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Panel on Information Technology and Broadcasting

Meeting on 10 December 2018

**Updated background brief on
Review of Telecommunications Regulatory Framework**

Purpose

This paper summarizes previous discussions by Members relating to the review of Telecommunications Ordinance (Cap. 106).

Background

Review of Broadcasting Ordinance and Telecommunications Ordinance

2. The Government has embarked on an exercise to review and update the Broadcasting Ordinance (Cap. 562) and Cap. 106. The objective of the review is to provide a balanced competitive environment for the broadcasting and telecommunications markets and to modernize the regulatory frameworks so as to ensure that the regulatory regimes are capable of responding to technological development and keeping pace with new trends.

3. At the meeting of the Panel on Information Technology and Broadcasting ("the Panel") held on 12 March 2018, the Administration briefed members on the first phase of review which focuses on television and sound broadcasting regulatory regimes enshrined respectively in Cap. 562 and Part 3A of Cap. 106, as well as the outcome of the public consultation regarding the proposed amendment to Cap. 562 and Cap. 106.

4. As mentioned in the Chief Executive's 2018 Policy Address, the Administration will proceed to the second phase of the review which will

cover Cap. 106. The Administration's aim is to ensure that the laws and regulations dovetail with the latest developments in technologies to pave the way for early adoption and provision of innovative services, so that Hong Kong can consolidate its leading position as a regional telecommunications hub.

The telecommunications regulatory regime

5. The local fixed telecommunications services market has been fully liberalized since 2003, with no limit on the number of licensees. All sectors of Hong Kong's telecommunications market have been liberalized with no foreign ownership restriction. Competition in telecommunications services has been keen.

6. The Administration's policy goals are to maintain a level playing field in the market, to enable efficient use of resources and to ensure that consumers get the best services available in terms of capacity, quality and price. At the meeting of the Panel held on 12 June 2017, members noted the Administration's observation that, while the current version of Cap. 562 and Cap. 106 was enacted in 1960s, the existing control regimes are not obsolete in entirety; many of the legislative intents remain largely relevant and applicable in the modern day context. The key of the review of Cap. 562 and Cap. 106 should therefore ensure that the relevant statutes would be suitably updated so that they could adequately regulate licensees to preserve the interests of audience and consumers, while at the same time provide latitude for the industries to continue to innovate and thrive.

Alignments between Cap. 562 and Cap. 106

7. The two ordinances were enacted decades ago and have since been separately reviewed and amended on different occasions. Separate individual amendment exercises over the years have resulted in different extents of misalignment between broadcasting and telecommunications regulatory regimes. The Administration has highlighted three issues that may warrant review:

- (a) Transferring the sound broadcasting control regime in Cap. 106 to Cap. 562: One of the major parts of Cap. 106 currently houses the sound broadcasting control regime. Such regime is quite distinct from the rest of Cap. 106 which deals with telecommunications matters. The Administration has indicated that it is exploring the case for transferring the sound broadcasting control regime to

Cap. 562, and the need for aligning, as appropriate, the relevant control provisions regarding television broadcasting and sound broadcasting;

- (b) Penalty levels: the penalty levels of breaches of the regulatory provisions appear inconsistent. For example, there are provisions in Cap. 106, Cap. 562 and the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) which empower the Communications Authority ("CA") to impose a financial penalty on a licensee in the event of any contravention of a licence condition. However, the maximum amounts of financial penalties among these ordinances are different; and
- (c) Appeal mechanisms: while Cap. 562 and Cap. 391 provide that a broadcasting licensee may appeal to the Chief Executive in Council against the decisions of CA, there is no appeal mechanism on telecommunications-related regulatory matters other than matters handled under section 7Q (concerning exploitative conduct) under Cap. 106.

Other areas for review

8. The Administration has also identified other areas that should be reviewed to enhance the operation of the regime. For instance, stakeholders have been urging the Administration to consider the enhancement of protection of underground telecommunications facilities by imposing criminal liability (apart from the existing provision of civil remedies) to help forestall damages caused by reckless excavation works and lower the risks of service interruption that would cause massive inconvenience to the public and businesses.

Public consultation and way forward

9. The Administration informed the Panel that it would launch a three-month public consultation in end-2018 to seek stakeholders and public views on the review of Cap. 106. A number of proposals, seeking to update the statutory requirements under Cap. 106 to prepare for the arrival of the fifth generation ("5G") mobile communications and Internet of Things technologies and to facilitate the operation of the telecommunications industry, will be put forward for consultation. The Administration aims to introduce an amendment bill into the Legislative Council in 2019.

Previous discussions

10. At the meetings of the Panel held on 12 June 2017 and 12 March 2018, the Administration briefed members on the progress of the review on Cap. 106 and Cap. 562. The major discussions and concerns raised by members and the Administration's response in respect of the review on Cap. 106 during these meetings are summarized in the ensuing paragraphs.

Protection of underground telecommunications facilities

11. Some members queried why the Administration would need to consider imposing criminal liability against damages to underground telecommunications facilities when the owners of the facilities could seek remedies under common law. The Administration explained that the request for such provisions was put forward by telecommunications service operators. They argued that telecommunications had become an essential service to the community, the statutory protection of telecommunications facilities should be brought on a par with other main public utilities, such as electricity and gas.

Merging of Cap. 562 and Cap. 106

12. Some members asked if the Administration would consider an earlier plan of merging Cap. 562 and Cap. 106 to remove inconsistencies in the regulation of the broadcasting and telecommunication sectors. The Administration informed the Panel that priority was being given to implementing relaxation measures in the regulation of the broadcasting industry. The Administration would update the telecommunications regulatory regime to cope with the advancement of telecommunications technologies including the imminent arrival of the 5G mobile communications services in the next phase of the review.

13. The Administration further explained that the longer term question on whether the Administration should devote resources to embark upon a major exercise of merging Cap. 562 and Cap. 106 could be addressed after the relaxation measures (mentioned above) had been properly implemented and in smooth operation, and in the light of the prevailing market circumstances at that time.

Latest position

14. The Administration will update the Panel on 10 December 2018 on the progress in the review of Cap. 106. A list of the relevant papers is set out in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
4 December 2018

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) prepared by the Legislative Council Secretariat (LC Paper No. CB(4)1133/16-17(04))</p> <p>Minutes of meeting (LC Paper No. CB(4)1360/16-17)</p>
The Chief Executive's 2018 Policy Address	---	Paragraph 138 of 2018 Policy Address
Commerce and Economic Development Bureau	23 October 2018	<p>Paragraph 36 of 2018 Policy Address Policy Initiatives of Communications and Creative Industries Branch (LC Paper No. CB(4)24/18-19(02))</p>

Issued by	Meeting date/ Issue date	Paper
Panel on Information and Technology and Broadcasting	12 November 2018	<p>Administration's paper on retention of two supernumerary directorate posts in the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau (LC Paper No. CB(4)162/18-19(07))</p> <p>Updated background brief on retention of two supernumerary directorate posts in the Commerce and Economic Development Bureau for review of Broadcasting Ordinance (Cap.562) and Telecommunications Ordinance (Cap. 106) (LC Paper No. CB(4)162/18-19(08))</p>