

LEGISLATIVE COUNCIL BRIEF

1998 REVIEW OF TELEVISION POLICY

INTRODUCTION

A At the meeting of the Executive Council on 8 December 1998, the Council ADVISED and the Chief Executive ORDERED that the policy recommendations arising from 1998 Review of Television Policy (at Annex A), should be adopted.

BACKGROUND AND ARGUMENT

Background

B 2. On 1 September 1998, the Executive Council decided that the paper on 1998 Review of Television Policy should be published for public consultation on 3 September 1998. A Legislative Council brief was issued on 3 September 1998 and Members were briefed on the policy proposals at a special Information Technology and Broadcasting Panel meeting held on the same day. The consultation exercise ended on 3 October 1998 and a total of 46 submissions have been received. A summary of the submissions is at Annex B.

Policy Proposals

3. Having carefully considered all submissions received and bearing in mind our broadcasting policy objectives (which in brief are to broaden programme choice, encourage innovation, maintain our competitiveness and enhance Hong Kong's position as a regional broadcasting hub), the policy proposals put forward in the consultation paper have been revised. The policy decision as approved by the Executive Council against the policy proposals are set out in Annex A. The Government's considerations on the major issues are set out below.

Network Sharing

4. The majority of the submissions support our proposals to allow Fixed Telecommunications Network Services (FTNS) licensees to convey and provide television services and cable television networks to deliver telecommunication services. They agree that these proposals would enable cross-fertilisation of both the telecommunication and broadcasting markets and would facilitate the development of new services and competition. However, the proposals to require Hong Kong Cable Television Limited (HKCTV, formerly known as Wharf Cable Limited), to open up its broadband network for use by other telecommunication and television services providers and to require HKCTV to return the Microwave Multipoint Distribution System (MMDS) frequencies are strongly opposed by HKCTV. In addition, HKCTV has suggested that it should be granted an FTNS licence (separate from the existing licence held by one of its sister companies, New T&T Hong Kong Limited which exists under the same umbrella - Wharf Communications Investments Limited) for it to make full use of its network for the provision of telecommunication services.

5. We do not agree with the arguments put forward by HKCTV regarding interconnection and the returning of the MMDS frequencies. The interconnection requirement has been applicable to licensees under the Telecommunication Ordinance to enable service providers to have equal and non-discriminatory access to the network facilities available in the market. HKCTV, in rolling-out its service, has also relied upon the interconnection requirement to gain access to buildings. The interconnection requirement is provided under sections 36A, 36B and 36C of the Telecommunication Ordinance and section 20B of the Television Ordinance, which are applicable to HKCTV's broadband network. In accordance with these provisions, telecommunications licensees would have reciprocal right to seek interconnection with HKCTV's network. Under this framework, the preference of the Telecommunications Authority (TA) is for the interconnection charges to be negotiated and agreed commercially between HKCTV and the other operator requesting interconnection between the networks. In the event that a commercial agreement cannot be reached, the TA may determine a fair interconnection charge to sufficiently meet the investment and operational costs of HKCTV in the construction and maintenance of its network. The TA will develop a set of principles and technical arrangements on such interconnection in consultation with the industry and publish guidelines on the arrangements for reference by the industry.

6. The requirement to return the MMDS frequencies currently used by HKCTV is stipulated in HKCTV's licence. We will discuss with HKCTV, as part of the mid-term review of its licence, the time-frame for recovering the MMDS frequencies due for return under the licence. Our current thinking is that HKCTV should be required to roll out its hybrid fibre coaxial cable network to replace the MMDS network within the shortest practical time.

7. As for our proposal allowing HKCTV's network to be opened up to carry telecommunication services, HKCTV's expressed wish to obtain an FTNS licence would have to be considered in the light of our consideration of and the Government's decision on whether the moratorium on local FTNS licences should be extended. In the event the moratorium were extended, then HKCTV could not be granted a licence to operate fixed telecommunications services on its own as this would be tantamount to granting a further FTNS licence. Thus, HKCTV's network could only be allowed to carry telecommunication services provided by the incumbent FTNS licensees. In the event that the moratorium were not extended, then HKCTV may apply for a new FTNS licence on its own. Like other applicants, its application would have to be assessed taking into account any network roll-out requirements which the Government may wish to impose and the competition safeguards in the telecommunications market. As regards the FTNS licensees, should they wish to provide television programme service by themselves, they would have to apply for an appropriate licence under the new categories of television programme service licences. Their applications would be assessed taking into account any programme service requirements and the need to safeguard competition in the broadcasting market.

In-building distribution systems

8. It is generally recognised that the limited capacity of the in-building distribution system will impose a constraint on the introduction of new services. The Government will promote the efficient use of the capacity of the in-building network by giving priority in the allocation of the frequency for channels to services using digital and other advanced technologies. The Government will also set up an internal working group to look into ways to relieve the congestion problem. In order to maximise the capacity for channel distribution, the working group's first task will be to rationalise existing frequency allocations in the in-building network. To this end, the working group will seek to develop and formulate an optimal frequency layout plan and draw up technical specifications on the standards of distribution for consultation and agreement with the industry. Our intention is to promulgate the technical

specifications and frequency layout plan in time for our invitation to the industry for applications for the introduction of new services.

The Pay Television Market

9. There is overwhelming support from both the industry and the community for opening up the pay television market for free competition by whatever means of delivery that are technically feasible. To facilitate the early introduction of new pay television services, necessary amendments to the existing Satellite Master Antenna Television (SMATV) licences, which general conditions are subsidiary legislation under the Telecommunication Ordinance, will be proposed to enable the licensees to carry pay TV services.

Direct-To-Home Satellite Services

10. The proposals for using the four high-power broadcasting satellite services (BSS) channels allocated by the International Telecommunication Union (ITU) for the provision of Direct-to-Home (DTH) services are well received. The Government will proceed with the preparatory work with a view to inviting applications in 1999. There are suggestions that the Government should not limit DTH services to the four BSS channels since other Ku-band frequencies are also capable of delivering DTH services. It should be noted that the four BSS channels are permanently assigned to Hong Kong. They enjoy interference protection and are specifically designed to provide a good quality DTH service. However, we agree that broadcasters should be allowed to choose their preferred frequency channels (not necessarily the four BSS channels) to deliver DTH services. DTH services will be licensed under the proposed television programme service licensing regime upon the enactment of the proposed Broadcasting Bill and, in the interim period, under the satellite television uplink and downlink licence issued under the Telecommunication Ordinance.

Regulatory and licensing framework

Licensing regime

11. The proposal to replace the present transmission-based licensing regime with a technology and transmission neutral regime embracing four categories of licences is widely supported. There are, however, some

suggestions to improve the definition of service categories. In the light of these suggestions, it is decided that the following clarification/amendment should be made to our original proposals:

- (a) it will be clarified that licensees of "non-domestic television programme services" will also be allowed to provide pay television services which are receivable in but not primarily targeted at Hong Kong. Whether a programme service primarily targets Hong Kong should be subject to the determination of the Broadcasting Authority (BA) in accordance with the range of factors currently set out in satellite television uplink and downlink licences. This will enhance Hong Kong's attractiveness as a regional broadcasting hub; and
- (b) for "other licensable television programme services", the cap on the aggregate number of target households a licensee and those exercising control of it and their associates may pass without having to seek approval of the Chief Executive in Council will be reduced from 15% to 10% of the total number of households in Hong Kong (i.e. from about 285,000 to 190,000 households). The total number of households will be based on the latest available result of the general household survey conducted by the Census and Statistics Department. A smaller aggregate household size is better able to reflect the nature of these "niche" services and will better differentiate this type of licence from that of the territory-wide "domestic pay" services.

Domestic free television

12. Questions were raised as to why the Government had not proposed to open up the free-to-air television market for competition. TA has confirmed that, because of spectrum constraint, a fifth UHF television channel with territory-wide coverage transmitted by analogue technology is technically not feasible at the moment. However, transmission of free television service is not limited to using the UHF spectrum. General and direct-to-home satellites, for example, can be used to provide free television services. Under the new technology-neutral licensing regime, there would be no limit on the number of domestic free licences to be issued. Applications for domestic free licences transmitted through other technically feasible means will be considered.

Restrictions on voting control

13. At present, the restrictions on the exercise of voting control by persons not ordinarily resident in Hong Kong apply to all licensees under the Television Ordinance. Our proposal to confine the restrictions to domestic free television licensees is generally supported. On the enforcement of these restrictions, we have put forward two options, namely to retain the present system; or to modify the existing system with a cap on the aggregate ownership of non-residents at 49%. Because of the legal and practical difficulties in the implementation and enforcement of a cap on the shares of listed companies which are freely traded, and in the absence of strong industry and public demand for change, it is decided that the present approach based on voting control on a poll at a general meeting would be maintained. However, the incremental steps of voting control by persons not ordinarily resident in Hong Kong at which approval of the BA is required would be relaxed. At present, the trigger points are set at 2%, 4%, 6%, 8%, and 10%. These will be simplified and relaxed to 2%, 6% and 10%.

Cross-media ownership restrictions

14. While cross-media ownership restrictions should continue to apply to domestic free and domestic pay television programme services licensees in order to avoid conflicts of interest and the build-up of media monopoly, we have, in the light of increased cross-market developments in a technology-convergent environment, proposed to remove “programme suppliers” and “companies which transmit sound or television material, whether within or without Hong Kong” from the list of disqualified persons. We have not received any objection to the latter proposal. But there is a concern about the former, namely that a programme supplier, if allowed to exercise control in a dominant licensee, may manipulate the association and deny the programme supplier’s competitors the dominant licensee’s air-time they need. To address this valid concern, it is now decided that a person, including its controller and associate, which supplies material for broadcasting by a TV programme service licensee, i.e. any one of the 4 new categories of television programme services licensees should not exercise control in, or be controlled by, the dominant television programme services licensee without the approval of the Chief Executive in Council. (The definition of the dominant television programme service licensee is set out in paragraph 27.)

15. We have proposed in the consultation paper that the dominant FTNS licensee would require Chief Executive in Council's approval to exercise control in the subscription television licensee which is dominant in the pay TV market. In response, we received the suggestion that the same requirement

should also apply to the dominant FTNS licensee for exercising control in the domestic free television licensees. To prevent the dominant FTNS licensee from seeking to entrench its dominant position in both the telecommunications and broadcasting markets, this suggestion is accepted.

Investment restrictions

16. In a bid to make our policies as business-friendly as possible and to keep bureaucratic interference to a minimum, we have proposed to remove the requirement that a licensee has to seek the approval of the BA prior to acquiring or holding any interest in another company. In addition, we have proposed to allow all licensees the freedom to make investments in any businesses except that the cross-media ownership restrictions should continue to apply in order to prevent the build-up of media monopoly. This proposal was welcomed by the industry and favourably received. There is, nevertheless, a concern that in the absence of a general competition law in Hong Kong, the proposed relaxation might enable a domestic free licensee to make use of its pervasive influence in the television market to gain an unfair advantage in another industry. However, as it is Government policy to promote competition on a sectoral basis, any anti-competitive behaviour should be dealt with in the specific markets concerned. As for the television market, our decision to strengthen and provide competition safeguards by legislation (paragraphs 25-28 refer) to deal with any anti-competitive practices and abuse of a dominant position should address this concern. However, to ensure that cross-media ownership restrictions can be effectively enforced as a safeguard against possible conflict of interest and the build-up of media monopoly within a corporate group (paragraphs 14 and 15 refer), our decision now is that while investment restrictions in general would be removed, investment by a domestic free or a domestic pay television programme services licensee in a disqualified person (including a newspaper) would continue to be restricted in that prior approval of the Chief Executive in Council has to be sought if the licensee acquires or holds the beneficial ownership or voting control of more than 15% of the voting shares of that disqualified person.

Content control

17. To provide broadcasters with greater flexibility in packaging their advertisements, we have proposed to relax the present advertising time restrictions outside the peak viewing hours (6:00 p.m. to 12 midnight) for domestic free TV licensees. We have also proposed to remove all advertising restrictions for the other categories of licences as we believe that they will respond to market forces and viewers' pressure and adjust their advertising levels accordingly. The industry and the community are generally in support, with the incumbent commercial television licensees asking for more latitude. As domestic free television will for sometime continue to be the most pervasive and is being relied on by a substantial number of viewers as a major source of information and entertainment, it is in the interest of the viewing public to apply certain restrictions on advertising time during the peak viewing hours. However, an adjustment to the definition of the peak viewing hours could be made to enable the relevant television licensees to continue their current practice of broadcasting advertising magazines after 11:00 p.m. Accordingly, the peak viewing hours are now redefined as the period from 5:00 p.m. to 11:00 p.m. This adjustment should prevent bunching of advertisements during the 5:00-6:00 p.m. period when children programmes are usually broadcast.

Independent local productions

18. There are suggestions that to break up vertical integration prevailing in the television market and to promote the growth of the local television production industry, the broadcasting licensees should be required to reserve a portion of their air-time for local independent productions. However, others have reminded us that broadcasters' editorial freedom to decide whether, what and where to source programmes cannot be compromised. At any rate, it will be in their own interest that they provide programmes which meet their viewers' and market demand.

19. In an emerging multi-channel and multi-media television environment, there will be new and expanded business opportunities for the local television production industry. The market demand for good quality local productions should also increase. In step with the global trend of liberalisation of the television market, the Government's role should be to provide an open, fair and pro-competition environment conducive to the development of the broadcasting and related industries, and that it should refrain from interfering with the market unless absolutely necessary. In any case, enforcing a quota system for local productions will be fraught with problems. The Government does not therefore propose to stipulate a general obligation on

the broadcasters to reserve a proportion of their air-time for outside independent productions.

Royalties

20. Under the misguided belief that the Government does not intend to open up the free television market, a number of respondents have suggested that the charging of royalties on the terrestrial television licensees should continue. As explained in paragraph 12, there will be no limit on the number of domestic free television licences. Under the new regulatory regime, the free television market, like the pay television and other markets, will be opened up for competition. Thus, it is decided that the advertising and subscription royalties for all television and sound broadcasting licensees should be abolished as originally proposed. The abolition of royalties, together with the immediate application of full-cost recovery licence fees, would take effect when the new regulatory regime has been put in place.

Digital terrestrial television

21. The proposals to introduce digital terrestrial television (DTT) to Hong Kong are well received. Many respondents have indicated an interest in joining the steering committee proposed to be set up to steer and co-ordinate the conduct of technical trials on DTT. As the committee's role is confined to conducting trials on terrestrial digital TV broadcasts, only the two terrestrial commercial TV broadcasters (i.e. Television Broadcasts Limited and Asia Television Limited) will be invited to join the committee. They will be required to bear all the costs related to the trials and to make available the outcome of the trials to the industry and the public. However, the Government will make it clear to the participants that they will not be conferred with any automatic right to use any frequency channels for digital broadcast if and when DTT is introduced to Hong Kong. Applications from other interested parties to conduct trials of DTT will be considered on a case-by-case basis having regard to the merits of their proposals and they will be subject to the same conditions required of these two terrestrial TV broadcasters. Separately, the Government will, in consultation with the industry and the community, consider the policy and regulatory issues in accordance with the timetable set out in the consultation paper.

Competition safeguards

22. Considerable feedback has been received on the need to incorporate competition safeguards in legislation. There are comments that despite the increased choice of viewers over the number of television channels in the past years, there has been no effective competition in the marketplace as one local station still takes up some 75% to 80% of the market share, both in terms of viewership and advertising revenue.

23. At present, all broadcasting licences already contain a free competition clause which prohibits a licensee from entering into any agreement or arrangement which will restrict competition in relation to the establishment, provision or operation of any telecommunication or broadcasting service. To strengthen these competition safeguards, the relevant licence conditions will be expanded and enshrined in the proposed “Broadcasting Bill”.

24. Many developed economies have a general competition law to deal with competition-related issues. The laws usually contain provisions against restrictive trade practices and abuse of a dominant position. In 1997, the Government completed a review of the competition policy and decided against enacting an all-embracing competition law. Instead, pro-competition measures, where necessary, should be initiated on a sectoral basis through administrative, legislative or other means as appropriate.

Pro-competition provisions

25. In line with the present practice adopted in the fixed telecommunications market, it is decided that the competition safeguards in the proposed Broadcasting Bill should include provisions against anti-competitive trade practices and abuse of position by a dominant licensee.

26. Regarding anti-competitive practices applicable to all licensees, it is decided the existing free competition clause in the broadcasting licences which reflects the commonly accepted practices in the industry should be built into the primary legislation. In brief, the pro-competition provisions would stipulate that a licensee shall not enter into any agreement or arrangement, or offer any inducement (whether financial or otherwise) to any person etc. which will, or is calculated to, restrict, impede or restrain competition by any person other than the licensee in relation to the establishment, provision or operation of any service or network for telecommunication or broadcasting in Hong Kong. These would, however, be subject to a number of provisos the effect of which is to permit restrictions which are fair and reasonable in reference to the public

interest, restrictions on broadcasting any programme material acquired or produced by or for the licensee, restrictions on supplying any proprietary decoder by a subscription television licensee and restrictions on any person using or exploiting his artistic talent or ability, etc.

27. As for the safeguards against abuse of dominant position, dominance would be determined *mainly* by reference to the combined gross local television advertising and subscription revenues attributable to the Hong Kong domestic market and to which the licensee is entitled. In order to counter fragmentation and siphoning-off of the monies received by a licensee, appropriate anti-avoidance provisions will be put in place. A market share of over 50% would be a good indicator of market dominance. In addition to revenue market share, other relevant factors including the power to decide pricing, the market share in ratings, the availability of substitutions, etc. may also be considered in determining dominance where applicable.

28. Similar to the existing practice in the telecommunications market, a dominant licensee would be taken to have abused its position if it has engaged in conduct which has the purpose of preventing or substantially restricting competition in the broadcasting and telecommunications market. Conduct which is capable of constituting an abuse of a dominant position would include -

- (a) predatory pricing;
- (b) price discrimination;
- (c) tying arrangements; and
- (d) discrimination in the supply of services to competitors.

As mentioned in paragraph 26, the competition provisions applicable to all television licensees would be subject to those practices which are commonly accepted as trade practices in the broadcasting industry. In line with Government's policy objective to promote fair competition and provide a level playing field for all broadcasters, the dominant licensee may also lawfully engage in these commonly accepted practices. Accordingly, the same permissive provisions as mentioned in paragraph 26 would be stipulated in the competition provisions targeted at a dominant licensee.

Regulatory bodies

29. There are two alternative institutional structures to enforce the above pro-competition provisions: an agency approach and the court approach. In terms of cost, speed of decision-making, and in view of the sectoral approach for promoting competition in the television market, it is decided that the agency approach should be adopted. The BA, which is currently charged with the statutory responsibility for regulating the broadcasting industry, is the most appropriate body to enforce these pro-competition provisions. In this regard, the BA would be empowered to require a television programme service licensee to supply information relating to its business; to determine dominance in the television market; to investigate and make determinations of anti-competitive practices; to require a licensee to cease and desist from a practice determined by the BA to be in breach of the competition provisions; and to impose financial penalties as prescribed in the legislation. Like other decisions by the BA at present under the Television Ordinance, we would propose, in the new Broadcasting Bill, and subject to Bill of Rights clearance in due course, to provide for appeals to the Chief Executive in Council. The maximum financial penalty that the BA may impose under the new Broadcasting Bill for breaches of the pro-competition provisions would be set at \$1 million.

Implementation

30. The existing commercial television, subscription television, programme service, satellite television uplink and downlink licences will be amended to reflect the new policy following endorsement. Amendments to HKCTV's licence will tie in with its mid-term review scheduled for 1999 and those proposals which do not require legislation will be given effect in the licence conditions where applicable. Amendments to the commercial television licences will tie in with the renewal of licences held by Asia Television Limited (ATV) and Television Broadcasts Limited (TVB) in 2000.

31. Applications for new pay television licences will be invited as soon as the in-building frequency rationalisation plan has been agreed (see paragraph 8 above). Before the new legislation is enacted, licences, if granted, will be subject to and governed by existing legislation depending on the mode of transmission.

32. Drafting work on the Broadcasting Bill will commence immediately with a view to introducing it into the Legislative Council in 1999. The new regulatory regime and the abolition of the subscription and advertising royalties will be effective upon the enactment of the Broadcasting Bill.

Legislation

33. There is overwhelming support for the introduction of a proposed technology-neutral Broadcasting Bill. We will proceed with the drafting work immediately.

FINANCIAL AND STAFFING IMPLICATIONS

34. The economic benefits that will accrue to Hong Kong from a more thriving and competitive television industry are likely to outweigh the loss in royalty revenue. Upon the abolition of advertising and subscription royalties, licence fees at full cost level will become payable and the additional revenue will be \$20 million in the first year based on 1998-99 prices. Initially, the Television and Entertainment Licensing Authority will absorb the additional workload arising from the BA's taking on the additional licensing functions for non-domestic and other licensable television programme services as well as the powers to investigate into and determine anti-competitive practices. Terrestrial broadcasters will be asked to bear all the costs associated with the conduct of DTT trials and any additional resources required within the Government for the trials will be met from Secretary for Information Technology and Broadcasting's global allocation. Other proposals are mostly cost-neutral as the resources required for implementation can be absorbed by the relevant bureaux and departments.

ECONOMIC IMPLICATIONS

35. An opened-up television broadcasting and programme service market will speed up technology transfer, attract investment, stimulate the growth of related industries like programme production, and create new employment opportunities. A vibrant television industry in Hong Kong would not only widen viewers' programme choice, but also enhance our position as the regional broadcasting hub. Safeguards will be incorporated to ensure fair competition and a level playing field.

PUBLICITY

36. We will brief the Legislative Council Information Technology and Broadcasting Panel on the outcome of the review on 10 December 1998. A press conference will be held and a press release will be issued on the same day to announce the policy decisions. All respondents will be informed of the policy decisions in writing.

10 December 1998
Information Technology and Broadcasting Bureau
Government Secretariat

**Policy Decisions arising from the
1998 Review of Television Policy**

Subject	Original Proposals	Policy Decisions
Network sharing	1. To allow Fixed Telecommunication Network Services (FTNS) licensees to carry and, subject to appropriate licensing, provide television programme services, including pay television and video-on-demand (VOD) services.	No change.
	2. To require Hong Kong Cable Television Limited (HKCTV, formerly known as Wharf Cable Limited) to open up its broadband network for use by other television and telecommunications service providers subject to the payment of a cost-based interconnection charge to be approved by the Telecommunications Authority (TA).	No change. The right to interconnect will be confined to licensees under the Telecommunication Ordinance and the television transmission network operators. HKCTV may charge a fair interconnection fee as determined by the TA in the event that a commercial agreement between HKCTV and the operator requesting interconnection cannot be reached. The TA will develop a set of principles and technical arrangements on such interconnection in consultation with the industry and publish guidelines for reference by the industry.
	3. To allow cable television	No change. Applications for

Subject	Original Proposals	Policy Decisions
	<p>networks to deliver telecommunications services in addition to television services.</p>	<p>an FTNS licence by the cable television licensee will be subject to the government policy at the time, specifically, whether the moratorium on local FTNS licences would be extended.</p>
	<p>4. To allow satellite TV uplink and downlink licensees to offer their transmission facilities for providing uplinking services immediately following the expiry of Hong Kong Telecom International Limited (HKTI)'s exclusivity to provide facility-based satellite uplinking service on 1 January 2000.</p>	<p>No change.</p>
	<p>5. To require HKCTV to hand back non-essential Microwave Multipoint Distribution System (MMDS) frequencies within a stipulated time-frame.</p>	<p>No change. The Government will discuss with HKCTV, as part of the mid-term review of its licence, the time-frame for rolling out the hybrid fibre coaxial cable network to replace the MMDS frequencies due for return under the licence.</p>
	<p>6. To develop the application of digital terrestrial television (DTT), thereby reducing existing spectrum constraints on terrestrial television broadcasting and broadening the scope of services to include High Definition Television (HDTV), multimedia and telecommunication services.</p>	<p>No change. A steering committee on the technical trials of DTT will be established. ATV and TVB will be invited to join the Committee.</p>

Subject	Original Proposals	Policy Decisions
	7. To put in place appropriate pro-competition safeguards against and between dominant network/transmission facilities owners and/or service providers.	No change. See also paragraph 32 on competition safeguards.
	8 In the longer term, to mandate interconnection between telecommunications and broadcasting networks in a digital multimedia environment.	No change.
	9. To review the terms and conditions for the use of a site reserved at Chung Hom Kok for the development of a teleport to facilitate investments in satellite stations for external telecommunications and uplinking of broadcasting signals.	No change.
In-building distribution systems	10. To promote efficient use of the frequency spectrum by giving priority in the allocation of the frequency spectrum of the in-building wiring to services using digital and other advanced technologies.	No change.
	11. To encourage cable, satellite and terrestrial broadcasters to apply digital technology in their transmission, especially in the introduction of new services.	No change.
	12. To amend section 36A of the Telecommunication Ordinance	No change.

Subject	Original Proposals	Policy Decisions
	with a view to strengthening the TA's power in determining interconnection within buildings.	
	13. To require the mandatory provision of access facilities in new buildings.	No change.
	(Additional policy measure to address the limited capacity of the in-building distribution system.)	The Government will formulate an optimal frequency layout plan and draw up technical specifications on the standards of distribution for consultation and agreement with the industry.
Pay television market	14. To lift the moratorium on pay television and VOD programme service licences and open the market for free competition.	No change.
	15. To remove existing restrictions and allow satellite broadcasters and Satellite Master Antenna Television (SMATV) operators to carry pay television services.	No change. Necessary amendments to the relevant regulations under the Telecommunication Ordinance to effect the changes to the SMATV licences will be proposed.
	16. To continue to allow television receive-only (TVRO) to receive any satellite television programmes without restriction. However, foreign television services should not be allowed to market their pay services or sell/rent/install their decoders and	No change.

Subject	Original Proposals	Policy Decisions
	<p>reception equipment in Hong Kong for their television services if they do not possess a television service licence issued in Hong Kong.</p>	
<p>Direct-to-home satellite television services</p>	<p>17. To prepare for the licensing of Direct-to-Home (DTH) satellite service using the 4 high power Broadcasting Satellite Service (BSS) channels allocated for domestic free and/or pay television services in digital format in and uplinked from Hong Kong with a view to inviting applications in 1999.</p>	<p>In addition to the 4 designated BSS channels, the use of other frequency channels to deliver DTH services can also be considered.</p>
<p>Regulatory issues</p>	<p>18. To revamp and rationalise the existing regulatory approach for licensing television broadcasting services by replacing it with a technology and transmission neutral regime with four categories of licences as set out in paragraph 11.2 of the consultation paper :</p> <p>(a) Domestic free television programme services</p> <p>(b) Domestic pay television programme services</p> <p>(c) Non-domestic television programme services</p>	<p>No change.</p> <p>No change.</p> <p>No change.</p> <p>Subject to licence approval and BA's determination, services can include pay services which are receivable</p>

Subject	Original Proposals	Policy Decisions
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	<p>(d) Other licensable television programme services. We have proposed that the target audience for such a licence should not exceed 5,000 households and that the aggregate target number of households served by any one company should not exceed 15% of the total number of households in Hong Kong without Chief Executive in Council (CE in C)'s approval.</p>	<p>in but not primarily targeted at Hong Kong. Whether a programme service primarily targets Hong Kong would be subject to the determination of the BA in accordance with the range of factors currently set out in satellite television uplink and downlink licences.</p>
	<p>(d) Other licensable television programme services. We have proposed that the target audience for such a licence should not exceed 5,000 households and that the aggregate target number of households served by any one company should not exceed 15% of the total number of households in Hong Kong without Chief Executive in Council (CE in C)'s approval.</p>	<p>The cap on the aggregate number of target households a licensee and those exercising control of it and their associates may pass without having to seek CE in C's approval to be reduced from 15% to 10% of the total number of households in Hong Kong (i.e. from about 285,000 to 190,000 households).</p>
<p>19. To invite the Broadcasting Authority (BA) to review the existing codes of practice with a view to issuing a set of generic codes on programme and advertising standards and specify which parts of the codes are applicable to all or a certain category of licensees. The TA should be responsible for issuing technical standards in respect of the four categories of licensees proposed in paragraph 18 above.</p>		<p>No change.</p>

Subject	Original Proposals	Policy Decisions
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20. To subject the four categories of services proposed in paragraph 19 above to a 4-tier regulatory system commensurate with the degree of pervasiveness and the nature of the services. Restrictions on ownership, investment by licensees, content and advertising control etc. are to be relaxed or simplified in accordance with the proposals set out in paras. 11.7 to 11.31 of the consultation paper.

No change except as stated below.

Restrictions on Voting Control by Non-Residents

We have proposed that the restrictions on non-residents to exercise control on domestic free licensees should be retained but subject to two options:

(a) to retain the present restrictions but the incremental percentages requiring approval of the BA may be relaxed; or

The present restrictions will be maintained for domestic free licensees. However, the incremental steps requiring approval will be relaxed from 2%, 4%, 6%, 8% and 10% to 2%, 6% and 10%.

(b) to cap the aggregate ownership of non-residents at 49%.

Not adopted because of legal and enforcement difficulties.

“Disqualified persons”

We have proposed that the dominant FTNS licensee and

No change. In addition, the same requirement will be

Subject	Original Proposals	Policy Decisions
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those exercising control of it and their associates would require CE in C's approval to exercise control in the subscription television licensee which is dominant in the pay TV market.

extended to apply to the dominant FTNS licensee for exercising control in a domestic free TV licensee.

We have proposed that "a company which supplies material for broadcasting by a licensee" should be removed from the list of disqualified persons.

This category of disqualified persons will be retained in respect of the dominant television programme service licensee.

Investment by licensees

We have proposed that the existing restrictions on investment (including that a licensee may only invest in broadcasting-related business subject to the BA's prior approval) should be removed for all TV programme service licensees.

Investment by a domestic free or a domestic pay licensee in a disqualified person (including a newspaper) will continue to be restricted in that prior approval of the CE in C has to be sought if the licensee acquires or holds the beneficial ownership or voting control of more than 15% of the voting shares of that disqualified person.

Advertising Time Restrictions

We have proposed that advertising time restrictions should be removed for all categories of licensees except domestic free TV licensees. For domestic free licensees, they should not broadcast more than 10 minutes of advertising per hour during the period from 6

For domestic free TV programme services, the peak viewing hours will be redefined as the period from 5:00 p.m. to 11:00 p.m.

Subject	Original Proposals	Policy Decisions
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p.m. to midnight and at other times the total advertising time should not exceed 18% of total broadcast time of those periods. All advertisements (including infomercials) should be clearly identified as such and the existing categories of advertising magazines and classified advertisements should be abolished.

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| 21. To require parental locking systems for all domestic pay and other licensable television services. | No change. |
| 22. Transactional and data services offered to pay television subscribers as a package or stand-alone services should continue to be regulated under licences issued by the TA under the Telecommunication Ordinance (Cap. 106). | No change. |
| 23. Any new multimedia service (including Internet) originated in Hong Kong, which offers TV-type programmes, on a commercial basis and competes with television programme services operating in Hong Kong should require a television programme service licence. 'Web TV' should continue to be regulated as Internet service until it is caught by the foregoing description. | No change. |

Subject	Original Proposals	Policy Decisions
Royalties and licence fees	24. To abolish the charging of subscription royalties for domestic pay television services.	No change.
	25. To abolish the charging of advertising royalties for all television programme services.	No change.
	26. To abolish the charging of advertising royalties for all radio services.	No change.
	27. To maintain the current policy of recovering full cost from licence fees for all television programme and radio services and to regularly review and introduce cost-efficiency measures where appropriate to licence administration. As a quid pro quo for the abolition of royalties, the phase-in arrangement for full cost recovery for licence fees should cease and the full licence fees should be payable immediately upon legislative and licence amendments where appropriate.	No change.
Digital Terrestrial Television	28. To establish a Joint Government-Industry steering committee to steer and co-ordinate the conduct of technical trials on digital terrestrial television (DTT) and HDTV with a view to	No change.

Subject	Original Proposals	Policy Decisions
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determining a DTT standard to be adopted in 2000.

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| <p>29. To commence in 2 years, on satisfactory completion of the DTT trials, simulcast of analogue and digital terrestrial television; subject to the circumstance at the time, to review in 5 years following commencement of simulcast or when the penetration of digital terrestrial television reaches 50% of all television households, whichever is the earlier, whether and when a switch-off date should be set for analogue broadcast.</p> | <p>No change.</p> |
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| <p>Legislation</p> | <p>30. To consolidate all provisions relating to broadcasting under the existing Television Ordinance (Cap. 52), Telecommunication Ordinance (Cap. 106) and Broadcasting Authority Ordinance (Cap. 391) and embrace them under an omnibus 'Broadcasting Bill'. The 'Broadcasting Bill' should be technology-neutral legislation appropriate to the technology-convergent environment.</p> <p>31. To provide, in the omnibus 'Broadcasting Bill' and through amendments to the Telecommunication Ordinance, a</p> | <p>No change.</p> <p>No change.</p> |
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Subject	Original Proposals	Policy Decisions
	<p>framework that enables the separate regulation and licensing of transmission facilities and service provision.</p>	
	<p>32. To enhance the safeguards on competition by incorporating provisions prohibiting anti-competition practices in the proposed “Broadcasting Bill”.</p>	<p>No change.</p>
	<p>(Additional competition safeguards against abuse of position by a dominant licensee to be provided in the Broadcasting Bill.)</p>	<p>A dominant licensee would be taken to have abused its position if it has engaged in conduct which has the purpose of preventing or substantially restricting competition. Conduct which is capable of constituting an abuse of a dominant position would include predatory pricing, price discrimination, tying arrangements and discrimination in the supply of services to competitors. The BA would be empowered to enforce the competition provisions.</p>
<p>Regulatory bodies</p>	<p>33. To empower the BA to license non-domestic television programme services and other licensable television services proposed in paragraphs 18(c) & (d).</p>	<p>No change.</p>
	<p>34. The BA should continue to be responsible for the issuance and</p>	<p>No change.</p>

Subject	Original Proposals	Policy Decisions
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review of codes of practice on programme and advertising standards for television programme services, and monitoring television service providers' compliance with the codes and licence conditions on an 'act-on-complaint' basis.

35. The TA should be the licensing authority for all transmission facility service providers (except those licensed under the Outer Space Ordinance) under the separate licensing framework proposed in paragraph 31 above and responsible for monitoring the technical performances of the licensees.

No change.

1998 Review of Television Policy

Summary of Responses to the Public Consultation

General views

The respondents, particularly the telecommunications and television industries, are generally supportive of the proposals which are perceived as generating new business opportunities, promoting the growth of related industries and enabling investors to harness the convergent technologies. It is also generally agreed that the opening up of the television market and the rationalisation of the regulatory regime will enable the incumbent and new players to compete on a level playing field and bring about more programming choice to the general public.

Vertical integration

2. Most of the respondents support the breaking up of vertical integration in the broadcasting industry. Some have suggested that television licensees should be required to reserve a portion of their air time for local independent productions. On the other hand, a couple of submissions recognise that some form of vertical integration may be acceptable for good economic reasons in a vibrant convergent environment.

Network sharing

3. The majority of respondents support the proposals to open up the telecommunications and cable TV networks to achieve maximum utilisation and efficient use of the existing networks. The potential users as well as the owners of the networks are naturally concerned with the calculation of the cost-based interconnection charges. They have suggested that this should be a transparent process involving industry participation. The cable TV licensee, however, has strong objection to the proposal to open up its network for use by other service providers.

In-building distribution systems

4. It is generally recognised that the in-building bottleneck will impose a constraint on the introduction of new services. Some respondents have requested that information on the current spectrum usage should be released and that the Government should mandate access to the in-building/SMATV networks. Most respondents agree that in the allocation of channels for new services, priority should be given to those employing digital and advanced technology. The proposal to mandate access to new buildings is strongly supported.

The Pay Television market

5. There is overwhelming support for opening up the subscription television and Video-on-Demand programme service markets. The licensing proposals for using the four ITU high-power Broadcasting Satellite Service (BSS) channels for the provision of Direct-to-Home (DTH) services are also generally well received. Some have pointed out that other satellite transponders in the Ku band are also capable for delivering DTH services, and that the Government should not limit DTH services to the four ITU channels.

Regulatory Issues

6. The proposal to replace the existing transmission-based regulatory system with a technology and transmission neutral regime embodying four categories of television programme service licence, namely, domestic free, domestic pay, non-domestic and other licensable television programme services, has received wide support. An incumbent terrestrial television licensee, however, has argued that all television programme services should be subject to the same regulation under one single category of licence. A number of submissions have suggested that the free TV market should be opened up for competition so as to achieve a level-playing field for all players.

Ownership and corporate control

7. The proposed relaxation and simplification of the regulation on ownership and corporate control is generally agreed. Regarding voting control of domestic free licensees by non-residents, one incumbent licensee prefers retaining the present system while another has suggested that such control should be removed totally.

8. Some respondents have expressed reservations about the removal of “programme suppliers” from the “disqualified persons” list and the lifting of the investment restrictions for domestic licensees, particularly the dominant players. They are concerned that the proposed relaxation may enable the licensees to use their dominant position in the broadcasting industry to gain an unfair advantage in another industry.

Content Control

9. The positive programme requirements are generally considered to be necessary. Comments on the requirement of English channels for the terrestrial broadcasters are mixed. Some consider that the requirement should continue while others are of the view that the requirement should be suitably adjusted to provide the broadcasters with more flexibility in catering for minority interests.

Royalties and Licence Fees

10. There are mixed views on the proposed abolition of royalties. While appreciating the justifications for the proposal, some have suggested that the abolition of royalties for free television should take effect only when the free television market is opened up for competition. The charging of full cost recovery licence fee has gathered a more uniform support.

Digital Terrestrial Television

11. The respondents are generally in favour of the proposals to introduce Digital Terrestrial Television (DTT) to Hong Kong. Some respondents have expressed interest in joining the proposed Government-industry steering group on the technical trial.

Legislation

12. There is overwhelming support for the introduction of an omnibus “Broadcasting Bill” which would incorporate all provisions relating to broadcasting under the existing Television Ordinance, Telecommunication Ordinance and the Broadcasting Authority Ordinance. The proposal to

separate the regulation and licensing of transmission facilities from service provision is welcomed.

13. Considerable feedback has been received on the need to incorporate competition safeguards in the proposed “Broadcasting Bill”. It has been strongly suggested that provisions should be made to prevent a licensee from abusing its dominant position by engaging in anti-competitive practices.

Regulatory Bodies

14. There are suggestions that the Broadcasting Authority should be given more resources to strengthen its professional support. One licensee has suggested that an expert team should be set up under ITBB to deal with the complex competition issues.

Implementation

15. It is generally agreed that the policy proposals should be implemented as soon as practicable upon policy endorsement. An incumbent licensee is concerned that any changes to the present system before the enactment of the “Broadcasting Bill” may result in fragmented outcomes.