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Panel on Information Technology and Broadcasting

Meeting on 12 March 2018

**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) ("the Review").

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. During the first stage, the Administration set up the Communications Authority ("CA") by merging the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA"). The new institution enforces the existing provisions of Cap. 562 and Cap. 106 as well as other relevant legislation. It is also responsible for administering all matters under the purview of BA and TA.

4. In the second stage, CA, together with the Administration, review and rationalize, Cap. 562 and Cap. 106 to ensure consistent and effective regulation of the telecommunications and broadcasting sectors. To this

end, the Administration has set up a dedicated team in the Commerce and Economic Development Bureau to conduct the Review.

5. According to the Administration, the Review aims to respond to the evolution of infotainment and to modernize the regulatory framework to provide a balanced competitive environment for the broadcasting market and facilitate the industry's development.

Public consultation on the Review

6. On 20 February 2018, the Administration launched a three-month public consultation to gauge views from members of the public, the broadcasting industry and other stakeholders on the proposals of the Review. The Administration announced that the proposals would address the imbalance in the regulatory regimes for traditional broadcasting services and Internet media, attempted to remove obstacles for the traditional broadcasting sector and reduce the gap between the traditional broadcasting sectors and Internet media in terms of regulatory control. According to the Administration, the Review concludes that the existing broadcasting regulatory framework is proportionate and reasonable and should remain intact. As regards Internet-based television ("TV") and sound programme services, with reference to overseas experience, the Administration is of the view that they should remain not subject to the broadcasting licensing controls. The Administration considers that while maintaining the existing regulatory regime intact, there is room for relaxing the level of regulation for individual aspects. Details of the Administration's proposals are set out in the consultation paper which can be accessed through the following link:

[http://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1\(eng\).pdf](http://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1(eng).pdf)

Summary of key proposals of the Review

7. The Administration has 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 covered and the Administration's proposals are set out below:

- (a) **Cross-media ownership restrictions** – the policy intent of the existing cross-media ownership restrictions is to forestall conflict of interest and editorial uniformity. With the proliferation of online infotainment covering a range of different tastes, focuses and stances, the Administration considers that the risk of traditional media achieving editorial uniformity has been significantly reduced nowadays. Therefore, the Administration has proposed to remove some of the obsolete categories from the definition of "disqualified persons" and narrow the scope of "relative" under the definition of "associate" to facilitate business development of the traditional broadcasting industry;

- (b) **Foreign control restrictions** – the existing foreign control restrictions ensure that licensees are controlled by local individuals or companies who are responsive to and cater for the local audience's interests, tastes and culture. The Administration proposes that the existing foreign control restrictions should remain, with only minor refinements of the threshold percentages of foreign investments that are subject to the prior approval of CA with a view to reducing the compliance burden on investors while maintaining suitable control in the system;

- (c) **Requirement of a licensee being a non-subsidiary company** – the existing requirement aims to ensure that the licensees would focus on their broadcasting businesses under minimal influence or interference by other related entities. In the light of the evolution over time and the present competitive environment in the market, the Administration proposes to remove the requirement so that licensees will be given the flexibility in arranging their businesses and in exploring other related business opportunities; and

- (d) **Licensing authority** – taking into account the high pervasiveness and impact of TV (in particular free television programme service ("free TV")) and radio, the Administration proposes that the existing regime with the

Chief Executive in Council being the licensing authority for local free/pay broadcasting services should remain intact. It is also proposed that CA should remain the licensing authority for non-domestic TV licences (covering TV service not primarily targeting Hong Kong, e.g. satellite TV) and other licensable TV licences (providing hotel TV service).

8. The Administration aims to introduce an amendment bill incorporating proposals that have received broad consensus, into the Legislative Council in early 2019. The Review is being conducted in two phases. Whereas phase one public consultation will close on 19 May 2018, the public consultation for phase two of the review, expected to commence later in 2018, will focus on the telecommunications regulatory regime as enshrined in Cap. 106 to cope with the advancement of telecommunications technologies, including the imminent arrival of the fifth generation mobile communications ("5G") services and application of such 5G services in the era of the Internet of Things.

Previous discussions

9. The Administration briefed the Panel on the directions of the Review at the meeting held 12 June 2017. The major discussions and concerns raised by Panel members and the Administration's response are summarized in the ensuing paragraphs.

Scope of the Review

10. Members considered that the Review was long overdue and, the current statutory licensing system for TV broadcasting was not operating as effectively as the Administration had described and should be reviewed.

Cross-media ownership restrictions

11. Some members enquired if the Administration would examine, in the review of Cap. 562, whether a holder of domestic free TV licence should be required to notify CA of any transfer of share ownership. The Administration explained the Review would examine whether the current provision under Cap. 562 regarding ownership requirements of free TV licensees were appropriate.

12. Some Panel members queried whether the Administration would allow a person to hold licence of more than one type of media. The Administration explained that it had been conducting an internal study on the subject of cross-media ownership, covering overseas experiences and practices of their regulatory regimes as appropriate. Consultants might be engaged to study certain specific issues, if necessary. In some jurisdictions, a person or corporation might own more than one type of media so long as the coverage or market share of the media outlets did not exceed specified limits. In some other jurisdictions, a person or corporation might hold a certain number of licences, say two out of three specified types of media.

Foreign control restrictions

13. A few members expressed concerns on the threshold percentages of the total voting shares of a free TV licensee owned by a voting controller who was not an ordinarily resident in Hong Kong ("non-local resident") that required the approval of CA. They cautioned that the Administration should weigh each factor carefully and should not relax the threshold just to attract more foreign investment in Hong Kong. They also advised the Administration to give due consideration to local sentiments in reaching a decision.

14. The Administration responded that it had no preconceived positions regarding on the residency requirements of directors and principal officers of free TV licensees and the threshold percentages of shareholding by non-local residents that required prior written approval by CA. The objective of (a) requiring the majority of directors and principal officers to be local residents; and (b) requiring shareholding by non-local residents exceeding specified threshold percentages to be approved by CA, was to ensure that programmes of free TV licensees could meet local taste.

Protection of underground telecommunications facilities

15. Some members queried the reasons for reviewing the need to impose criminal liability to help forestall damage caused by excavation works and lower the risk of service interruption. Members commented that owners of underground telecommunications facilities could already seek remedies under common law against damages. The Administration responded that the proposal was put forward by telecommunications service operators, on the ground that, as telecommunications had become an essential service to the community, the statutory protection of telecommunications facilities should be brought to be on a par with those

already in place for, for example, electricity and gas.

Over-the-top television services

16. Panel members asked if the Administration would study on the regulation of over-the-top ("OTT") television services. The Administration explained that regulation of OTT was not covered in the Review as it had no plan to regulate Internet broadcasting. If a broadcasting licensee used the Internet as a platform to extend its broadcasting services, such operation would not fall into the definition of cross-media ownership. The Administration had been conducting an internal exercise to examine the developments of OTT services and their regulatory regimes in overseas jurisdictions, and found that OTT services were generally not regulated or regulated with a light-handed approach such as that in the United Kingdom.

17. Members noted that OTT television services were becoming the mainstream and many commercial activities were, at present, being carried out through OTT services. They expressed concerns that personal data were being transferred across the Internet through OTT television services. Members asked how the Administration would ensure that personal data of local consumers would be adequately protected. The Administration replied that such commercial activities did not fall under the scope of the broadcasting control regime, but the Personal Data (Privacy) Ordinance (Cap. 486) and other relevant legislation should have provisions that covered protection of personal data and privacy issues in the cyber world as in the offline setting.

Latest position

18. The Administration will update the Panel on 13 March 2018 on the progress of the Review.

Relevant papers

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

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	12 June 2017	<p>Administration's paper on review of Broadcasting Ordinance (Cap.562) and Telecommunications Ordinance (Cap. 106) (LC Paper No. CB(4)1133/16-17(03))</p> <p>Background brief on review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106) (LC Paper No. CB(4)1133/16-17(04))</p> <p>Minutes of meeting (LC Paper No. CB(4)1360/16-17)</p>
Commerce and Economic Development Bureau	20 February 2018	Press releases – Public consultation on phase one of review on Broadcasting Ordinance and Telecommunications Ordinance launched