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Panel on Information Technology and Broadcasting

Meeting on 14 November 2011

Background brief on the establishment of the Office of the Communications Authority

Purpose

This paper summarizes the concerns raised by the Bills Committee on Communications Authority Bill (the Bills Committee) in relation to the establishment of the Office of the Communications Authority (OFCA) and the follow-up actions to be taken by the Administration during the scrutiny of the Communications Authority Bill (the Bill).

Background

2. Under the existing regulatory regime, the Broadcasting Authority¹ (BA) is responsible for the regulation of television and sound broadcasting services in accordance with the Broadcasting Ordinance (Cap. 562) (BO) and Part IIIA of the Telecommunications Ordinance (Cap. 106) (TO) respectively. The Telecommunications Authority (TA) is responsible for the regulation of the telecommunications sector and the technical standards for broadcasting services. Since the establishment of the Office of the Telecommunications Authority² (OFTA) in 1993, the Director-General of Telecommunications, who heads the OFTA, has been appointed as the TA under section 5 of the TO.

3. Rapid advancement in technology is blurring the traditional boundaries between telecommunications and broadcasting, leading to convergence of the two markets. According to the Administration, Hong

¹ The Broadcasting Authority is a statutory body established under the Broadcasting Authority Ordinance (BAO) (Cap.391).

² The Office of the Telecommunications Authority is operating under the Trading Funds Ordinance (Cap. 430).

Kong needs to restructure its regulatory institutional arrangements and review the overall regulatory regime and legislation for telecommunications and broadcasting to keep pace with technological development.

4. On 3 March 2006, the Administration published a consultation paper to seek public views on its proposal to merge the BA and the TA into a unified regulator, namely the Communications Authority (CA), for the efficient, effective and coordinated regulation of a converging electronic communications sector. The Administration proposed a two-staged approach -

- (a) upon its establishment, the CA would continue to enforce the existing provisions of the BO, the TO and other relevant ordinances, and administer all matters currently under the purview of the BA and the TA; and
- (b) the CA would be tasked to review and rationalize together with the Administration the BO and the TO to ensure the consistent and effective regulation of the broadcasting and telecommunications sectors.

5. According to the Administration, there was widespread and overwhelming support for the proposal of establishing the CA after the consultation. The Administration subsequently introduced the Bill into the Legislative Council (LegCo) on 30 June 2010. The Bill sought to establish the CA, transfer the functions of the BA and the TA to the CA, dissolve the BA, and provide for incidental and connected matters. A Bills Committee was formed to study the Bill which was passed by LegCo on 30 June 2011. The Communications Authority Ordinance will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

Deliberations of the Bills Committee

6. The Bills Committee formed to study the Bill held 11 meetings with the Administration, and exchanged views with representatives of the BA at two meetings on the establishment of the CA, the provisions in the Bill and related matters. The Bills Committee also received views from stakeholders, including the broadcasting and telecommunications industries as well as trade associations.

Director-General of Communications and OFCA

7. During the Bills Committee's deliberation, members discussed the roles and functions of the Director-General of Communications (DG Com) and OFCA in supporting the CA. Members noted that the DG Com would be a full-time public officer ranked at Directorate Six level. The Administration would seek the approval of the Establishment Subcommittee and the Finance Committee on the creation of the post, subject to the advice of the Standing Committee on Directorate Salaries and Conditions of Service, when the Administration made submission on the organization structure of the OFCA after the passage of the Bill.

8. Members also noted that the future OFCA would take over the functions of the OFTA and become the executive arm of the CA. Under section 7 of the Trading Funds Ordinance, the statements of the annual accounts of the OFCA Trading Fund would be examined and audited by the Director of Audit. As a government department, the OFCA would be subject to the same codes and requirements which applied to all government departments, including the value for money audits. The Television and Entertainment Licensing Authority (TELA)'s functions would be transferred in the following manner –

- (a) the broadcasting functions would be transferred to the OFCA. These activities would be funded under the future OFCA Trading Fund and would remain under the policy purview of the Commerce and Economic Development Bureau (CEDB);
- (b) non-broadcasting related functions which concerned the control of obscene and indecent articles, film censorship, and matters relating to newspaper registration, would be transferred to the OFCA. These activities would continue to be funded by the Government under a new general revenue head outside the ambit of the OFCA Trading Fund. Control of obscene and indecent articles as well as film censorship would remain under the policy purview of the CEDB, whereas newspaper registration would remain under the policy purview of the Constitutional and Mainland Affairs Bureau. The Administration was considering giving divisions in the OFCA responsible for the non-broadcasting functions currently in the TELA a distinct identity so as to avoid giving an impression that these functions were related to the work of the CA; 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 were currently under the policy portfolio of the Home Affairs Bureau, would be taken up by the Home Affairs Department.

9. The Administration advised that the transfer of the TELA staff to the OFCA would largely follow the transfer of functions as stated in the paragraph above. The staff of the OFTA and the TELA had been consulted on the merger and were satisfied with the transitional arrangements. The Administration assured the Bills Committee that the civil service status, salary and conditions of service of the staff transferred would not be affected. The disbandment of the TELA and the subsequent transfer of its functions would not result in any redundancy of civil service or non-civil service contract staff. It was anticipated that the OFCA would have an establishment of around 500 staff. The establishment of the OFCA was cost-neutral in respect of staffing and would not involve the creation of additional civil service posts.

10. The Bills Committee enquired how the DG Com and the different divisions of the OFCA would be funded under the OFCA Trading Fund and the new general revenue head. In this connection, some members expressed reservation about the separate funding arrangements for the OFCA under the OFCA Trading Fund and the new general revenue head, as such an arrangement would be too complicated to execute. These members suggested that a unified source of funding should be adopted.

11. The Administration advised that for staff members of the OFCA whose schedule of work fell entirely within the divisions of the OFCA not related to telecommunications and broadcasting (the non-trading fund divisions), their staff costs would be paid out of the new general revenue head. For staff members who would oversee or provide support to both the trading fund and non-trading fund divisions, their staff costs would be apportioned between the two sources of funding in accordance with the respective duties and responsibilities. In respect of the DG Com, the post would be partly funded by the OFCA Trading Fund and partly by general revenue, in accordance with the division of responsibilities between the telecommunications and broadcasting part of the post and the non-telecommunications and broadcasting part of the post.

Follow-up actions to be taken by the Administration

12. During the deliberations of the Bills Committee, the Administration undertook to take the following actions –

- (a) review the TO and the BO as a matter of priority immediately upon the establishment of the CA. The review would cover issues including cross media ownership and foreign ownership restrictions, licensing authorities and appeal mechanisms, and the regulatory regimes for the telecommunications and broadcasting sectors. The Administration would devise a more detailed plan together with the CA upon its establishment on the areas to be reviewed and the relevant timetable;
- (b) inform the Panel on Information Technology and Broadcasting (the Panel) in future if a decision was made for the appointment of a full-time chairperson of the CA;
- (c) inform the Panel in future of the rules/standing orders made by the CA for the purpose of regulating the number of meetings to be held by the CA in any year, the meeting procedures, members' participation in meetings by telephone, video conferencing or other electronic means, and the supply of documents or information relating to any matter to a member who had or might have an interest in the matter; and
- (d) inform the Panel in future of the standing orders made by the CA in respect of disclosure of interests by a member of the CA.

Latest position

13. The Administration will brief the Panel on 14 November 2011 on the setting up of the OFCA by merging the OFTA and the Broadcasting Division of the TELA.

Relevant Papers

Papers relating to the Bills Committee on the Communications Authority Bill
<http://www.legco.gov.hk/yr09-10/english/bc/bc10/general/bc10.htm>

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