

立法會
Legislative Council

LC Paper No. CB(1)556/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

Minutes of the third meeting
held on Thursday, 4 November 2010, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Samson TAM Wai-ho, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon WONG Yuk-man
- Public officers attending** : Agenda Item II
Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mr SUEN Wai-chung
Senior Assistant Law Draftsman (Professional
Development)
Department of Justice

Mr PO Pui-leong
Assistant Commissioner for Television and
Entertainment Licensing (Broadcasting)

Mr Chaucer LEUNG
Head, Regulatory 1 and Head of Special Duty
Office of the Telecommunications Authority

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)301/10-11 - Minutes of meeting held on
- 7 October 2010)

The minutes of the meeting held on 7 October 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)2923/09-10(07) -- List of follow-up actions arising from the discussion at the meeting on 22 July 2010

LC Paper No. CB(1)2923/09-10(08) -- Administration's response to issues raised at the meeting on 22 July 2010

LC Paper No. CB(1)303/10-11(01) -- Administration's response to views submitted by organizations on the Communications Authority Bill

Clause-by-clause examination of the Bill

LC Paper No. CB(3)815/09-10 -- The Bill

LC Paper No. CB(1)333/10-11(01) -- Marked-up copies of the relevant Ordinances and Regulations

File Ref: CTB(CR)9/19/13 (10) -- Legislative Council Brief on Communications Authority Bill issued by the Commerce and Economic Development Bureau)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Admin 3. The Administration was requested to provide:

- (a) information in table form on the composition, membership (including whether the members were full-time or part-time; and the level of fees and salaries for these members), functions and missions of unified regulators for telecommunications and broadcasting sectors in overseas jurisdictions (such as the United States (the US), Canada, the United Kingdom (UK) and Australia) and the proposed Communications Authority (CA);

- (b) a summary table of the provisions of the relevant legislation regulating conflict of interests and governing the disclosure of interests for members of unified regulators in overseas jurisdictions (such as the US, Canada, the UK and Australia);
- (c) information on the workload (such as the number of open/closed meetings, the duration of each meeting, the number of issues handled) of the Telecommunications Authority (TA) and the Broadcasting Authority (BA), and how the proposed membership of the CA could perform the complex and heavy duties efficiently and effectively after the merger; and
- (d) a list of agenda items (indicating whether the items were confidential or open) for meetings of the BA in the past four years, and the relevant press releases announcing BA's deliberations after the meetings.

Admin 4. The Administration was also requested to:

- (a) confirm whether the appointment of members to the future CA would be in compliance with the six-year and six-board Rules and the principle of gender mainstreaming;
- (b) consider if amendments to the Bill should be made to include the public mission of the CA;
- (c) consider amending Clause 3 of the Bill to spell out clearly that the CA was an independent statutory body other than the provisions stipulated in Clause 3(3);
- (d) consider members' request to propose amendments to the Bill requiring the chairperson-designate of the CA to go through a non-binding pre-appointment hearing at the Legislative Council (LegCo), similar to the relevant practice of the UK;
- (e) consider amending Clause 8(1)(c) of the Bill to spell out clearly that the Director-General of Communications (DG Com) was a public officer;
- (f) consider whether nomination from the trade and different sectors of the community should be accepted so as to enhance the transparency of the appointment mechanism of the CA; and

- (g) re-consider the suggestion of establishing a non-civil service organization as the executive arm of the CA in future, by making reference to the relevant practices in overseas jurisdictions (such as the US, Canada, the UK and Australia).

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)572/10-11(02) on 25 November 2010.)

ALA 5. The Assistant Legal Adviser was requested to provide in table form information and examples of statutory provisions in current legislation:

- (a) stipulating the mission and/or functions of statutory bodies;
- (b) governing the opening up of meetings to the public; and
- (c) requiring such statutory bodies to consist of members nominated by the trade and different sectors of the community.

(Post-meeting note: The information provided by the ALA was issued to members vide LC Paper No. LS6/10-11 on 18 November 2010.)

III. Any other business

6. The Chairman reminded members that the fourth meeting would be held on 25 November 2010 at 2:30 pm in Conference Room A of the Legislative Council Building.

(Post-meeting note: With the concurrence of the Chairman, the meeting originally scheduled for 25 November 2010 was rescheduled to 10:45 am on 26 November 2010 to avoid a clash with the anticipated continuation of Council meeting on 24 November 2010.)

7. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the third meeting of
Bills Committee on Communications Authority Bill
on Thursday, 4 November 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000203	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 7 October 2010 (LC Paper No. CB(1)301/10-11)	
000204 – 000704	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 22 July 2010 (LC Paper No. CB(1)2923/09-10(08)).	
000705 – 002624	Chairman Ms Emily LAU Mr LEE Wing-tat Mr Paul TSE Mr Ronny TONG Dr Margaret NG Administration	<p><u>Discussion on the appointment mechanism for CA members</u></p> <p>Ms Emily LAU and Mr LEE Wing-tat noted that while there was no parliamentary involvement in the appointment process of the Australian Communications and Media Authority (ACMA) and the Canadian Radio-Television and Telecommunications Commission (CRTC), the Chairman-elect of the Office of Communications (Ofcom) of the United Kingdom (UK) had to go through a non-binding pre-appointment hearing at the House of Commons. They also noted that the Commissioners of the Federal Communications Commission (FCC) of the United States (US) were appointed by the US President with the confirmation of the Senate. To enhance transparency and public accountability, they urged that the appointments to the Communications Authority (CA) be endorsed by LegCo and requested the Administration to consider amending the Bill requiring the Chairman-designate of the CA to go through a pre-appointment hearing at the LegCo, similar to the relevant practice of the UK. Mr Paul TSE and Mr Ronny TONG shared a similar view.</p> <p>The Administration replied that reference had been made to the appointment mechanism of similar regulatory bodies in overseas jurisdictions having regard to Hong Kong's situation. The proposed appointment mechanism for the CA and the relevant provisions in the Bill were in line with prevailing practices applicable to most of the advisory and statutory bodies in Hong Kong which had been well-established and functioning smoothly. On public accountability, it was anticipated that the CA, when established, would continue the prevailing practice of the TA and the BA in attending the meetings of the LegCo Panel on Information Technology and Broadcasting and to</p>	The Administration to follow up as stated in paragraph 4(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>brief the LegCo on various aspects of its work, as well as submitting its annual report to the LegCo (which was required under clause 6(2) of the Bill).</p> <p><u>Discussion on the composition and membership of the proposed CA compared to similar unified regulatory bodies in overseas jurisdictions</u></p> <p>Ms Emily LAU and the Chairman noted that the CRTC currently had 12 full-time members and no part-time members. They asked whether the Administration would consider appointing full-time members to the CA in view of the important and heavy duties of the CA as suggested by some deputations.</p> <p>Dr Margaret NG enquired about the membership and the workload of the TA and the BA. She doubted whether the small membership of the future CA would be able to effectively and efficiently perform the complex and heavy duties of the TA and the BA after the merger.</p> <p>Mr LEE Wing-tat expressed disappointment that the BA had been slow in handling complaints received, such as the complaint against the Television Broadcast Limited alleging anti-competitive conduct. Citing the appointment of Associate Members to the ACMA for the purpose of conducting inquiry, investigation, hearing or any other matters relating to the performance of the ACMA's functions as an example, he urged that apart from the DG Com, one or more CA members should be full-time dedicated to handling complaints so as to enhance the efficiency of the CA.</p> <p>The Administration responded that:</p> <p>(a) to address public concern on the CA's small membership, the proposed number of non-official members of the CA had been increased from 5 to "no fewer than 5 and no more than 10" (including a non-official Chairperson). The CA would also include a public officer and the DG Com;</p> <p>(b) while the Chairman and members were non-executive, the DG Com, the head of the Office of the Communications Authority (OFCA) would be a full-time public officer ranked at Directorate 6 appointed to the CA as an ex-officio member by virtue of post. There was already flexibility in the Bill to accommodate the appointment of full-time members to the CA. It would depend on the actual circumstances for the Chief Executive to determine if</p>	<p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the Chairman and the members should be full-time or not;</p> <p>(c) complaints were processed by the BA in accordance with the established procedures and the relevant legislation. Time would be required for processing the complaints (gathering the necessary information from the parties concerned and for the parties to state their case), regardless of whether members were full-time or not; and</p> <p>(d) apart from CA members, Clause 16 of the Bill provided that the CA might appoint any committees it considered fit and appoint a person to be a member of a committee to advise and assist the CA to perform any of its function, such as the Complaints Committee and the Codes of Practice Committee currently under the BA.</p>	
002625 – 004457	Chairman Ms Emily LAU Mr Ronny TONG Administration	<p><u>Discussion on the provisions regulating conflict of interests and governing the disclosure of interests for members of the CA and unified regulators in overseas jurisdictions</u></p> <p>Ms Emily LAU raised concern about possible conflict of interests particularly when members from the trade were not full-time.</p> <p>The Administration was of the view that the proposed two-tier structure (the CA Board serviced by an executive civil service set-up) would help ensure good governance. Clause 13 of the Bill had provided for the declaration of interests for members of the CA. The official members (DG Com and a public officer) appointed to the Board would help ensure the impartiality of the CA and safeguard public interests.</p> <p>Mr Ronny TONG suggested amending Clause 8(1)(c) of the Bill to spell out clearly that the DG Com was a public officer.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 4(e) of the minutes.</p>
004458 – 005647	Chairman Administration	Briefing by the Administration on its response to views submitted by organizations on the CA Bill at the meeting held on 7 October 2010 (LC Paper No. CB(1)303/10-11(01)).	

Time marker	Speaker	Subject(s)	Action required
005648 – 010325	Chairman Ms Emily LAU Administration	<p><u>Discussion on the independence of the CA and the OFCA</u></p> <p>Ms Emily LAU referred to some deputations' suggestion that the executive arm of the CA should be an independent organization rather than a Government department staffed by civil servants. She urged the Administration to make reference to the relevant practices in overseas jurisdictions, and consider establishing a non-civil service organization as the executive arm of the CA. Other than the provisions stipulated in Clause 3(3), she called on the Administration to consider amending Clause 3 of the Bill to spell out clearly that the CA was an independent statutory body.</p> <p>The Administration was of the view that there was no overriding urgency or justification to set up a non-civil service organization at the outset. To establish the unified regulator and set up a non-civil service executive organization concurrently would distract the new regulator from its focus on the main policy, strategic and regulatory challenges. The Administration advised that with the exception of Ofcom which had an independent secretariat, ACMA, CRTC, and FCC were serviced by a civil service set-up. The Administration also advised that clause 3 of the Bill had clearly stated that the CA was not part of the Government.</p>	<p>The Administration to follow up as stated in paragraphs 4(g) and (c) of the minutes respectively.</p>
010326 – 011945	Chairman Mr LEE Wing-tat Ms Emily LAU Mr Paul TSE Administration Assistant Legal Advisor (ALA)	<p><u>Discussion on the mission and function of CA</u></p> <p>Mr LEE Wing-tat referred to some deputations' view that the CA should work to protect freedom of information and expression and promote competition in and development of the communications market. He urged the Administration to consider including such public mission in the Bill. Ms Emily LAU shared a similar view.</p> <p>ALA advised that the functions of the Equal Opportunities Commission were stipulated under section 62 of the Disability Discrimination Ordinance (Cap. 487). Section 4 of the Securities and Futures Ordinance (Cap. 571) had also provided for the regulatory objectives of the Securities and Futures Commission.</p> <p>The Administration responded that upholding freedom of speech and promoting competition, innovation and investment in the communications market were established Government policies. It was the CA's mission to achieve these objectives.</p> <p>Mr Paul TSE expressed reservation over the approach of</p>	<p>The Administration to follow up as stated in paragraphs 3(a) and 4(b) of the minutes.</p> <p>ALA to follow up as stated in paragraph 5(a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>specifying all the related and consequential amendments in the Schedule under Clause 26 of the Bill. Other than Clause 4(1) and (2) of the Bill conferring on the CA all functions conferred on the BA and the TA by or under the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), the Telecommunications Ordinance (TO) (Cap. 106), the Broadcasting Ordinance (BO) (Cap. 562), the Unsolicited Electronic Messages Ordinance (Cap. 593) or any other Ordinance as they were in force immediately before the commencement date and not inconsistent with the CA Ordinance, he urged the Administration to clearly specify what functions and power were transferred to the new CA. The Administration replied that the consequential amendments were primarily changes to the references to former authorities in various ordinances. The clarity of the TO, BO and other relevant ordinances, in which the powers of the CA would be clearly stipulated, would not be affected.</p> <p>Mr Paul TSE expressed concern about repealing the competition-related provisions currently under the TO and the BO under the Competition Bill.</p> <p>The Administration assured the member that having regard to the policy objective of having a single piece of competition law to effectively and consistently deal with anti-competitive conduct in all sectors of the Hong Kong economy, the relevant provisions under the future competition law would be applied to the broadcasting and telecommunications sectors to address the prevailing concerns on the inconsistencies between the BO and the TO on competition matters and ensure fair competition in the communications market.</p>	
011946 – 012559	Chairman Mr LEE Wing-tat Dr Samson TAM Administration	<p><u>Discussion on opening up CA meetings to the public</u></p> <p>Mr LEE Wing-tat urged that provisions requiring the CA to open up its meetings and post minutes of meetings on its website should be included in the Bill to increase transparency in the CA's operation and enhance its public accountability.</p> <p>Dr Samson TAM said that the trade was of the view that all meetings, except those involving commercially sensitive information, should be open to the public to enhance transparency.</p> <p>The Administration considered it inappropriate to mandate that CA had to open up its meeting to members of the public. Given the vast amount of commercially sensitive information it would handle, the future CA should have</p>	<p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p> <p>ALA to follow up as stated in paragraph 5(b) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>the flexibility to decide whether and when meetings would be open to the public. By virtue of Clause 10 of the Bill, the CA might make standing orders to regulate the procedures to be followed at its meetings, which might allow public participation therein or the posting of agendas and minutes of meetings on its website. It was anticipated that the CA would consider favourably the opening up of the meetings of some of its committees to the public as appropriate, as was the case of the BA. The future CA would account for its work no less than present, such as issuing public statements to explain its decisions, consulting the trade and public on various regulatory issues, and submitting annual reports to the LegCo.</p>	
<p>012600 – 014829</p>	<p>Chairman Ms Emily LAU Dr Samson TAM Administration</p>	<p><u>Appointment/nomination of CA members</u></p> <p>Ms Emily LAU urged the Administration to make a pledge that the appointment to the future CA would be in compliance with the six-year and six-board Rules and the principle of gender mainstreaming.</p> <p>Ms Emily LAU called on the Administration to consider allowing the trade and different sectors of the community to nominate members to the CA to enhance the transparency of the appointment mechanism of the CA.</p> <p>Dr Samson TAM said that the trade was of the view that the industry bodies should be allowed to make nominations to the CA. He called on the Administration to appoint academics and the younger generation of the industry to the CA.</p> <p>The Administration maintained that as the CA would be an industry regulator, nominations from the trade were likely to give rise to concerns over conflicts of interest.</p>	<p>The Administration to follow up as stated in paragraph 4(a) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 4(f) of the minutes.</p> <p>ALA to follow up as stated in paragraph 5(c) of the minutes.</p>
<p>014830 – 014849</p>	<p>Chairman Administration</p>	<p>Meeting arrangements</p>	