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4 October 2010

Ms Yue Tin-po
Clerk to Bills Committee on the Communications Authority Bill
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Yue,

Communications Authority Bill (the Bill)

Thank you for your letter dated 4 August 2010. We hereby provide the information requested by the Bills Committee at its meeting on 22 July 2010.

The appointment mechanism and practice in making nominations/appointments to overseas unified regulators

In response to Members' request for exploring the overseas practices of appointing members to the unified regulators for telecommunications and broadcasting, we have studied the experience of

Australia, Canada, the UK and the US and hereby provide the requested information as set out in ensuing paragraphs.

Australia – the Australian Communications and Media Authority (ACMA)

The ACMA is a body corporate established in 2005 by merging the Australian Communications Authority and the Australian Broadcasting Authority. In line with the ACMA Act, the relevant legislation governing the regulatory body, the AMCA consists of a Chair, a Deputy Chair and 1 to 7 other Members. Associate Members may be appointed to the ACMA for the purpose of conducting inquiry, investigation, hearing or any other matter relating to the performance of the ACMA's functions. The ACMA currently has 5 Members and 1 Associate Member.

Members of the ACMA are appointed by the Governor-General by written instrument, based on the recommendations of the Minister for Broadband, Communications and the Digital Economy (the Minister). Associate Members are appointed by the Minister.

There is no parliamentary involvement in the appointment process.

Canada – the Canadian Radio-Television and Telecommunications Commission (CRTC)

The CRTC was established in 1976 by virtue of the CRTC Act. The CRTC consists of not more than 13 full-time members and not more than 6 part-time members, all of them appointed by the Governor-in-Council (GiC). The CRTC currently has 12 full-time members and no part-time members.

Appointment to the CRTC by the GiC is made on the advice of the Cabinet, drawing on the recommendations of the Minister of Canadian Heritage and Official Languages. There is no parliamentary involvement in the appointment process.

The UK – the Office of Communications (Ofcom)

The Ofcom was established in 2003 by merging five former regulators¹. Under the Office of the Communications Act 2002 and subsequent Orders, Ofcom shall comprise not more than 10 and not fewer than 3 members, including non-executive members (one of them would be the Chairman) and executive members. The Ofcom currently has 6 non-executive members and 2 executive members.

Non-executive members of Ofcom are appointed by the Secretary of State (i.e. jointly by the Secretary of State for Business, Innovation and Skills and Secretary of State for Culture, Media and Sport). Executive members are appointed by the Chairman and other non-executive members of Ofcom. The Chairman-elect has to go through a non-binding pre-appointment hearing at the House of Commons.

The United States – the Federal Communications Commission (FCC)

The FCC was established in 1934 by virtue of the Communications Act. The FCC has 5 full-time Commissioners. Only 3 Commissioners may be members of the same political party, and none of them can have a financial interest in any Commission-related business.

FCC Commissioners are appointed by the US President with the confirmation of the Senate.

Compliance of the Broadcasting Authority with the six-year and six-board rules (the six-six rules) and the principle of gender mainstreaming

The Broadcasting Authority (BA) currently has 9 non-official members, and 3 official members who are appointed by post². Tables

¹ These former regulators include the Broadcasting Standards Commission, the Independent Television Commission, the Office of Telecommunications, the Radiocommunications Agency and the Radio Authority.

² The three official members are the Permanent Secretary for Commerce and Economic Development (Communications and Technology), the Director-General of Telecommunications and the Deputy Secretary for Home Affairs.

setting out the situation of the compliance of the BA with the six-six rules and the principle of gender mainstreaming are set out below –

Years of continuous service by non-official members of the BA (as at September 2010)

Years of continuous service a BA non-official member is serving the BA	Number of non-official BA members
1 st year	1
2 nd year	3
3 rd year	0
4 th year	1
5 th year	0
6 th year	4
Beyond 6 th year	0

Number of Advisory and Statutory Boards served by non-official BA Members (as at September 2010)

Number of boards currently served (inclusive of the BA)	Number of non-official BA members
1	4
2	1
3	2
4	1
5	1
6	0
More than 6	0

Gender Distribution (as at September 2010)

Gender	Number of non-official BA members	Percentage of the total number of non-official BA members
Female	4	44%
Male	5	56%

The current consultative mechanism under the BA and the Telecommunications Authority (TA)

The TA and the BA have a number of committees and/or advisory bodies operating under them. These committees and bodies are appointed to offer advice on various regulatory issues, or perform functions in accordance with the law. A list of these committees and bodies is set out at **Annex A**. Among them, the Complaints Committee and the Codes of Practice Committee under the BA are appointed on a statutory basis whereas others are appointed administratively.

The Complaints Committee under the BA will be renamed as the “Broadcast Complaints Committee” under the CA Bill, and will continue to exist by virtue of the law. Meanwhile, in accordance with Clause 16 of the CA Bill, the CA may appoint committees as it thinks fit to offer advice to it or perform its functions.

Since the establishment of the CA will not bring about immediate or major changes to the regulatory regimes in respect of telecommunications and broadcasting, we expect that the functions of the bodies set out in **Annex A** will remain largely the same as they are with the establishment of the CA. It will be up to the CA to decide upon its establishment if these committees and bodies should be preserved (the Broadcast Complaints Committee will continue to exist by virtue of the law) and if other committees should be set up to offer assistance to its work.

Report of work on telecommunications and broadcasting to the Legislative Council (LegCo)

The TA and the BA are statutory bodies established to carry out regulatory functions concerning the telecommunications and broadcasting sectors respectively. The TA and the BA representatives attend the meetings of the LegCo Panel on Information Technology and Broadcasting from time to time to brief the LegCo on various aspects of their work. The attendance in respect of the 2009-2010 session is set out at **Annex B**. We expect that the CA, when established, will continue to adopt the practice.

Under Clause 6 of the CA Bill, the CA has to submit an annual report on its work to the LegCo.

Yours sincerely,



(Kevin LAI)

for Secretary for Commerce and Economic Development

cc

DoJ, Law Drafting Division

(Attn: Mr W C Suen and
Ms Carmen Chu)

DoJ, Commercial Unit

(Attn: Mr L Y Yung)

Director-General of Telecommunications

(Attn: Mr Chaucer Leung)

Commissioner for Television and
Entertainment Licensing

(Attn: Mr P L Po)

**Committees and/or Advisory Bodies
under the Telecommunications Authority (TA) and
Broadcasting Authority (BA)**

A) Bodies appointed on a statutory basis

Responsible regulator	Name of body	Terms of reference/brief description of functions
BA	Complaints Committee (of the BA)	The Complaints Committee is appointed by the BA under section 10(1) of the Broadcasting Authority Ordinance (Cap. 391) (BAO) and is responsible for considering complaints about broadcasts and making recommendations to the BA regarding such complaints.
BA	Codes of Practice Committee (of the BA)	The Codes of Practice Committee is appointed by the BA under section 12(1) of the BAO. It advises the BA on matters relating to the Codes of Practice on programme, advertising and technical standards of television and sound broadcasting by conducting regular review of the existing Codes, revising the Codes and drawing up new ones where appropriate.

B) Bodies appointed on an administrative basis

Responsible regulator	Name of body	Terms of reference/brief description of functions
TA	Regulatory Affairs Advisory Committee	To advise the TA on all economic and technical regulatory issues related to the development of telecommunications in Hong Kong, except for specific issues which are handled by other competent advisory committees created under the auspices of the TA.

Responsible regulator	Name of body	Terms of reference/brief description of functions
TA	Telecommunications Numbering Advisory Committee	To advise the TA on: (a) the development, implementation and administration of Hong Kong's telecommunications numbering plan and issues related to it; and (b) the allocation of numbers in a fair and equitable manner to telecommunications operators and users in Hong Kong.
TA	Technical Standards Advisory Committee	To advise the TA on – (a) the needs, establishment and maintenance of technical standards, including technical specifications for type-approval or compliance tests, related to the use of telecommunications and broadcasting equipment and the provision of telecommunications and broadcasting services; (b) the policies and procedures for the testing, approval and certification of telecommunications and broadcasting equipment; and (c) the formulation of Hong Kong's position at and contributions to international and regional fora on issues related to technical standards, equipment testing, approval and certification.

Responsible regulator	Name of body	Terms of reference/brief description of functions
TA	Radio Spectrum Advisory Committee	To advise the TA – (a) in the planning of the use of the radio frequency spectrum; (b) in the formulation of the strategies, policies and procedures in the management of the radio frequency spectrum; and (c) in the formulation of Hong Kong's position at and contributions to international and regional forums on issues related to the management of the radio frequency spectrum.
TA	Telecommunications Users and Consumers Advisory Committee	(a) To advise the Office of the Telecommunications Authority (OFTA) on the development, provision and maintenance of telecommunication services from the consumer and user perspective to ensure that a high quality of service is provided at reasonable price and that a choice of a wide range of services and operators is available; and (b) To advise OFTA on the education of, and dissemination of information to, consumers and users of telecommunication services so that maximum benefits can be derived.

Responsible regulator	Name of body	Terms of reference/brief description of functions
BA	Television and Radio Consultative Scheme	The Scheme consists of 540 volunteer members appointed from across the territory's 18 districts to provide qualitative input in the BA's public consultation process. The members meet in the form of focus groups to discuss topical subjects relating to broadcasting standards. Their views help complement the quantitative findings obtained from the Broadcasting Services Survey.

**Attendance by OFTA and BA representatives at LegCo
Panel on Information Technology and Broadcasting meetings
in the 2009-10 session**

Date of meeting	No. of discussion items attended by OFTA officer(s)	No. of discussion items attended by BA Chairman or member
20 October 2009*	1 (i.e. Secretary for Commerce and Economic Development's Briefing on Policy Address Initiatives)	-
9 November 2009	1 (i.e. Review of regulation of person-to-person telemarketing calls)	-
14 December 2009	1 (i.e. Digital terrestrial television update)	-
11 January 2010	2 (i.e. 1) Making available radio spectrum for public mobile services; and 2) Chargeable mobile content services delivered via short messaging services)	-
8 February 2010	1 (i.e. Review of telephone directory enquiry services)	-
8 March 2010	2 (i.e. 1) Development of digital audio broadcasting; and 2) Landing of submarine cables)	-
14 June 2010	2 (i.e. 1) Customer Complaint Settlement Scheme; and 2) Review of Local Access Charge)	1 (i.e. Sponsored programme and advertising of a political nature on radio)

Date of meeting	No. of discussion items attended by OFTA officer(s)	No. of discussion items attended by BA Chairman or member
12 July 2010	-	1 (i.e. Mid-term review of domestic free TV programme service licences)
22 July 2010*	-	1 (i.e. Applications for domestic free TV programme service licences)
Total :	10 items in 7 meetings	3 items in 3 meetings

* denote special meetings