



**CSL Limited's Submission to
the Legislative Council in relation to
the Communications Authority Bill**

27 September 2010

1 Introduction

1.1 CSL Limited (“**CSL**”) is pleased to provide comments to the Legislative Council regarding the Communications Authority Bill (**Bill**).

2 Member Composition

2.1 The Bill aims at enacting legislation to establish the Communications Authority (**CA**) as a single unified regulator to take over the existing functions of the Telecommunications Authority (**TA**) and the Broadcasting Authority (**BA**) in regulating the telecommunications and broadcasting sectors.

2.2 The Commerce and Economic Development Bureau (**CEDB**) proposes that members of the CA consist of five to ten non-official members (including a chairperson) and one public officer appointed by the Chief Executive, and the Director-General of Communications.

2.3 Regarding the composition of the proposed CA, CSL previously provided its comments to the Legislative Council in 2006 and would like to reiterate and further elaborate our comments in this submission.

Members of the CA

2.4 CSL notes that all members except for the Director-General of Communications are to be part-time. This is not an appropriate

structure for the CA since part-time members would not be sufficiently versed in the increasingly complex issues facing the telecommunications and broadcasting sectors and would not have sufficient time to discharge their duties, particularly in an era where the boundaries between telecommunications and broadcasting become blurred and convergence of these two markets is taking place.

2.5 The Bill does not stipulate the factors the Chief Executive will take into account in appointing the non-official members of the CA. As the CA will be vested with powers to make decisions which are currently conferred on the Telecommunications Authority and the Broadcasting Authority and has a far-reaching impact on the industry, it is vital to ensure that potential candidates must possess relevant knowledge and experience in the telecommunications and broadcasting sectors. Otherwise, they would not have the level of expertise required to deal with issues facing the industry. In addition, the composition of the CA must be strongly independent in order to ensure the impartiality and integrity of the CA.

Chairperson of the CA

2.6 As for the position of the chairperson, in summary, CSL believes that:

- a.) the chairperson must be a strong and effective leader who has extensive regional telecommunications and broadcasting experience and knowledge;
- b.) the chairperson is also the Director General of Communications of the executive department¹ (a full time employee of the CA);

¹ Analogous to a Chief Executive Officer

- c.) a part-time chairperson will not be sufficiently versed in the increasingly complex issues facing the industry; and
- d.) the creation of the position as part-time risks a titular appointment being made.

2.7 Following these recommendations would allow for a chairperson who is focused on the initiatives, problems and issues facing the industry and by virtue of fulfilling these criteria would have the confidence and respect of the industry.

2.8 In relation to the executive nature of the role of chairperson, this allows the chairperson to be involved fully in operational issues of the CA and to become conversant with its operational affairs. To make the public face of the CA "part time" and in any way removed from day to day affairs (and more importantly enforcement and regulatory action) is to risk that person being seen purely as a figurehead appointment who is nothing more than a spokesperson.

2.9 The model of having an executive chairperson has worked very successfully in other jurisdictions. In Australia, where the regulator has a very successful track record, the Chairman of the Australian Communications and Media Authority (**ACMA**)² is a much respected regulator. The ACMA Chairman is an executive but is also a very public figure who features prominently in Australian business life. It is also well known that the Chairman of the ACMA is very capable of putting into effect any public statement that he may make regarding regulatory activity.

² Currently Mr. Chris Chapman who commenced as the inaugural Chairman and CEO of the ACMA in February 2006.

- 2.10 A non-executive chairperson, not being involved (on a full time basis) in the complex operational affairs of the CA, could not hope to adequately represent the CA to the industry and the public, bearing in mind that all members of the CA appointed by the Chief Executive (except for the Director-General of Communications) are on a part-time basis. Such a deficiency, if exposed, would decrease the respect for the CA and hence its ability to perform its stated aims.
- 2.11 An executive chairperson is less likely to be a political appointment as it would be difficult for such an appointee to properly perform this demanding role if he or she is not properly qualified. By making the chairperson an executive it would effectively mandate the selection of a properly qualified candidate which of course would only serve to enhance the effectiveness of the CA.
- 2.12 Having a single person as the chairperson of the CA and the Director-General of Communications will provide for a stronger leadership base (if the correct person is appointed). It will also do away with the need for an added level of bureaucracy that would be necessary if the role was split. A split role, of course would make the CA more unruly, cumbersome and less able to react in a decisive and timely manner to industry challenges.

3 Trading Fund

- 3.1 CEDB proposes that the executive arm of the CA will be formed by merging the Office of the Telecommunications Authority (**OFTA**) and the Broadcasting Division of the Television and Entertainment Licensing Authority (**TELA**). The executive arm will be a government department named the Office of the Communications Authority (**OFCA**) which will operate as a trading fund.
- 3.2 For the 2008-09 financial year, it was reported that the total revenue of the OFTA Trading Fund was \$343.7 million, 83.6% or \$287.3³ of which was derived from licence fees paid by the telecommunications industry.
- 3.3 According to Annex B to the Legislative Council Brief on the Communications Authority Bill⁴, the operating income of the Broadcasting Division of the TELA was estimated to be \$38.2 million in 2009-10.
- 3.4 CSL believes that the establishment of the CA might be inherently unfair if one segment of the communications industry, namely, the telecommunications industry, subsidises another, namely the broadcasting industry, through the higher licence fees paid by the former group. This might be inequitable and needs to be properly addressed.

³ OFTA Trading Fund Report 2008-2009

⁴ File Ref: CTB(CR)9/19/13 (10)

3.5 CSL respectfully suggests that one of the CA's priorities is to overhaul its licensing regime to ensure that its revenue base is derived equitably from all sectors of the communications industry, not from only one industry segment.

4 Confidentiality

4.1 CSL does not regard any part of this submission as confidential and has no objection to it being published or disclosed to third parties,

-END-