

立法會
Legislative Council

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Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Thursday, 27 March 2014, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon WONG Yuk-man (Chairman)
Dr Hon Elizabeth QUAT, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members attending : Hon Gary FAN Kwok-wai

Public officers attending : Agenda item I

Commerce and Economic Development Bureau

Mr Gregory SO, GBS, JP
Secretary for Commerce and Economic
Development

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Communications Authority

Mr Ambrose HO, SBS, SC, JP
Chairman, Communications Authority

Dr Anthony Seeto
Member, Communications Authority

Office of the Communications Authority

Miss Eliza LEE, JP
Director-General of Communications

Mr Danny LAU
Deputy Director-General of Communications
(Telecommunications)

Mr Chaucer LEUNG
Assistant Director (Regulatory), Office of the
Communications Authority

**Attendance by
invitation** : Agenda item I

Hong Kong Television Network Limited

Mr Ricky WONG
Chairman

Mr Simon LEUNG
Head of Legal

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Joey LO
Senior Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)2

Action

I. Issues relating to the mobile television service proposed to be provided by the Hong Kong Television Network Limited

(LC Paper No. CB(4)490/13-14(01) -- Administration's paper on matters related to the broadcast-type mobile television service proposed to be provided by Hong Kong Mobile Television Network Limited

LC Paper No. CB(4)473/13-14(01) -- Letter from Hon Claudia MO dated 11 March 2014 on issues relating to the mobile television service proposed to be provided by the Hong Kong Television Network

Limited
(Chinese version only)

- LC Paper No. CB(4)473/13-14(02) -- Letter from Hon SIN Chung-kai dated 12 March 2014 on issues relating to the mobile television service proposed to be provided by the Hong Kong Television Network Limited
(Chinese version only)
- LC Paper No. CB(4)490/13-14(03) -- Letter from Hon SIN Chung-kai dated 24 March 2014 on issues relating to mobile television licence
(Chinese version only)
- LC Paper No. CB(4)490/13-14(02) -- Paper on development of mobile television services prepared by the Legislative Council Secretariat
(background brief)
- LC Paper No. CB(4)519/13-14(01) -- Speaking note of the Secretary for Commerce and Economic Development
(Chinese version only. Tabled at the meeting and issued on 28 March 2014.)
- LC Paper No. CB(4)519/13-14(02) -- Speaking note of the Chairman of the Communications Authority
(Chinese version only. Tabled at the meeting and issued on 28 March 2014.)
- LC Paper No. CB(4)519/13-14(03) -- Minutes of the Panel on Information Technology and Broadcasting meeting on 6 February 2007 (Chinese version. Tabled at the meeting and issued on 28

March 2014.))

Welcoming remarks by the Chairman

The Chairman welcomed representatives of the Administration, the Communications Authority ("CA") and Hong Kong Television Network Limited ("HKTV") to the meeting. He reminded the meeting that, except Members and the public officers designated by the Chief Executive for the purpose of attending the meeting, representatives of the CA and HKTV were not covered by the privileges and immunities provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO") when addressing the Panel at the meeting, and their written submissions were also not protected by the said Ordinance.

Presentation by the Communications Authority, the Administration and Hong Kong Television Network Limited

2. At the invitation of the Chairman, Chairman of the Communications Authority ("C of CA") briefed members on the position of the CA on the proposed television service provided by Hong Kong Mobile Television Network Limited ("HKMTV"), a subsidiary company of HKTV. Details of the briefing were set out in the paper provided by the Office of the Communications Authority (LC Paper No. CB(4)490/13-14(01)) and the speaking note of C of CA which was tabled at the meeting and circulated for members' perusal (LC Paper No. CB(4)519/13-14(02)). C of CA said that any person providing a mobile television ("mobile TV") service which was available for reception by an audience of more than 5 000 specified premises should obtain the relevant licences under the Broadcasting Ordinance ("BO") (Cap. 562) prior to the service provision. The mere fact that HKMTV held a United Carrier Licence ("UCL") under the Telecommunications Ordinance ("TO") (Cap. 106) did not automatically displace the licensing requirements under the BO if the service to be provided by HKMTV triggered such licensing requirements, in which case, it would be necessary for HKMTV to obtain a domestic free television programme service ("free TV") licence or domestic pay television programme service ("pay TV") licence before service commencement. C of CA also explained in detail the legal position with respect to allegations against the two free TV licensees for providing mobile TV services without a licence.

3. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") briefed members on the Government's policy on the proposed television service provided by HKMTV. Details of the briefing were set out in the paper provided by the Administration (LC Paper No. CB(4)490/13-14(01)) and the speaking note of SCED which was

tabled at the meeting and circulated for members' perusal (LC Paper No. CB(4)519/13-14(01)). SCED said that the policy of mobile TV service was forward-looking and adopted the technology-neutral principle. Under this principle, an operator was free to choose the transmission technology and standard for the provision of its TV service, as long as it complied with the requirements of all relevant legislations and its licence.

4. With the aid of powerpoint presentation, Mr Ricky WONG, Chairman of Hong Kong Television Network Limited ("HKTV") briefed members on the position of HKTV on the proposed television service provided by HKMTV. Details of the briefing were set out in HKTV's powerpoint presentation material (LC Paper No. CB(4)518/13-14(01)). Mr WONG pointed out that according to paragraph 1.1 of Schedule 1 to HKMTV's UCL, "broadcast-type mobile television services mean the services of conveying television programmes operating at the frequencies specified in Schedule 3 with the use of digital broadcasting technologies for reception at moving locations in Hong Kong." Paragraph 3 of Schedule 1 provided that "a moving location includes, without limitation, the following – (a) Mobile station of a customer of the service...", and that "a mobile station includes any apparatus using the technology of a mobile station for mobile customer but being installed at a fixed location". As such, he was of the view that mobile TV did not refer to reception at moving location but reception using mobile technology, regardless of whether the location was a moving or fixed location.

Discussion

The Framework for Development of Mobile TV Service promulgated by the Government

5. Mr SIN Chung-kai noted that according to the Legislative Council ("LegCo") Brief on Framework for Development of Mobile Television Services issued in December 2008, the Administration did not propose to amend the BO to license local broadcast-type or streaming-type mobile TV services. He queried whether the Administration had made a wrong decision of not amending the BO in 2008.

6. SCED advised that the facilitating regulatory approach set out in the LegCo Brief in 2008 accorded with international best practices and was welcomed by the public and the industry in the two rounds of consultation conducted in 2007 and 2008. It was concluded that the local broadcast-type mobile TV service was a nascent and relatively personal service for reception by users on the move not involving specified premises. The Administration therefore proposed that a light-handed approach would be adopted in

regulating its content. As such, the Administration did not propose to amend the BO to license local broadcast-type or streaming-type mobile TV services. There had not been any change in the policy since then.

7. SCED further pointed out that according to the Panel's minutes of meeting on 6 February 2007, in response to Ms Emily LAU's concern as to whether the contents of mobile TV would be subject to regulation, the then Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) pointed out that mobile TV was primarily intended for reception outdoor on the move and the contents of which were designed for small display devices. As such, mobile TV services did not fall within the existing licensing regime under BO which focused on regulating TV services intended for reception by an audience of specified premises. The major consideration was therefore whether the TV services aimed at viewers on the move or of specified premises. In the event that mobile TV was available for reception by an audience of more than 5 000 specified premises such as domestic households on fixed in-door large display devices like televisions or computers via communal aerial systems, this might, subject to legal opinion, become licensable service under BO.

Different regulatory regimes for services under the Broadcasting Ordinance and Telecommunications Ordinance

8. Mr Charles Peter MOK opined that the dividing line between digital terrestrial TV service and mobile TV service was becoming blurred as technology progressed and media converged. It was therefore incumbent upon the Administration to review the TO and the BO to resolve any inconsistencies which might exist. In the meantime, he suggested that exemption should be given to HKMTV to provide the proposed service prior to such a review. Ms Emily LAU and Ms Cyd HO shared a similar view.

9. SCED advised that the Administration did not consider that there was any conflict between the BO and the TO in respect of the provision of mobile TV service. The question was whether the service intended to be provided by HKMTV in effect was a fixed or a mobile service. He stressed that a broadcast-type mobile TV operator was obliged under its carrier licence to provide coverage for at least 50% of the "population" at moving locations, but not "households" or "specified premises" under the BO.

10. Mr Ricky WONG said that notwithstanding the Administration and the CA's advice that an operator was free to choose the transmission technology and standard for the provision of its TV service, and OFCA's suggestion that HKMTV should consider other mobile TV standards such as Digital Video Broadcasting - Handheld ("DVB-H") to prevent its mobile TV

service from breaching the BO, OFCA advised HKMTV at a closed meeting in March 2014 that even if HKMTV opted for the DVB-H standard, the requirement for a free TV licence or pay TV licence under the BO would still be triggered in the future if the DVB-H standard became so popular that would render HKMTV's mobile TV service available for reception by an audience of more than 5 000 specified premises in Hong Kong.

11. Mr Ricky WONG added that after HKMTV's announcement of its plan to provide mobile TV service, a major manufacturer of TV sets in Japan had informed HKMTV that its TV sets delivered to Hong Kong would be equipped with a tuner to receive the signals transmitted by HKMTV depending on the transmission standard HKMTV adopted. Mr WONG said that notwithstanding the above, there was in fact no feasible technical solution to the dilemma faced by HKMTV. He added that HKMTV would not be able to launch its mobile TV service until OFCA could provide a technically feasible solution to ensure that the service of HKMTV would be exempt from the BO. In this regard, Mr James TO considered that the Administration and the CA was duty bound to resolve the dilemma.

12. Mr Christopher CHUNG opined that, regardless of the transmission standard to be used, HKMTV's mobile TV service should be subject to regulation under the BO if the programmes to be broadcast by HKMTV could be received by an audience of specified premises and the picture quality would be comparable to that of the existing domestic free TV licensees. Mr HO Chun-yin shared a similar view.

13. Mr Ricky WONG said that 90% of Hong Kong's households would not be able to receive HKMTV's TV signals because 90% of the buildings in Hong were installed with filters at their in-building coaxial cable distribution system. In response, Director-General of Communications advised that there were 90 000 village houses or standalone buildings which were not licensees under the TO and were not legally required to install filters to block off unlicensed television signals. The use of standalone antennas by these households to receive television signals was legally in order. Accordingly, HKMTV's mobile TV signals would be available for reception by these households, thereby rendering its service available for reception by audience of more than 5 000 households and triggering the licence requirement under the BO.

14. SCED stressed that under the technology-neutral principle, regardless of the transmission technology to be used, the mobile TV services to be provided by HKMTV, unless with a relevant licence under the BO, should be for reception by mobile devices which were not related to any specified premises.

15. Noting HKMTV's findings that signals from TVB had all along been receivable on mobile devices, Ms Claudia MO accused OFCA for adopting inconsistent law enforcement standards, in that it had not enforced the provisions of the TO or the terms and conditions of the Fixed Carrier Licence ("FCL") against TVB, despite that the FCL held by TVB prohibited them from infringing upon the exclusive interests of other licensees, and that it could only provide services to fixed locations. She opined that OFCA should exercise the same discretion to allow HKMTV to provide its proposed service. In this regard, Ms MO expressed concern that the Administration was under political pressure to adopt a double standard in the treatment of the issue.

16. C of CA responded that the CA had neither adopted a discriminatory approach in handling HKMTV's proposed use of a different transmission standard to provide mobile TV service, nor was it under political pressure to adopt a double standard in the treatment of the issue. Dr Anthony Seeto, Member of CA said that the original interest of mobile TV licence was from the mobile operators. From their perspective, the essence of mobile TV service involved the use of a portable device such as a mobile phone or a tablet personal computer which could be connected to the 3G or 4G network, rather than the use of a TV set placed in a domestic premise. Dr Anthony Seeto also commented that paragraph 3 of Schedule 1 of HKMTV's United Carrier Licence allowed mobile devices to be used while stationary e.g. when charging battery.

17. Mr CHAN Chi-chuen opined that the CA had adopted double standards regarding the provision of mobile TV service by HKMTV and the mobile reception of TV programme services of TVB as demonstrated by Mr Ricky WONG to the media. He accused the CA of defending TVB that it had not made an offer to the audience for the mobile reception of its TV programme services, hence did not contravene section 8(1)(aa) of the TO which stipulated that, "save under and in accordance with a licence granted there under, no person shall in Hong Kong offer in the course of business a telecommunications service". He opined that according to common law principles, an offer could be made in oral or written form, or implied by the actions of the parties concerned without explicit terms of transaction, as in the case of mobile reception of TV programme services of TVB. Mr Gary FAN shared a similar view.

18. C of CA said as he had explained at the start of the meeting, under section 8(1A) of the TO, for the purpose of subsection (1)(aa), "a person is to be regarded as offering a telecommunications service if he makes an offer which, if accepted, would give rise to an agreement, arrangement or

understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service". With this explicit definition of what constituted under the TO "offering a telecommunications services", there was no need to rely on any common law principle. The mere fact that the television signals of a free TV licensee might be received by portable devices did not automatically constitute an offer by that licensee as of mobile TV service in the course of business. Digital terrestrial television ("DTT") signals of the free TV licensees had wide coverage over the majority of the territory of Hong Kong and hence it would be possible for the DTT signals to be receivable by portable devices. This did not automatically constitute provision of mobile TV service by the free TV licensees. The allegations against the CA for not enforcing the TO, for enforcing the law selectively, or adopting double standards in law enforcement were due to misunderstanding of the relevant legislations and were therefore unfounded.

19. Mr Ronny TONG noted SCED's recapitulation on the exchanges that took place at the 2007 Panel meeting, which he also attended. He agreed that the BO regulated broadcasting services for reception by audience at specified premises, whereas mobile TV services were defined as TV services for reception on the move not involving specified premises. The regulation of the two types of services should not be mixed up with each other. Noting that a mobile device could be used at home to watch programmes broadcast by a mobile TV service provider, Mr Ronny TONG opined that there was a need for the Administration to review the definition of "specified premises" under section 2 of the BO which referred to any domestic premises, or hotel room, in Hong Kong.

20. C of CA advised that the definition of "specified premises" had been incorporated into the BO when it was amended in 2000. The receiving set up in mind by then for reception of free TV or pay TV service was a fixed device. C of CA considered that the relevant provisions were still unambiguous in this regard until now.

Transmission standard

21. Noting HKMTV's proposed change in transmission standard from China Mobile Multimedia Broadcasting ("CMMB") to Digital Terrestrial Multimedia Broadcasting ("DTMB") standard, Mr MA Fung-kwok enquired about the rationale behind proposed change. Mr Ricky WONG advised that the CMMB standard, which could only provide a picture quality equivalent to video compact disc, had lost popularity. He said that only the DTMB standard or the DVB-H standard featured upscaling capability to cater for the ever-increasing resolution of handheld devices. In this regard, Mr Paul TSE

and Dr CHIANG Lai-wan asked if HKMTV would push ahead to provide mobile TV service using the DTMB standard. In response, Mr Ricky WONG advised that whilst HKMTV would welcome the members' suggestion, HKMTV's application for installation of base stations had not been approved by OFCA.

Other issues

22. Noting that any new developments on HKTV could greatly affect its share prices, Mr NG Leung-sing enquired if HKTV had taken any measures to maintain fairness in the stock market and protect the interest of small investors from the volatility of the price of its shares. Mr Ricky WONG advised that HKTV had so far taken immediate actions to notify the Stock Exchange of Hong Kong of any developments which could result in volatility of its share price before the announcement of any price-sensitive information.

23. Noting that the appointed ending time of the meeting was 10:30 am, the Chairman declared that the meeting be extended for 15 minutes to deal with two motions moved by Ms Claudia MO and Mr Charles Peter MOK. During the period of extension of the meeting (at approximately 10:36 am), Dr CHIANG Lai-wan requested to move amendments to the motions but did not present to the Panel her proposed amendments in written form. The Chairman declined Dr Hon CHIANG Lai-wan's request, saying that her request should have been made before the original appointed ending time of the meeting, i.e. before 10:30 am.

Motion moved by Ms Claudia MO:

24. Ms Claudia MO proposed the following motion:

"本事務委員會譴責通訊事務管理局及通訊事務管理局辦公室，就流動電視及免費電視兩類服務牌照事宜，雖稱依法辦事，卻執法不公並持雙重標準，未有以法治精神處理"

(Translation)

"That this Panel reprimands the Communications Authority and the Office of the Communications Authority for, despite their claims of acting in accordance with the law, enforcing the law unfairly and adopting double standards without regard to the spirit of the rule of law in dealing with the licensing matters of mobile television services and free television services."

25. The Chairman considered that the proposed motion was directly related to the agenda item under discussion. As no members disagreed to deal with the motion, the Chairman informed the meeting that the motion would be proceeded with. The Chairman put the motion to vote. Ms MO claimed a division. The Chairman announced that four members voted for the motion, namely Mr James TO, Mr LEUNG Kwok-hung, Ms Claudia MO and Mr CHAN Chi-chuen, 15 members voted against the motion, namely Dr Elizabeth QUAT, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mrs Regina IP, Mr Paul TSE, Mr NG Leung-sing, Mr HO Chun-yin, Mr MA Fung-kwok, Mr Charles Peter MOK, Mr Christopher CHEUNG, Mr SIN Chung-kai, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok and Mr Christopher CHUNG. The Chairman declared that the motion was negated.

26. Mr Charles Peter MOK proposed the following motion:

"本事務委員會譴責商務及經濟發展局，漠視香港電訊及廣播條例嚴重落後科技及市場發展，即使於通訊局成立後，多年來一直拖延檢討相關法例；本會亦譴責行政長官會同行政會議改變通訊局對『免費地面電視牌照數目不設上限』的既定政策，突出相關條例衝突，引發是次規管危機，嚴重損害香港市民觀看電視的選擇權。"

(Translation)

"That this Panel reprimands the Commerce and Economic Development Bureau for disregarding the fact that the local legislations on telecommunication and broadcasting are seriously lagging behind the technological and market development, and the review of the relevant legislations has been delayed for years even after the establishment of the Communications Authority ("CA"); this Panel also reprimands the Chief Executive in Council for changing CA's established policy of 'not setting an upper limit on the number of licences for free terrestrial television services', highlighting the conflicts in the relevant legislations and triggering the current regulatory crisis which seriously undermines the right of choice of the television viewing public."

27. The Chairman considered that the proposed motion was directly related to the agenda item under discussion. As no members disagreed to deal with the motion, the Chairman informed the meeting that the motion would be proceeded with. The Chairman put the motion to vote. Ms MO claimed a division. The Chairman announced that 10 members voted for the motion, namely Mr James TO, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Paul TSE, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr Charles Peter MOK, Mr CHAN Chi-chuen and Mr SIN Chung-kai. 10

members voted against the motion, namely Dr Elizabeth QUAT, Mr WONG Ting-kwong, Mrs Regina IP, Mr NG Leung-sing, Mr HO Chun-yin, Mr YIU Si-wing, Mr Christopher CHEUNG, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok and Mr Christopher CHUNG, and one member abstained from voting, namely Mr MA Fung-kwok. The Chairman declared that the motion was negated.

II. Any other business

28. There being no other business, the meeting ended at 10:45 am.

Council Business Division 4
Legislative Council Secretariat
4 September 2014