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Panel on Information Technology and Broadcasting

Special meeting on 5 October 2009

Background brief on the regulatory regime for sound broadcasting services

Purpose

This paper describes the regulatory regime for sound broadcasting services and gives a summary of concerns raised by Members in previous discussions.

The regulatory regime for sound broadcasting services

2. The licensing regime for sound broadcasting services is set out in Part IIIA of the Telecommunications Ordinance (TO) (Cap. 106). Section 13B of the TO stipulates that an eligible corporation may apply to the Broadcasting Authority (BA), in such form as the BA may determine, for a licence to establish and maintain a sound broadcasting service. Section 13C(1) requires the BA to consider applications made under section 13B and to make recommendations thereon to the Chief Executive (CE)-in-Council. Section 13C(2) provides that having considered BA's recommendations in respect of an application for the licence, the CE-in-Council may grant a licence to the applicant subject to the terms and conditions he may specify. The Government issues Legislative Council Briefs and press release to announce the decisions of CE-in-Council on applications for licences for sound broadcasting services.

3. Under section 8(1)(a) of the TO, no person in Hong Kong shall establish or maintain any means of telecommunications (which includes radio apparatus) except under licence. In order to prevent interference caused by improper use of radio apparatus, the licence would specify the conditions of use as well as the emission characteristics that the radio apparatus must comply with. The emission characteristics normally include operating frequencies, bandwidth, the type and orientation of the antenna and transmission power. Any person who contravenes section 8(1) shall be liable to a fine of up to \$100,000 and to imprisonment for up to five years on conviction on indictment.

4. Section 23 of the TO provides that any person who knowing or having reason to believe that a means of telecommunications is being maintained in contravention of the TO, transmits or receives any message by such means of telecommunications or performs any service incidental to the transmission or reception of any such message or delivers any message for transmission by such means of telecommunications or takes delivery of any message sent thereby shall be guilty of an offence. Such person is liable to a fine of up to \$50,000 on summary conviction.

5. The Office of the Telecommunications Authority (OFTA) is responsible for the enforcement of the provisions of sections 8(1)(a) and 23 of the TO. OFTA will investigate and collect evidence related to the relevant illegal activities, including the suspected use of unlicensed radio apparatus for sound broadcasting. If OFTA considers that the evidence obtained justifies further consideration, OFTA will consult the Department of Justice on the viability of initiating prosecution.

Previous discussions

Review of the Telecommunications Ordinance

6. Following the incident on unlicensed broadcast by Citizens' Radio leading to the prosecution of a number of persons for breaching the provisions in the TO, some Panel members expressed concern that the Administration seemed to have enforced the relevant provisions selectively. At the meeting held on 19 February 2008, the Administration briefed the Panel on Information Technology and Broadcasting (the Panel) on the prevailing policies relating to the regulation of radio broadcasting and the use of radiocommunications apparatus for the purpose of radio broadcasting.

7. Panel members expressed concern that the review of the TO was deferred pending the outcome of the court's ruling arising from the incident. They pointed out that the criteria and requirements for licensing were not clearly prescribed in the TO and that there was no provision for appeal against the decision of the CE-in-Council who had unchecked power to approve or reject applications for a TV or sound broadcasting licence. Panel members considered that the outdated TO and the licensing regime were no longer effective in regulating the telecommunications industry and should be revamped in line with public expectation of the prompt opening up of airwaves for use by the community. Some Panel members also considered that the current licensing regime which focused mainly on financial consideration was against the world trend whereby community channels in a number of overseas economies had received government subsidy. The Panel therefore called for an early review of the TO to enhance the fairness and transparency of the licence processing procedures regardless of the outcome of the court's ruling. At the Panel's request, the Research and Library Services Division of the LegCo Secretariat also conducted a research on the regulation of radio broadcasting services in Canada, the United Kingdom, Australia and the United States. The research report (RP07/07-08) was presented to the Panel meeting on 10 June 2008 to facilitate members' future deliberations of the regulatory framework in Hong Kong.

8. According to the Administration, new administrative arrangements had been introduced to enhance transparency and to ensure fairness following Citizens' Radio's application for a sound broadcasting licence to operate community radio service in 2006. Under the arrangements, an element of public engagement was included in the handling of new applications for sound broadcasting licences with reference to the TV licensing regime. Details of the applications would be released and information would be provided to enable the public or interested parties to submit their views to the BA. The BA's views would also be presented to the applicant for response, so that the applicant could make representations in respect of the BA's analysis and recommendations. The applicant's representations together with the BA's analysis and recommendations would then be submitted to the CE-in-Council for a final decision. The processing of Citizens' Radio's application had followed the due process in which a decision was made by the CE-in-Council having regard to the views and recommendations made on the application from the BA and the representations submitted by Citizens' Radio in response to the BA's recommendations.

Establishment of a unified regulatory body

9. The Panel has all along considered that there is a need to review the TO to keep it in line with public expectation on spectrum utilization for broadcasting services. At the Panel meeting held on 12 January 2009, members expressed disappointment at the lack of progress in the proposed merging of the Telecommunications Authority and the BA into a unified regulatory body as well as the related review of the TO and Broadcasting Ordinance (BO) (Cap. 562), following the issue of consultation paper in early 2006. The Administration advised that work was underway to work out the specific details of the legislative exercise of setting up the unified regulator to oversee both the telecommunications and broadcasting sectors in the light of challenges brought about by technological convergence.

Spectrum availability and allocation

10. In December 2008, the Administration briefed the Panel on the assignment of the available radio spectrum in the 1800 MHz Band for public mobile service to the incumbent mobile network operators to allow for service expansion. The Administration also briefed the Panel in January 2009 on the implementation framework for development of mobile TV services, the proposed auction arrangements, the related legislative amendments for the auction of the relevant radio spectrum and the multiplexes in Band III (174 – 230 MHz) and the UHF Band (470 – 806 MHz), and also the levying of the spectrum utilization fee through auction. To enable the release of relevant radio spectrum and multiplexes in Band III and the UHF Band by auction, three pieces of subsidiary legislation under the TO were gazetted on 6 February 2009 and tabled for negative vetting at the Legislative Council meeting on 11 February 2009. A subcommittee was subsequently formed under the House Committee to study the relevant Regulations which came into operation on 3 April 2009.

11. In examining the three pieces of subsidiary legislation under the TO, the subcommittee noted that the Government had proposed to release one out of the two available frequency multiplexes in UHF Band and two out of the four available frequency multiplexes in Band III for the introduction of broadcast-type mobile TV services, which would enable the provision of a maximum of some 26 mobile TV programme channels. The remaining frequency multiplexes (one in the UHF Band and two in Band III) would be reserved for future digital terrestrial television, public service broadcasting (PSB) and digital audio broadcasting services or other possible electronic communications services when technology further evolved. The subcommittee also noted that some industry players had indicated interest in providing digital audio broadcasting services, and that two Band III multiplexes had been reserved to cater for the development of digital audio broadcasting as new technology would enable each band III multiplex to support more than seven channels. The Administration had undertaken to discuss with the sound broadcasting industry on the future development of digital audio broadcasting.

Opening up of the airwaves for public access channels

12. The Panel is aware of calls on the Government to open up radio and TV channels for the use of the community or certain social groups as their broadcasting platforms. During the public hearings conducted on the development of PSB in Hong Kong, the Panel noted that some concern groups and academics supported the development of public access channels in Hong Kong. In its report on the development of PSB in Hong Kong published in October 2006, the Panel stated that the Government should examine the demand for opening up public channels to allow public participation.

13. At the meeting held on 13 July 2009, the Panel expressed grave concern about the deferral in releasing the consultation paper on PSB and the future of the Radio Television Hong Kong (RTHK) and also the opening up of radio/TV channels for use of the community, as the consultation had dragged on for a long time. Panel members urged the Administration to make the best effort to finalize the consultation paper, and to widely consult the public and RTHK as soon as possible.

Latest Position

14. In order to enhance the transparency of the existing licensing regime, the Administration issued a LegCo Brief (File Ref: CTB(CR)9/19/15(09) Pt. 3) in July 2009 promulgating a set of licensing criteria adopted by the CE-in-Council for the grant of sound broadcasting licences. The Administration seeks to prescribe this set of licensing criteria by law, and to empower the BA to issue guidelines indicating how it proposes to perform its function of making recommendations on sound broadcasting licence applications to the CE-in-Council through the Telecommunications (Amendment) Bill 2009.

15. On 22 September 2009, the Administration issued a LegCo Brief (File Ref: CTB(CR) 9/17/9) announcing that the Government had decided on the way forward in respect of PSB and the future of RTHK.

16. The Administration will brief the Panel on details of the Telecommunications (Amendment) Bill 2009, PSB and the future of RTHK at the Panel meeting on 5 October 2009.

Relevant papers

Report on the Study of Public Service Broadcasting for Hong Kong issued by the Information Technology and Broadcasting Panel (October 2006)

<http://www.legco.gov.hk/yr05-06/english/panels/itb/papers/itb-rpt061009-e.pdf>

Report on Review of Public Service Broadcasting in Hong Kong issued by the Committee on Review of Public Service Broadcasting (March 2007)

<http://www.legco.gov.hk/yr06-07/english/panels/itb/papers/itbcb1-1258-e.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 17 May 2007

<http://www.legco.gov.hk/yr06-07/english/panels/itb/papers/itb0517cb1-1584-1-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 17 May 2007

<http://www.legco.gov.hk/yr06-07/english/panels/itb/minutes/itb070517.pdf>

Submissions provided by the deputations for the Information Technology and Broadcasting Panel meeting on 29 June 2007 (Please refer to the agenda)

<http://www.legco.gov.hk/yr06-07/english/panels/itb/agenda/itag0629.htm>

Minutes of Information Technology and Broadcasting Panel meeting on 29 June 2007

<http://www.legco.gov.hk/yr06-07/english/panels/itb/minutes/itb070629.pdf>

Question No. 2 at the Council meeting on 12 December 2007 on "Telecommunications Ordinance"

<http://www.legco.gov.hk/yr07-08/english/counmtg/hansard/cm1212-translate-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 29 January 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb080129.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0219cb1-805-1-e.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 19 February 2008 (speaking note of Director General of Telecommunications on regulation of radio broadcasting)

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0219cb1-865-2-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb080219.pdf>

Research report prepared by the Research and Library Services Division of the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 10 June 2008

<http://www.legco.gov.hk/yr07-08/english/sec/library/0708rp07-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 10 June 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb080610.pdf>

Legislative Council Brief on framework for development of mobile television services issued by the Commerce and Economic Development Bureau for the Information Technology and Broadcasting Panel meeting on 12 January 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb0112-ctbcr9191408pt4-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 12 January 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/minutes/itb20090112.pdf>

Report of the Subcommittee on Subsidiary Legislation to Enable the Release of Spectrum for Expansion of the Second Generation Mobile Service and Mobile TV Services for the House Committee meeting on 20 March 2009

<http://www.legco.gov.hk/yr08-09/english/hc/papers/hc0320cb1-1067-e.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 13 July 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb0713cb1-2180-3-e.pdf>

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