

Bills Committee on Communications Authority Bill

**Issues requiring follow-up action/consideration by the Administration
(position as at 30 March 2010)**

Date of meeting	Issues	Outcome
22 July 2010	<p>The Administration was requested to provide information on:</p> <ul style="list-style-type: none"> (a) the appointment mechanism and practice in making nominations/appointments to unified regulators for telecommunications and broadcasting sectors in overseas jurisdictions, such as the United States, Canada, the United Kingdom and Australia; (b) the current membership of the Broadcasting Authority (BA) and to advise whether it was in compliance with the six-year and six-board Rules (the six-six Rules) and the principle of gender mainstreaming; and (c) the current consultative mechanism and committee structure under the BA and the Telecommunications Authority. 	<p>The information provided by the Administration was circulated to members vide LC Paper No. CB(1)2923/09-10(08) on 5 October 2010.</p>
4 November 2010	<p>The Administration was requested to:</p> <ul style="list-style-type: none"> (a) provide 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) provide a summary table of the provisions of the relevant legislation regulating conflict of interests and governing the disclosure of interests for members of unified 	<p>The information provided by the Administration was circulated to members vide LC Paper No. CB(1)572/10-11(02) on 25 November 2010.</p>

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	<p>regulators in overseas jurisdictions (such as the US, Canada, the UK and Australia);</p> <p>(c) provide 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 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;</p> <p>(d) provide 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;</p> <p>(e) 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;</p> <p>(f) consider if amendments to the Bill should be made to include the public mission of the CA;</p> <p>(g) 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);</p> <p>(h) 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, similar to the relevant practice of the UK;</p> <p>(i) consider amending Clause 8(1)(c) of the Bill to spell out clearly that the Director-General of Communications was a public officer;</p>	

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	<p>(j) 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</p> <p>(k) 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).</p>	
26 November 2010	<p>The Administration was requested to:</p> <p>(a) provide a list of agenda items (indicating whether the items were confidential or open) for meetings of the Broadcasting Authority (BA) in the past two years;</p> <p>(b) provide information on the broadcasting-related matters and issues which the BA had discussed and advised on in the past years;</p> <p>(c) provide detailed information on the workload of the BA including the estimated hours of work committed by its members in the conduct of the BA's business;</p> <p>(d) provide information on the current honorarium/remuneration received by members of the BA and other statutory bodies/advisory committees;</p> <p>(e) provide views and concerns raised by BA on the proposed establishment of the Communications Authority (CA), the draft CA Bill and related matters as well as the Administration's response;</p> <p>(f) provide information on the transitional arrangements in respect of legal and complaints handling;</p>	<p>The information provided by the Administration in respect of (a) to (h) was circulated to members vide LC Paper No. CB(1)670/10-11(02) on 7 December 2010.</p>

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	<p>(g) provide information on the transitional personnel arrangement for the transfer of staff of the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority to the Office of the Communications Authority (OFCA) for the provision of secretariat support (in terms of manpower, clerical, technical and legal support, etc) for the CA, and to advise whether LegCo's approval would be sought on the organization structure of the future OFCA and the creation of posts;</p> <p>(h) provide information on the enforcement of the relevant provisions under the future competition law in the broadcasting and telecommunications sectors to ensure fair competition in the communications market, and the relevant practice in the United Kingdom;</p> <p>(i) consider amending the relevant clauses of the Bill, with reference to relevant provisions in the legislation of overseas jurisdictions, to include the public mission and or the objects of the CA, in particular its mission of upholding the freedom of expression;</p> <p>(j) consider giving a greater role to CA in making policies for the electronic communications industry;</p> <p>(k) consider proposing amendments to the Bill to open the meetings (except when involving sensitive information) of the CA and its committees to the public; and</p>	<p>In respect of (i), the Administration's draft CSA is being awaited.</p> <p>In respect of (j), the Administration has not provided any response yet.</p> <p>In respect of (k), the Administration advised at the meeting on 7 December 2010 that the future CA should</p>

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	<p>(1) consider amending Clause 8 of the Bill to spell out clearly the criteria for appointing members (such as requisite professional knowledge and expertises) to the CA.</p>	<p>have the flexibility to decide whether and when meetings would be open to the public.</p> <p>In respect of (1), the Administration advised at the meeting on 7 December 2010 that it was considering members' request raised at previous discussions to spell out clearly the criteria for appointing members to CA.</p>
7 December 2010	<p>The Administration was requested to:</p> <p>(a) provide a detailed job description of the Director-General of Communications (DG Com) (including its rank, to whom it would be responsible, and its main duties and responsibilities, etc);</p> <p>(b) provide examples of statutory provisions relating to the appointment of a public officer holding a civil service post to a statutory/advisory body similar to the Communications Authority (CA);</p> <p>(c) provide examples of statutory provisions in relation to member participation in</p>	<p>In respect of (a) to (f), the information provided by the Administration was circulated to members vide LC Paper No. CB(1)1026/10-11(02) on 10 January 2011.</p>

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	<p>meeting of statutory/advisory bodies by telephone, video conferencing or other electronic means;</p> <p>(d) consider the suggestion for the Secretary for Commerce and Economic Development to address the Legislative Council (LegCo) when tabling the annual report of the CA;</p> <p>(e) consider defining "public officer" in Clause 2 of the Bill if the definition of the term under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) was not intended to apply to the Bill;</p> <p>(f) consider using the term "Director-General of Communications" in the provisions instead of defining it in Clause 2 of the Bill;</p> <p>(g) consider amending Clause 8(5) to the effect that the appointment of a member appointed under Clause 8(1)(a) would lapse immediately upon the member becoming a public officer, or adding a new paragraph under Clause 8(4) to provide for the Chief Executive to declare the office of the concerned member vacant if that member became a public officer;</p> <p>(h) consider amending Clause 9(2) so as to specify the reasons for which the Chief Executive might at any time revoke the appointment of the chairperson, the vice-chairperson and members of the CA; and</p>	<p>In respect of (g), the Administration advised that it was considering members' views and would work out a proposal to improve the Bill after discussion with the Law Draftsman.</p> <p>In respect of (h), the Administration advised that it would further consider members' views as to</p>

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	<p>(i) consider including specific rules in the Bill or for the CA to set specific rules/standing orders under Clause 10(5) governing member participation in CA meetings by telephone, video conferencing or other electronic means to safeguard against possible abuse and to ensure security.</p>	<p>whether the reasons for which the Chief Executive might revoke the appointment of the chairperson and the vice-chairperson should be stipulated in the Bill.</p> <p>In respect of (i), the Administration advised that it was considering members' views and would consider improvements in consultation with the Law Draftsman.</p>
11 January 2011	<p>1. The Administration was requested to:</p> <p>(a) set out the Government's policy intent in respect of the public mission of the proposed Communications Authority (CA) and to propose amendments to the Bill to address members' concern in this respect;</p> <p>(b) provide the organizational structure and the distribution of business of the proposed Office of the Communications Authority (OFCA) in relation to its various</p>	<p>In respect of (a), the Administration's draft CSA is being awaited.</p> <p>The information provided by the</p>

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	<p>functions;</p> <p>(c) advise how the Director-General of Communications and the different sections of OFCA would be funded under the OFCA Trading Fund and the new General Revenue Head; and</p> <p>(d) provide the organizational structure and the distribution of business of the Television and Entertainment Licensing Authority in relation to its existing functions and how those functions would be discharged (and by whom) in the future upon the establishment of CA and OFCA.</p> <p>2. The Broadcasting Authority (BA) was requested to provide detailed information on BA members' views on the Bill, the proposed merger of the Telecommunications Authority and BA, and related issues including but not limited to the following:</p> <p>(a) the establishment of the CA;</p> <p>(b) the staged approach in reviewing the regulatory regime for the telecommunications and broadcasting sectors;</p> <p>(c) the review of the Telecommunications Ordinance and the Broadcasting Ordinance to rationalize any inconsistencies between them;</p> <p>(d) the public mission and functions of the CA;</p> <p>(e) the composition and the size of the CA membership having regard to its scope of responsibility and workload, remuneration for CA members and whether full-time paid members should be appointed to the CA;</p>	<p>Administration in respect of (b) to (d) was circulated to members vide LC Paper No. CB(1)1158/10-11(02) on 26 January 2011.</p> <p>The BA's submission in respect of (a) to (g) was circulated to members vide LC Paper No. CB(1)1725/10-11(01) on 28 March 2011.</p>

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	<p>(f) the status, organizational structure and functions of the OFCA; and</p> <p>(g) the operation of the future OFCA Trading Fund.</p>	
27 January 2011	<p>The Administration was requested to:</p> <p>(a) provide information on mechanism for disclosure of members' interests in matters discussed at a meeting of the Broadcasting Authority (BA) or its committees (including guidelines and registration form(s), if any) and how "immediate family members" of a BA member were defined in the event that he had to declare the interests of such persons at the meeting;</p> <p>(b) provide information on the future funding for litigation costs, if any, to be incurred by the proposed Communications Authority (CA) and measures to be taken to ensure that the trading fund under CA would not be depleted by such costs;</p> <p>(c) consider amending Clause 11 of the Bill to the effect that, other than administrative matters, CA might not transact any business by the circulation of papers among its members;</p> <p>(d) consider spelling out clearly in Clause 16 of the Bill the statutory committees to be appointed by CA, their respective terms of reference and membership;</p> <p>(e) consider amending Clause 16 of the Bill to the effect that CA might not appoint any person, who was not its member, to be the chairperson of a committee appointed under Clause 16(1); and</p> <p>(f) consider amending Clause 17 of the Bill to spell out clearly all the powers/functions which CA must not delegate under Clause 17(3) rather than merely referring to the</p>	<p>The information provided by the Administration in respect of (a) and (b) was circulated to members vide LC Paper No. CB(1)1301/10-11(02) on 15 February 2011.</p> <p>In respect of (c) to (f), the Administration advised that it was considering members' views and would consider improvements to the said clauses in consultation with the Law Draftsman.</p>

Date of meeting	Issues	Outcome
	section numbers of relevant Ordinances.	
17 February 2011	<p>The Administration was requested to:</p> <ul style="list-style-type: none"> (a) advise whether the Government would be responsible for the future injection of funding into the Office of the Communications Authority (OFCA) Trading Fund in the event that it would be depleted by the litigation costs, if any, to be incurred by the future Communications Authority (CA); (b) advise on the enforceability of the provisions under Clause 21 of the Bill relating to the proposed offence to give or disclose confidential information obtained or received officially; and (c) advise how to ensure that the disclosure of information authorized by the CA or the OFCA in the form of a summary compiled under Clause 21(2)(g) of the Bill could prevent the particulars concerned from being ascertained from it, and the party to bear the legal liability if it could not. (d) consider deleting Clause 13(7) of the Bill to address members' concern about its counter-productive effect; (e) consider deleting the wordings "一經收取" from the Chinese version of Clause 19(1) of the Bill to avoid semantic inconsistency with "已繳付" in the main clause of the sentence; (f) consider deleting Clause 21(4)(a) of the Bill to avoid uncertainty and ensure enforceability of the provisions; and 	<p>The information provided by the Administration was circulated to members vide LC Paper No. CB(1)1491/10-11(02) on 7 March 2011.</p>

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	(g) consider deleting the brackets from the phrase "(但僅因非法披露才屬公眾可知的資料除外)" in the Chinese version of Clause 21(2)(a) of the Bill.	
8 March 2011	<p>The Administration was requested to consider:</p> <ul style="list-style-type: none"> (a) amending the conjunction at the end of Clause 21(2)(g)(i) of the Bill from "or" to "and" to enhance the clarity of Clause 21(2)(g); (b) reflecting in the Bill that Clause 13(7) would not prevent the Communications Authority (CA) and its committees from reviewing their own decisions or taking any necessary remedial actions in the event of the failure by a CA member to comply with the disclosure of interest requirements under Clause 13; (c) refining the Chinese version of Clause 19(1) of the Bill to avoid semantic inconsistency between the expressions "一經收取" and "已繳付"; (d) amending the conjunction at the end of Clause 21(5)(b) of the Bill from "and" to "or" to reflect the seemingly disjunctive relationship among subclauses (5)(a), (5)(b) and (5)(c); (e) explaining why Clause 21 did not provide a procedure similar to relevant provisions in section 36D of the Telecommunications Ordinance (TO) (Cap. 106) and section 27 of the Broadcasting Ordinance (Cap. 562) requiring the authorities concerned to seek representations from persons who might be affected by any proposed disclosure of confidential information under Clause 21(2); and (f) seeking the views of industry organizations on Clause 22 of the Bill to address members' concern about section 33 of the Telecommunications Ordinance (Cap. 	The Administration's response is being awaited.

Date of meeting	Issues	Outcome
	106) in respect of the execution of prescribed authorizations for telecommunications interception.	

Council Business Division 1
Legislative Council Secretariat
30 March 2011