difficulties to smaller community groups. As such, the Community Broadcasting Involvement Fund was proposed to be set up to provide financial support and technical assistance to facilitate community groups to participate in broadcasting and content productions. RTHK would also dedicate part of its airtime and resources to provide platform for community participation in broadcasting.

25. Mr WONG Yuk-man referred to the prosecution of certain LegCo Members under section 23 of the Ordinance. He queried why the Administration did not take legal actions against some news media's illegal interception of the Police and ambulance radio broadcasts as a source of news, a practice that was a known secret. PSCED(CT) replied that these were matters to be dealt with by the Police under the relevant legislation.

Proposed licensing criteria

26. Ms Emily LAU and Mr Paul TSE expressed grave concern that the proposed licensing criteria on financial soundness and commitment to investment for the grant of sound broadcasting licences would preclude set-ups that had less financial means from being granted a licence to operate community radio service. They were of the view that as digitization would free up additional frequency spectrum, the financial threshold should be lowered so that not only resourceful conglomerates, but also smaller community groups that were less financially capable could also have the opportunity to operate their own channels and participate in community broadcasting. Ms Emily LAU remarked that the licensing criteria focusing on financial consideration was outdated and was against the world trend whereby community channels in a number of overseas economies had received government subsidy.

27. Ms Cyd HO queried the need for prescribing criteria for the grant of sound broadcasting licences under the law, in particular the criteria regarding variety, quantity and quality of programmes to be provided as well as the benefits to the local broadcasting industry, the audience and the community as a whole. Pointing out that these criteria could be subject to different interpretation, she expressed

grave concern that the criteria, if also made applicable to newspaper and magazine publications, would have a negative impact on freedom of press and greatly impede the free flow of information. Given that programme quality and content were already subject to the regulation of the Control of Obscene and Indecent Articles Ordinance (COIAO) and other relevant legislation, Ms HO was of the view that these criteria should be scrapped. While she appreciated the present constraints on the availability of frequency spectrum, she opined that the Administration should lift the restrictions on the grant of licence to enable public access to airwaves as digitization would release additional frequency spectrum. In this connection, she enquired about the number of licence applications under processing.

28. In response, PSCED(CT) advised that presently there was one licence application being processed. He said that the availability of suitable frequency spectrum was an overriding factor or requisite condition before a sound broadcasting licence application could be considered. Although advanced technology and digitization would release more frequency spectrum and bring about more broadcasting and other communications opportunities, frequency spectrum was still a scarce public resource and was limited. As such, a licensing framework was necessary to ensure the effective use of spectrum.

29. As regards the proposed licensing criteria, PSCED(CT) said that the criteria were objective and were based on established cases and international best practices. In line with the expectation of the public and Members that the criteria used to determine licence applications should be transparent, clear and certain, the Administration proposed to prescribe the set of criteria under the law to enable the public and licence applicants to be fully aware of the factors and requirements against which a licence application would be considered. He highlighted that the criteria on financial soundness did not specify the level of financial resources required other than stating that the applicant must demonstrate a commitment to invest sufficiently in the proposed project and possess sufficient financial capacity to invest to the level proposed. The reference to programme quality and content was to ensure that licence applicants were aware of the programme requirements and standards set out in the BA guidelines. He clarified that the criteria on programme quality and content were only applicable to broadcast licence for a channel under the regulatory framework of the Broadcasting Ordinance (Cap. 562). The requirement was not applicable to individual programmes and neither was COIAO relevant.

30. Mr Paul TSE referred to the licensing criteria on fit and proper persons and enquired whether persons with criminal record such as contempt of court or libel would be considered as not fit and proper. In reply, PSCED(CT) said that it was considered reasonable to require the applicants to demonstrate to the satisfaction of the BA and the CE-in-Council that they were fit and proper. The BA, having considered the application in the overall context, would make a recommendation to the CE-in-Council pursuant to section 13C of the Ordinance.

Summing up

31. The Chairman concluded that the Panel supported in principle the legislative proposal and the introduction of the Bill to LegCo on 21 October 2009.

III. Any other business

32. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1
Legislative Council Secretariat
30 October 2009