

Summary of the views of the Broadcasting Authority on the establishment of the Communications Authority (CA)

The Broadcasting Authority (BA) discussed the proposal to establish the CA on several occasions in 2006, 2009, 2010 and 2011. Set out below are highlights of the views expressed by Members of the BA.

The Establishment of the CA

2. Members of the BA generally recognized that, with the rapid convergence of the telecommunications and broadcasting sectors, there was a need to set up a unified regulatory authority to regulate the two sectors.

3. Some BA Members suggested that priority should also be given to identifying problematic areas or inconsistencies between the broadcasting and telecommunications regimes and addressing these. Some Members recognized that it would be a massive, complicated and protracted task to review the regulatory regime in telecommunications and broadcasting and accepted that it would be prudent to adopt a staged approach to establish the CA first and review the regulatory regime thereafter. Some Members suggested the setting up of a steering group as a precursor to the establishment of the CA and the Office of the Communications Authority (OFCA) to examine issues related to the merging of the BA and the Telecommunications Authority, and to expedite the establishment of the CA and the OFCA Trading Fund.

The Public Mission and Functions of the CA

4. On what the public mission of the CA should be, some Members of the BA stressed the need to focus on its regulatory role as well as the consideration of public interest. Some advised that the mission of CA should not be too narrow or too commercially oriented. There was a view that one of the duties of the CA should be the promotion of consumer interest. In general, BA Members considered that the public mission of the CA should be succinct and balanced and should serve to safeguard public interest.

5. On the subject of freedom of expression, the BA generally considered that upholding freedom of expression should not be unqualified and a balance should be struck between freedom of expression on the one hand and protection of children, social values, public morals and other public interests on the other.

6. As regards the functions of the CA, BA Members generally agreed that the CA should focus on regulatory issues. There was a view that CA could have a role in policy formulation.

Composition of the CA

7. When the proposal of establishing the CA was first presented to the BA, the Administration was then considering only having five non-official members and two official members on the CA. Some BA Members expressed concern that the small size of the CA would not enable the CA to cope with the heavy workload of regulating both the telecommunications and broadcasting sectors. However, Members agreed the CA should have a lean structure to enhance efficiency in decision-making and approval process.

8. The BA noted the Administration's current proposal to increase the maximum number of non-official members of the CA from five to ten and considered that this would allow flexibility for a greater number of members to be appointed to cope with the future workload of the CA.

9. There were discussions on whether the chairperson of the future CA should work on a full-time basis. Some Members of the BA accepted that there would be flexibility under the proposed legislation for the chairperson and members to be appointed on full-time basis if the workload justified.

The Status, Organizational Structure and Functions of the OFCA

10. The BA discussed on more than one occasion the proposed set-up for the executive arm of the CA, i.e. OFCA. Some Members of the BA considered that the executive arm of the CA should best be a non-civil service structure so that the CA could be acting and seen to be

so acting independently. It would be a lost opportunity if we could not have this independent status of the executive arm enshrined in the proposal CA Bill. Some Members accepted the proposed arrangement for OFCA to be served by officials in the Television and Entertainment Licensing Authority (TELA) and the Office of the Telecommunications Authority (OFTA) as this would minimize disruption to serving civil servants and avoid the establishment of the CA being unnecessarily held up by organizational issues. There was a view that the credibility of the CA should be built on the quality of its work and decisions, more so than on the structure of its secretariat. The BA also noted that the independent status of the CA would be protected by statute.

11. The BA requested and the Administration agreed not to rule out the idea of setting up an independent executive arm as a longer term proposition. The Administration would examine this in light of the future operational experience of the CA and OFCA.

The Operation of OFCA Trading Fund

12. The BA discussed the proposal to transfer non-CA-related functions from TELA to OFCA in respect of control of obscene and indecent articles, film classification and newspaper registration. The sections dealing with these functions would operate outside the context of the OFCA Trading Fund. Some Members of the BA asked if members of the public would be able to differentiate these functions from the role of the CA, and whether OFCA could adequately deal with these functions since supporting the CA would already entail a heavy workload. The Administration explained that other trading fund departments like the Electrical and Mechanical Services Department had similar experience and undertook to consider adopting appropriate nomenclature or titles to differentiate the trading fund sections from the non-trading fund sections of the OFCA.