

**The Administration's Response to Issues Raised at the Meeting of
the Bills Committee of the Communications Authority Bill
on 26 November 2010**

**Items discussed by the Broadcasting Authority (BA) and the advice of
the BA on broadcasting-related matters**

We have set out the items discussed at the BA meetings and the information on the broadcasting-related matters which BA discussed and advised on for the past two years at **Annex A**.

Hours of work committed by members of the BA and its committees

2. Members have asked for information on the time committed by members of the BA and its committees and working groups. We have set out the number of such meetings as well as their duration (both the range and the average duration) at **Annex B**. As regards the time spent by BA members on the work of BA in addition to attending the above meetings, we do not have such records.

**Remuneration for BA members and members of other advisory and
statutory bodies (ASBs)**

3. The level of honourarium for members of the BA, the Code of Practice Committee and the Complaints Committee of the BA is as follows –

Body	Remuneration (per attendance)
BA	\$323
Code of Practice Committee of the BA	\$323
Complaints Committee of the BA	\$323

4. We have also set out in **Annex C** the remuneration for members of a number of statutory bodies with executive or non-executive functions for reference.

Views of the BA on the establishment of the CA

5. Members also have asked for the Administration to set out the views expressed by the BA on the CA Bill. The Administration consulted the BA on the establishment of the CA in May 2006, December 2009 and May 2010. BA Members expressed support for the establishment of the CA as the need for a unified regulator was well justified. A number of issues were discussed. They are set out together with the Administration's position at **Annex D**.

Information on transitional arrangements

6. Members have asked for information on the operation of Clauses 24 (Transitional arrangements) and 25 (Savings) of the CA Bill.

7. Clause 24 provides that complaints that are handled by the current complaints committee of the BA and are not finally disposed of as at the commencement date of the Bill will be dealt with by that committee as renamed/reconstituted under the Bill as the Broadcast Complaints Committee. This ensures continuity in the processing of complaints.

8. Clause 25 generally preserves the validity of all lawful acts and business carried out by the Telecommunications Authority (TA) and the BA ("the former authorities") and the Office of the Telecommunications Authority (OFTA) and the Television and Entertainment Licensing Authority (TELA) ("the former departments"). This serves to ensure that business lawfully conducted by or in relation to the former authorities or former departments would continue to have effect or be valid after the transfer of authority, and that the newly set up institutions could continue to handle these matters should the circumstances so require. Such business typically includes legal proceedings (covered by subclause (4)), appeals lodged (covered by subclause (5)), licences or permits issued, contracts concluded, forms and documents published such as statements and determinations (covered by subclause (6)), the performance of functions and powers (subclauses (7) and (8)).

Transfer of staff from the OFTA and the TELA to the Office of the Communications Authority (OFCA)

9. Members have asked for information on the staffing arrangement for the future OFCA. As set out in the Legislative Council Brief issued to Members, the future OFCA would take over the functions of OFTA. As at December 2010, OFTA has 353 posts. All these posts would be transferred to the future OFCA. Meanwhile, TELA's functions will be transferred in the following manner –

- (a) the **broadcasting functions** will be transferred to the OFCA. These activities will be funded under the future OFCA Trading Fund and will remain under the policy purview of the Commerce and Economic Development Bureau (CEDB);
- (b) **non-broadcasting related functions** which concern the control of obscene and indecent articles, film censorship, and matters relating to newspaper registration, will be transferred to the OFCA. These activities will continue to be funded by the Government under a new General Revenue Head outside the ambit of the future OFCA Trading Fund. Control of obscene and indecent articles as well as film censorship will remain under the policy purview of the CEDB and newspaper registration will remain under the policy purview of the Constitutional and Mainland Affairs Bureau; and
- (c) matters relating to the issuance of **entertainment licences** under the Amusement Game Centres Ordinance (Cap. 435), the Gambling Ordinance (Cap. 148) and the Miscellaneous Licences Ordinance (Cap. 114), which are currently under the policy portfolio of the Home Affairs Bureau, will be taken up by the Home Affairs Department.

10. As at December 2010, TELA has 165 posts. The transfer of TELA staff would largely follow the above transfer of functions. We anticipate that the future OFCA would have an establishment of around 500 staff.

11. As in the case of the current BA, the secretariat support for which is provided by TELA, the future CA would be served by the OFCA.

12. Upon the passage of the CA Bill, in line with normal practice, the Administration will seek the approval of the Establishment Subcommittee and the Finance Committee of the Legislative Council on the organizational structure of the future OFCA.

13. The establishment of OFCA is cost-neutral in respect of staffing and will not involve the creation of additional civil service posts. In future, in case additional posts are required, we will seek approval in accordance with established procedures. For example, we would need to seek the approval of the Establishment Subcommittee and the Finance Committee of the Legislative Council for the creation of directorate posts.

CA in enforcing the future Competition Ordinance

14. The policy proposal under the Competition Bill is to have a single competition law which can effectively and consistently deal with anti-competitive conduct in all sectors of the Hong Kong economy. Accordingly, the existing competition provisions under the Broadcasting Ordinance and the Telecommunications Ordinance will be repealed.

15. The Competition Bill provides that the existing sectoral competition regulators, i.e. the TA and the BA, would have concurrent jurisdiction with the proposed Competition Commission in respect of the investigation and bringing of enforcement proceedings of competition cases in the telecommunications and broadcasting sectors respectively. Regulators sharing jurisdiction will have to sign a memorandum of understanding covering areas such as how to perform their functions, the provision of assistance to each other, information exchange on the progress of cases, etc. Meanwhile, the existing adjudicative functions of the TA and the BA, i.e. to decide whether there is a breach and to impose sanctions, will be transferred to the proposed Competition Tribunal. The concurrent jurisdiction will be taken up by the CA in the future when it is formed by merging the TA and the BA.

Experience in the UK

16. In the United Kingdom (UK), the Office of Communications (OFCOM) has concurrent powers with the Office of Fair Trading (OFT) in respect of agreements or conduct relating to activities connected with communications matter. OFCOM has all the powers of the OFT to apply and enforce the concerned provisions of the Treaty on the Functioning of the European Union and the Competition Act 1998 in order to deal with competition matters.

**Communications and Technology Branch,
Commerce and Economic Development Bureau
December 2010**

Agenda Items of the Broadcasting Authority

This note sets out the discussion items, excluding the administrative items¹, of the Broadcasting Authority (BA) from January 2009 to October 2010. The discussion of these items is confidential, and the BA issues press release on a regular basis to publicize its work. For major decisions made, the BA would consider special publicity arrangements, like arranging press conferences.

Category of items	2009	2010 (Jan to Oct)
Appointment of members to the Complaints Committee and Code of Practice Committee of the BA	1	0
Report of Complaints Committee	8	9
Report of the Commissioner for Television and Entertainment Licensing	11	9
TV service licence applications	3	4
Applications for Domestic Free TV Programme Service Licences	0	2
Application for non-domestic TV programme service licence	3	2
Issues or applications in relation to shareholding and ownership changes in respect of TV licensees	5	2
Guidelines in respect of TV licensing	1	1
Draft Guidance Note on Statutory Declaration Forms on Persons Regarded as Fit and Proper for Television Programme Service Licence	1	1
Issues or applications in respect of licensing requirements for TV licensees	4	1

¹ Including the confirmation of minutes, matters arising, publicity arrangements, any other business and meeting arrangements

Category of items	2009	2010 (Jan to Oct)
Updated Digital Terrestrial Television Programming Investment by a domestic free TV programme service licensee	2	0
Presentation of capital investment plans of TV licensees	1	0
Applications by domestic pay TV programme service licensee to employ additional transmission means	1	0
Control and management of a domestic free TV programme service licensee	0	1
Mid-term review of domestic free TV service licences	11	1
Sound broadcasting service licence applications	2	7
Proposed delegation of powers under the sound broadcasting licence of a sound broadcasting licensee	1	0
Criteria for grant of licences for sound broadcasting services	1	0
Guidance note on sound broadcasting licence applications	0	1
Application for sound broadcasting licences	0	4
Applications for digital audio broadcasting licences	0	2
Mid-term review of sound broadcasting licences	1	5
Compliance with the legislation and/or regulations by licensees	6	6
Failure to comply with statutory limit on advertising time by free TV licensee	2	0

Category of items	2009	2010 (Jan to Oct)
Draft responses to an appeal by pay TV programme service licensee against the BA's decision	3	0
Complaint cases about TV/radio programme and advertisement	1	5
Complaints on anti-competitive practices of domestic free TV service licensee	0	1
Advisory matters in relation to broadcasting	5	9
Mobile Television services	1	0
Competition Bill	1	1
Public service broadcasting	1	0
Digital audio broadcasting	1	1
Public consultation in relation to domestic free television programme service licences	0	2
Establishing the Communications Authority	1	2
Competition matters of free TV service market	0	1
Radio-Television Hong Kong	0	1
Frequency allocation and transmission	0	1
Consultancy study on broadcasting matters	1	0
Results of the Digital Terrestrial Television Full Scale Survey 2009	1	0
Total number of items	59	54

**Duration of meetings of the Broadcasting Authority
and its committees and working groups**

Category of Items			2009	2010 (Jan – Oct)
A.	Broadcasting Authority Meetings	a. Total number of BA meetings ¹	13	12
		b. Range of the duration of meetings	From around one hour to around five hours	From around one hour to over six hours
		c. Average duration of meetings	Around two hours	Around two hours
B.	Broadcasting Authority Complaints Committee (BACC) Meetings²	a. Total number of BACC meetings	9	9
		b. Range of the duration of meetings	From around half an hour to one and a half hour	From around half an hour to over two hours
		c. Average duration of meetings	Around one hour	Over one hour
C.	Broadcasting Authority Code of Practice Committee (BACPC) Meetings³	a. Total number of BACPC meetings	1	1
		b. Range of the duration of meetings	Over one hour	One and a half hour
		c. Average duration of meetings	Over one hour	One and a half hour
D.	Working Groups⁴			
1.	Mid-term review of domestic free TV service licences	a. Total number of Working Group meetings	11	N.A.
		b. Range of the duration of meetings	From half an hour to three and a half	N.A.

¹ Including both regular and special meetings.

² As at December 2010, BACC includes six BA members and six co-opted members.

³ As at December 2010, BACPC includes four BA members and five co-opted members.

⁴ The memberships of working groups include 4 BA members on average.

Category of Items			2009	2010 (Jan – Oct)
			hours	
		c. Average duration of meetings	Two hours	N.A.
2.	Mid-term review of sound broadcasting licences	a. Total number of Working Group meetings	N.A.	3
		b. Range of the duration of meetings	N.A.	From two hours to two and a half hours
		c. Average duration of meetings	N.A.	Over two hours
3.	Applications for sound broadcasting licences to provide digital audio broadcasting services	a. Total number of Working Group meetings	N.A.	1
		b. Range of the duration of meetings	N.A.	Two hours
		c. Average duration of meetings	N.A.	Two hours
4.	Applications for domestic free TV programme service licences	a. Total number of Working Group meetings	N.A.	1
		b. Range of the duration of meetings	N.A.	Three hours
		c. Average duration of meetings	N.A.	Three hours
5.	Competition complaints	a. Total number of Working Group meetings	N.A.	1
		b. Range of the duration of meetings	N.A.	One and a half hour
		c. Average duration of meetings	N.A.	One and a half hour

Information on Selected Local Statutory Bodies (as at December 2010)

	Equal Opportunities Commission	Public Service Commission	Consumer Council	Hospital Authority	Hong Kong Science and Technology Parks Corporation
Statutory Provisions	Sex Discrimination Ordinance (Cap. 480)	Public Service Commission Ordinance (Cap. 93)	Consumer Council Ordinance (Cap. 216)	Hospital Authority Ordinance (Cap. 113)	Hong Kong Science and Technology Parks Corporation (Cap. 565)
Mode of work of members of the board	The Chairman works on a full-time, executive basis. Other members work on part-time, non-executive basis.	The Chairman works on a full-time, executive basis. Other members work on part-time, non-executive basis.	Part-time, non-executive basis	Part-time, non-executive basis (other than executive members such as the Chief Executive)	Part-time, non-executive basis
Remuneration	Chairman – pitched at D8 level Other members – no remuneration	Chairman – pitched at D8 level Other members – no remuneration	\$200 per attendance	Non-executive members : no remuneration	Board of directors : no remuneration

**Views of the Broadcasting Authority (BA) in
the Establishment of the Communications Authority (CA)**

The BA generally supports the establishment of the CA. Members inclined to support the staged approach in reviewing the regulatory regime in telecommunications and broadcasting. Views were expressed in the need to identify the inconsistencies between the Telecommunications Ordinance and the Broadcasting Ordinance in the review. Members also discussed the various aspects of the public mission of the CA and had expressed concerns as to whether the size of the CA membership would adequately deal with the workload of the CA. There were also different views in respect of the executive arm of the CA and how the Office of the Communications Authority (OFCA) Trading Fund would operate.

2. The Administration welcomed the supporting views of the BA to set up the CA and noted the need to rationalise the current inconsistencies in the Telecommunications Ordinance and the Broadcasting Ordinance through the staged approach. The Administration also noted the BA's views that the public mission of the CA should be succinct and balanced and should serve to safeguard public interest. The Administration would also consider increasing the maximum number of non-official members to be appointed to the CA. As regards the executive arm of the CA, the Administration noted that without a through examination of the issue and its implications, it is now premature to consider the subject. The CA

and the OFCA could examine the issue together after their establishment, in light of operational experience. The OFCA Trading Fund would operate in a similar manner as the current Office of the Telecommunications Authority Trading Fund.