

立法會
Legislative Council

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Panel on Information Technology and Broadcasting

Meeting on 12 June 2017

**Background brief on review of Broadcasting Ordinance (Cap. 562) and
Telecommunications Ordinance (Cap. 106)**

Purpose

This paper summarizes previous discussions by Members on the review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106).

Background

2. To keep pace with the advancement in technology in the telecommunications and broadcasting sectors, the Administration has adopted a two-stage approach to restructure the regulatory institutional arrangements and review the overall regulatory regime and legislation in respect of telecommunications and broadcasting.

3. In March 2006, the Administration consulted the public on the proposed merger of the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA") into the Communications Authority ("CA"). The new institution would enforce the existing provisions of Cap. 106 and Cap. 562 as well as other relevant legislation. It would also be responsible for administering all matters under the purview of BA and TA. To effect the merger, the Administration introduced the Communications Authority Bill ("the Bill") into the Legislative Council

("LegCo") on 30 June 2010. The Bill was passed by LegCo on 30 June 2011 and CA was formally established on 1 April 2012 when the Communications Authority Ordinance (Cap. 616) came into operation on the same day.

4. With its establishment, CA would review and rationalize, together with the Administration, Cap. 106 and Cap. 562 to ensure consistent and effective regulation of the telecommunications and broadcasting sectors. To this end, the Administration has set up a review team in the Commerce and Economic Development Bureau ("CEDB") to conduct the review. The review team would formulate a detailed plan on the review and the relevant timetable.

5. According to the Administration, the review team would conduct extensive policy and legal researches into the existing provisions of Cap. 106 and Cap. 562 and the corresponding developments and legislation in other comparable jurisdictions. In formulating the detailed plan of the review, the review team would identify and analyze issues associated with the provisions of the two ordinances, evaluable options to tackle the issues and prepare amendment legislation.

6. The Administration has also indicated that the review team would engage stakeholders, including CA, the industry players and the Community-at-large, and might engage external consultants to provide inputs on selected matters. Some of the priority issues and scope that the review would cover include:

- (a) **Cross media ownership and foreign ownership restrictions** – the review would examine whether the restrictions for sound broadcasting and those for television programme services should be brought on a par with each other;
- (b) **Licensing authorities** – the review would consider if there is a need to further streamline the licensing powers between the Chief Executive ("CE") in Council and CA on telecommunications and broadcasting services;

- (c) **Appeal mechanisms** – at present, broadcasting service licensees may appeal to CE in Council under Cap. 562 and the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) on broadcasting-related regulatory matters. However, no similar appeal mechanism is available under Cap. 106 on telecommunications-related regulatory matters other than competition. The review would examine if there is a need to remove this difference;
- (d) **Powers of CA** – there are slight differences in the powers of CA as well as the maximum amounts of financial penalties that can be imposed in Cap. 106, Cap. 562 and Cap. 391. The review would examine whether the differences should be streamlined; and
- (e) **Offences** – some of the offences set out in Cap. 106, Cap. 562 and Cap. 391 are similar but not entirely the same. The review would examine the consistency of these offence clauses.

7. Furthermore, the Administration would consider other broader issues and propose necessary and appropriate amendments with a view to keeping pace with the ever-changing communications environment at the later stage of the review. These includes, for example, whether provisions of Cap. 106 governing access rights to buildings should be enhanced such that operators can expand their networks more easily; the existing requirement imposed on telecommunications licensees to publish tariffs should be updated to provide licensees with the flexibility to respond to the fast-changing environment of the market; and whether the statutory protection for telecommunications infrastructure under Cap. 106 should be enhanced.

Previous discussions

8. At the meeting of the Panel on Information Technology and Broadcasting ("the Panel") held on 9 November 2015, the Administration outlined the work involved in the review of Cap. 106 and Cap. 562 and sought members' support of the creation of supernumerary directorate posts

to lead a team in CEDB to conduct the review. With the support of the Establishment Subcommittee on 23 May 2016, the staffing proposed was approved by the Finance Committee ("FC") on 17 June 2016. The major discussions and concerns raised by Members and the Administration's response during these three meetings are summarized in the ensuing paragraphs.

Duration and timetable of the review

9. Some Members considered that it had taken too long for the Administration to initiate the review of Cap. 106 and Cap. 562. They enquired about the Administration's timetable and targets, and queried whether the review could be completed within three years. Some Members commented that the Administration should already have certain initial ideas on how the review should proceed. The Administration advised that necessary background research had been carried out to prepare for a full review of the two ordinances; and the operational experience gained through the operation of CA since its establishment in 2012 would provide useful insight that would facilitate the review. The Administration expected that the first phase of public consultation would be launched in mid-2016 and might conduct a series of public consultation with each session focusing on different major common issues such as cross media ownership restrictions, approving and review mechanism, etc.

10. On conducting public consultation, some Members asked if the Administration would consider issuing a white bill to consult the public again on the proposed legislative amendments made after the review. The Administration advised that it would publish a public consultation paper to gauge public views during the comprehensive review and it had not reached a decision whether a white bill would be issued for public consultation purpose.

Scope and coverage of the review

11. Some Members queried why the Administration would only consider other broader issues (such as issues relating to the Next Generation Network) in the latter stage of the review. The Administration explained that during the scrutiny of the Bill, the Administration had undertaken to accord priority to reviewing issues including cross-media ownership restrictions, foreign ownership restrictions, licensing authorities and appeal mechanisms. Other issues would be considered in the latter stage.

Provision of free television service

12. Some Members commented that the Administration should address the problem that the public lack choices in free television stations in Hong Kong. They had enquired if the review would examine the options of devolving the powers of CE in Council in vetting and approving licence applications for free television to CA, and to require under Cap. 562 that free television programmes should cater for the local audience. The Administration indicated that it would take into account relevant views related to the suggested devolution of licensing powers in respect of free television service. When handling free television service licence renewal applications, the Administration had included additional requirements in the licensing conditions requiring that a certain proportion of the programmes should be local production.

Regulation of political advertisement and Internet media

13. In response to the queries from some Members, the Administration maintained that regulation of political advertisement would not be a priority area in the review of Cap. 106 and Cap. 562.

14. Some Members considered that the Administration should consider regulating Internet media to control transmission of obscene and indecent materials, or information relating to terrorist acts on the Internet. However, one Member commented that the review should look into how the broadcasting market should be developed rather than further tightening the regulation of the Internet. Some other Members were concerned that the Administration might tighten regulation of Internet media and hinder the freedom of speech. These Members asked the Administration to clarify that regulation of Internet media would not be covered by the review of Cap. 106 and Cap. 562.

15. The Administration advised that information transmitted on the Internet was subject to regulation under the Control of Obscene and Indecent Articles Ordinance (Cap. 390), whereas information relating to terrorist acts was also subject to regulation under other relevant legislation. A regulatory regime targeting at Internet media was difficult to implement, as Internet media were boundary free. The Administration confirmed that it had no intention to tighten the regulation of Internet media through the review, nor was the subject a matter of priority in the review.

16. The Administration had indicated that, at present, service provided on the Internet was not regarded as "Television Programme Services" under Cap. 562. If there were voices in the community for a review of this exclusion, the Administration might need to consider how such views should be followed up, taking into account prevailing international practices and the feasibility of implementing regulatory measures.

Special Finance Committee meetings

17. At the special FC meetings on 6 April 2017, Hon Charles Peter MOK and Hon James TO sought information from the Administration regarding the staffing arrangements, work that had been undertaken, timetable and details of public consultation on the review of Cap. 106 and Cap. 562 (CEDB(CCI)031 and 046). The Administration's replies are in **Appendices Ia to Ib**.

Latest position

18. The Administration will update the Panel on 12 June 2017 on the progress in the review of Cap. 106 and Cap. 562.

Relevant papers

19. A list of the relevant papers is set out in the **Appendix II**.

Council Business Division 4
Legislative Council Secretariat
6 June 2017

CONTROLLING OFFICER'S REPLY**CEDB(CCI)031****(Question Serial No. 5113)**

Head: (55) Government Secretariat : Commerce and Economic Development Bureau (Communications and Creative Industries Branch)

Subhead (No. & title):

Programme: (1) Broadcasting and Creative Industries, (2) Telecommunications

Controlling Officer: Permanent Secretary for Commerce and Economic Development (Communications and Creative Industries) (Miss Susie HO)

Director of Bureau: Secretary for Commerce and Economic Development

Question:

Under Programme (2) of Head 55, the Administration started the preparatory work for comprehensive review of the Telecommunications Ordinance (TO) and the Broadcasting Ordinance (BO). Please advise this Committee of the following:

- (a) the specific work of the team set up for three years to review the TO and BO in 2016-17;
- (b) the staff establishment, work plan and schedule of the team;
- (c) whether the Administration will consult the industry and members of the public on the review. If yes, what are the details? If no, what are the reasons?

Asked by: Hon MOK Charles Peter (Member Question No. 54)

Reply:

Our consolidated reply to the three parts of the question is as follows:

In 2016-17, the dedicated team commenced the work for the review, which includes studying the legislative background and details of the Telecommunications Ordinance, the Broadcasting Ordinance and other relevant legislation, examining the comments and experiences of stakeholders and departments in the course of the implementation of the ordinances, drafting the consultation paper, etc.

The Administration plans to report to the Legislative Council Panel on Information Technology and Broadcasting in mid-2017 on the details of the work plan. It is anticipated that there will be several rounds of public consultation, the timetable of which is under consideration by the team. Subject to the findings of the consultations, the Administration will start the law drafting process for the relevant statutory provisions.

The team comprises six staff members, including one Administrative Officer Staff Grade B and one Administrative Officer Staff Grade C to spearhead the review. The other four staff members are non-directorate officers including one Senior Executive Officer, two Personal Secretaries Is and one Assistant Clerical Officer.

- End -

CONTROLLING OFFICER'S REPLY

CEDB(CCI)046

(Question Serial No. 1705)

Head: (55) Government Secretariat : Commerce and Economic Development Bureau (Communications and Creative Industries Branch)

Subhead (No. & title):

Programme: (1) Broadcasting and Creative Industry
(2) Telecommunications

Controlling Officer: Permanent Secretary for Commerce and Economic Development (Communications and Creative Industries) (Miss Susie HO)

Director of Bureau: Secretary for Commerce and Economic Development

Question:

Regarding the review of the Broadcasting Ordinance and the Telecommunications Ordinance, will the Administration advise this Committee of the following:

- (a) What are the details of the relevant work undertaken by the Administration in 2016-17? What is the expenditure involved?
- (b) What are the details of the relevant work undertaken by the Administration in 2017-18? What is the expenditure involved?
- (c) Has the Administration formulated a timetable for the review? If yes, what are the details? If not, what are the reasons?
- (d) Will the Administration conduct a public consultation on the review of the said Ordinances in 2017-18? If yes, what are the details? If not, what are the reasons?

Asked by: Hon TO Kun-sun, James (Member Question No. 41)

Reply:

Our consolidated reply to the four parts of the question is as follows:

The Administration secured the support of the Legislative Council (LegCo) Finance Committee in June 2016 for the creation of two supernumerary directorate posts (i.e. one Administrative Officer Staff Grade B and one Administrative Officer Staff Grade C) for a period of three years to spearhead the dedicated team responsible for the review of the Telecommunications Ordinance (TO) and the Broadcasting Ordinance (BO). Apart from the two directorate posts aforementioned, there are also four non-directorate posts in the team.

In 2016-17, the team commenced the work for the review, which included studying the legislative background and details of the TO, BO and other relevant legislation, examining

the comments and experiences of stakeholders and departments in the course of the implementation of the ordinances, drafting consultation paper, etc.; as well as formulating the public consultation timetable. The Administration plans to report to the LegCo Panel on Information Technology and Broadcasting in mid-2017 on the details of the work plan. The Administration will consult the public and will, subject to the consultation findings, kick-start the law drafting process for the relevant statutory provisions.

In 2016-17, the estimated expenditure for the team is \$2,891,000, in which the total staff cost is \$2,591,000 and other operating expenditure \$300,000.

In 2017-18, the estimated expenditure for the dedicated team is \$6,673,000, in which the total staff cost is \$6,537,000 and the other operating expenditure \$136,000. In 2017-18, with the support of the captioned Programme, the Department of Justice will create a time-limited Senior Government Counsel post for a period of two years to provide legal advice on the review. The annual expenditure involved is around \$1,271,000.

- End -

Appendix II

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	9 November 2015	<p>Administration's paper on proposed creation of two supernumerary directorate posts in the Communications and Technology Branch of the Commerce and Economic Development Bureau (LC Paper No. CB(4)125/15-16(06))</p> <p>Background brief on the review of the Telecommunications Ordinance and the Broadcasting Ordinance arising from the implementation of the Communications Authority Bill (LC Paper No. CB(4)125/15-16(07))</p> <p>Minutes of meeting (LC Paper No. CB(4)440/15-16)</p>
Establishment Subcommittee	23 May 2016	<p>HEAD 55 – GOVERNMENT SECRETARIAT : COMMERCE AND ECONOMIC DEVELOPMENT BUREAU (COMMUNICATIONS AND CREATIVE INDUSTRIES BRANCH) Subhead 000 Operational Expenses (EC(2015-16)20)</p> <p>Minutes of the 13th meeting (LC Paper No. ESC111/15-16)</p>
Finance Committee	17 June 2016 (FCR(2016-17)43)	Minutes of the 75th meeting (LC Paper No. FC321/15-16)