

立法會
Legislative Council

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(These minutes have been seen by
the Administration and cleared
with the Chairman)

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Bills Committee on Broadcasting Bill

Minutes of Meeting
held on Thursday, 1 June 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon David CHU Yu-lin
Hon MA Fung-kwok
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP

Members Absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

Public Officers Attending : Mr Eddy CHAN
Acting Deputy Secretary for Information Technology
and Broadcasting (1)

Mr Eddie MAK
Principal Assistant Secretary for Information Technology
and Broadcasting (A)

Ms Ava CHIU
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Mr Geoffrey A FOX
Senior Assistant Law Draftsman, Department of Justice

Ms Cynthia LEE
Government Counsel, Department of Justice

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Betty MA
Senior Assistant Secretary (2) 1

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I. Draft Committee stage amendments (CSAs) proposed by the Administration

[Paper No. CB(2)2166/99-00(01)]

Members noted that the following papers were tabled for members' information -

- further submission from Hong Kong Cable Television Limited [Paper No. CB(2)2166/99-00(02)] ;
- further submission from Cable & Wireless HKT Limited [Paper No. CB(2)2196/99-00(02)];
- supplementary information from Hong Kong Cable Television Limited; and
- the Administration's information paper on "Generic code of practice for television advertising standards - identification of advertisements" [Paper No. CB(2) 2196/99-00(04)].

2. The Chairman informed members that the Administration's revised version of draft Committee Stage amendments (CSAs) (version as at 1 June 2000) [Paper No. CB(2)2196/99-00(05)] was also tabled at the meeting. She suggested the Bills Committee continue examination of the draft CSAs based on the revised version (1 June 2000) instead and that the Administration would be invited to explain the revisions made since the last meeting held on 30 May 2000. Members agreed.

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3. At the invitation of the Chairman, Senior Assistant Law Draftsman (SALD) briefed members on the Administration's revised amendments from Schedule 5 onwards.

Revised Committee Stage Amendments (version as at 1 June 2000)

Schedule 5

4. Members noted that consequential amendment was made to disapply the new section 10 of Schedule 4 to Domestic Pay television programme service.

Schedule 7

5. Members noted that the new clause 2(11A) provided flexibility for the Broadcasting Authority (BA) to waive the upper limit of 5 000 households for Other Licensable service licences. The proposed amendment to section 1 of Schedule 7 was to remove the provision that the Chief Executive in Council (CE in C) could grant approval for a licensee (or his associate) to hold such number of Other Licensable service licences which were available to an audience exceeding 200 000 households.

Schedule 8

6. SALD explained that the new subsection (5) sought to empower the Financial Secretary to rebate on a pro rata basis to the licensee the amount of licence fees paid before the repeal of the Television Ordinance. The new section 8(2) declared that licensees had to pay royalties on a pro-rata basis until the Broadcasting Bill (the Bill) came into operation.

7. SALD also advised that the new section 10 was a transitional provision so that the existing codes of practice should continue to be applicable to existing licensees after enactment of the Bill, until a new code of practice was put in place. In reply to the Chairman, SALD said that under the new section 10(b)(iii), when the new code of practice came into operation, the old code would be deemed to have been modified for the purposes of the Bill.

Schedule 9

8. SALD briefed members on the following amendments -

(a) the new sections 5A and 6 sought to replace "Hotel television services licence" in the Telecommunication Regulations with "Hotel Television (Transmission) Licence";

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- (b) section 14 was amended to clarify BA's power under the Broadcasting Authority Ordinance to impose restrictions on the time of day when programmes and advertisements might be provided;
- (c) section 19 was amended to empower BA to impose the increased financial penalty on sound broadcasting licensees under the Broadcasting Authority Ordinance; and
- (d) section 20 was amended to enable BA to require a sound broadcasting licensee to make an apology within a specified period and specified time of a day.

Amendments made to the CSAs discussed on 30 May 2000

9. The Chairman then invited SALD to explain the further amendments made to other clauses of the Bill after the meeting held on 30 May 2000.

Clause 13

10. SALD said that with regard to members' concerns that artiste contracts should not be exempted from the competition provisions, the Administration now proposed to remove such exemption from clause 13(5)(b) which was amended to read as "any prescribed restriction" so that any proposed exemption would be subject to the positive vetting procedure of the Legislative Council (LegCo).

11. The Chairman sought clarification on the amendment. She pointed out that the Bills Committee had suggested deleting clause 13(5)(b) concerning the exemption of the artiste contracts but had not sought additions to the exemption list. In this respect, Miss Emily LAU asked about the consequences or impact on the operation of the industry if clause 13(5)(b) was deleted from the Bill.

12. Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) responded that the Administration had accepted most of the suggestions made by members, and the artiste contracts were now removed from clause 13(5)(b). However, it would be necessary to provide flexibility for BA to review, in consultation with the industry, whether exemptions should be provided for in future. DS(ITB)(Ag) stressed that any proposed exemptions would have to be prescribed in regulations which were subject to LegCo approval.

13. The Chairman recapitulated that members had expressed views at previous meetings that no exemption from the competition provisions should be provided in the Bill. As the Administration's revised amendments had not

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addressed members' concerns in full, she invited members' views on the Administration's proposed CSA.

14. Mr MA Fung-kwok said he preferred a more stringent approach that no exemption from the competition provisions should be provided in the Bill pending promulgation of the competition guidelines. Mr YEUNG Yiu-chung expressed support for the deletion of clause 13(5)(b). He further said that as BA would consult the industry on the need for exemption provisions when drawing up the guidelines, it would still be possible to provide for exemptions other than that in clause 13(5)(a) by amending the legislation when necessary.

15. Mr SIN Chung-kai noted that the industry had not raised objection to the proposed exemptions during the consultation in 1998. He said that on balance, he would support the Administration's revised amendment.

16. In response to members, Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) said that the Administration had proposed that clauses 13 to 16 would come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette. The Administration would consult the industry later on the competition guidelines and the proposed exemption provisions. He said that during the 1998 Review of Television Policy, the industry raised no objection to the exemptions. It was therefore necessary to consult the industry again on the proposed removal of the exemption in clause 13(5)(b). The subsequent proposals on the exemption provisions would be put to LegCo after consultation with the industry.

17. Responding to Miss Emily LAU, DS(ITB)(Ag) said that the Administration adopted a competition policy which was sector or industry based. The broadcasting industry recognised exclusive contracts signed between a television programme service licensee and the artistes, and such contracts would continue to be valid, unless unreasonable and harsh terms were included in the contract or the licensee had abused its dominant position in the relevant market. He pointed out that similar exemptions were already part of the existing licence conditions.

18. In response to Mr MA Fung-kwok, DS(ITB)(Ag) explained that an exclusive contract signed with an artiste would unlikely be an anti-competitive behaviour and BA would need to assess the effect of such contracts on the television programme service market. However, to address members' concern that exemptions of artiste contracts might lead to unnecessary disputes, the Administration now proposed to remove artiste contracts from the list of exemption but retain the flexibility for BA to amend the list by regulation which would be subject to the positive vetting procedure of LegCo.

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19. The Chairman advised that the Administration had made clear its position on the issue and that members could decide whether to accept the proposed CSA (paragraphs 39-43).

Clause 25

20. SALD informed members that a new clause 25 was proposed to bring the drafting in line with that of the Telecommunication (Amendment) Bill 1999. The new clause 25 made it clear that a non-licensee would be allowed to make representations on the requirement to provide information to BA and on the proposed disclosure of such information. In addition, a person who was required to supply information to BA would not be compelled to give information or produce documents which he could not be compelled to give in evidence, or produce in civil proceedings before the Court of First Instance.

Clause 29

21. SALD said that clause 29 was further amended to the effect that BA might specify the period and the time in a day for a licensee to make correction or apology in a television programme service.

Clause 41

22. Members noted that the drafting of clause 41(2) was further improved in response to members' suggestions.

II. Other Committee Stage Amendments

[Paper Nos. CB(2)2137/99-00(01) and CB(2)2166/99-00(02)]

Submission from International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI)

[Paper Nos. CB(2)2180/99-00(02) and CB(2)2196/99-00(01)]

23. Members noted that IFPI had forwarded its fifth submission [Paper No. CB(2)2180/99-00(02)] proposing deletion of the entire clause 13(5) on the grounds that such exemptions were unnecessary. Members also noted that IFPI had provided an independent Counsel opinion [Paper No. CB(2)2196/99-00(01)] on clause 13 of the Bill, advising that clause 13(5)(b) was unnecessary or repugnant to the policy objectives the Bill.

24. The Chairman said that IFPI's previous suggestions on the competition guidelines [Paper No. CB(2) 2180/99-00(02)] should be referred to BA for its consideration in formulating the competition guidelines.

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25. The Chairman also drew members' attention to IPFI's objection to the Administration's proposal to defer the enactment of clauses 13 to 16 of the Bill. The Chairman remarked that as the competition guidelines were not yet promulgated, it would not be possible to implement the competition provisions in clauses 13 to 16.

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26. In reply to Miss Emily LAU, DS(ITB)(Ag) said that the draft guidelines would be available for public consultation in August 2000 and would be completed around September 2000. He agreed to consult LegCo on the draft competition guidelines when the new term commenced in October 2000.

27. After discussion, members agreed that the Administration should take note of IFPI's concerns in drawing up the draft competition guidelines.

Submission from Hong Kong Cable Television Limited

[Paper No. CB(2) 2166/99-00(02)]

28. Members noted that the Hong Kong Cable Television Limited (Cable TV) had submitted its third submission to the Bills Committee [Paper No. CB(2) 2166/99-00(02)] and tabled supplementary information at the meeting. The Administration had provided a response to the submission [Paper No. CB(2)2196/99-00(03)].

29. DS(ITB)(Ag) explained that Cable TV was concerned about section 4(1)(b) of Schedule 1 to the Bill which might enable a Domestic Free licensee to indirectly hold a Domestic Pay licence via an intermediary Non-domestic licensee. DS(ITB)(Ag) stressed that the concern had been adequately addressed by the proposed restrictions on voting control in a licensee and the inclusion of "associates" in the definition of disqualified persons in Schedule 1. He clarified that a Domestic Free licensee, being a disqualified person, was prohibited from exercising control in a Domestic Pay licensee by holding, directly or indirectly, more than 15% of voting shares of a Domestic Pay licensee. Moreover, if a Non-Domestic licensee or its associate held or exercised control in a Domestic Free licensee, the Non-Domestic licensee would become an associate of a Domestic Free licensee and would be prohibited from holding a Domestic Pay licence. There was therefore no ambiguity in the provisions on disqualified persons in the Bill.

30. Responding to members, PAS(ITB) pointed out that section 4(1)(a)-(d) of Schedule 1 already listed out the disqualifications of licensees. The meaning of "exercise control" was elaborated in section 1(6) of Schedule 1, which stipulated that a person exercised control of a corporation if he was a director or principal officer, or the beneficial owner or a voting controller of more than 15% of the voting shares, in the corporation.

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31. In response to Mr SIN Chung-kai, ALA3 advised that the crux of the issue was whether an associate of a Non-Domestic licensee would be a disqualified person in relation to a Domestic Free or Domestic Pay licence. She agreed with the Administration that any person would be regarded as a disqualified person if the person fell within any category in section 4(1) of Schedule 1.

32. At the invitation of the Chairman, Mr Desmond CHAN of Cable TV joined the discussion to clarify the concern of Cable TV. Mr CHAN said that Cable TV agreed with the Administration's policy that a Domestic Free licensee should be restricted from holding or exercising control in a Domestic Pay licence, directly or indirectly. Cable TV only wanted to ensure that the drafting of the relevant provisions, in particular section 4(1)(b) of Schedule 1, would achieve the legislative effect. For example, Cable TV was concerned whether the reference to a licensee in section 4(1)(c) was within the meaning of the licensee referred to under section 4(1)(b).

33. SALD clarified that "licensee" in section 4(1)(c) also included the licensee referred to in section 4(1)(b).

34. DS(ITB)(Ag) advised that the drafting of section 4(1) was sufficiently clear and he believed that the concern of Cable TV was caused by a misinterpretation of the provisions. Members accepted the Administration's explanation.

Submission from Cable & Wireless HKT Limited
[Paper No. CB(2)2196/99-00(02)]

35. The Chairman said that the submissions of Cable & Wireless HKT Limited were mainly concerned about the prohibition of transfer of licence and the maximum aggregate number of households for Other Licensable services.

36. DS(ITB)(Ag) clarified that the Administration did not support frequent transfer of television programme service licences. He pointed out that the broadcasting and telecommunication industries were subject to different regulatory regimes. For example, there were no restrictions on disqualified persons and voting control for a telecommunications licensee.

37. As regards the aggregate number of households for Other Licensable services, DS(ITB)(Ag) advised that the limit of 200 000 households had been lowered from the original proposal of 300 000 households, after consultation with the industry in 1998.

Admin

38. The Chairman advised that the Administration should take note of the industry's concerns in drawing up the relevant guidance notes.

Way forward

39. The Chairman then invited members to take a view on the Administration's revised amendments to clause 13(5)(b) as discussed earlier in the meeting (paragraphs 10-19).

40. Mr MA Fung-kwok said that he maintained the view that clause 13(5)(b) should be deleted entirely as the Administration could not provide satisfactory explanation on the adverse impact of the proposed deletion on the operation of the industry.

41. Mr YEUNG Yiu-chung said that he had no strong views as the issue did not involve a matter of principle.

42. Miss Emily LAU said that since any future amendment to clause 13(5)(b) would be subject to the approval of LegCo and prior consultation with the industry, she had no objection to the Administration's revised CSA.

43. The Chairman pointed out that the major reason for the Administration to retain BA's power to provide for exemptions where necessary under clause 13(5)(b) was to give recognition to the consultation findings in 1998. In these circumstances, she agreed to the Administration's stance that any subsequent changes to the 1998 proposals would need consultation with the industry again. After discussion, members agreed not to move amendments to clause 13(5)(b) in the name of the Bills Committee.

44. In concluding the discussion, the Chairman said that as the Bills Committee had thoroughly discussed all issues related to the Bill, no further meeting would be scheduled. The Chairman advised that the Bills Committee supported the CSAs proposed by the Administration which had addressed most of the concerns raised by members and deputations. The Bills Committee would report its deliberations to the House Committee on 9 June 2000 supporting resumption of the Second Reading debate at the Council meeting on 21 June 2000. She also advised that, if members wanted to move amendments to the Bill, the deadline for giving notice was 12 June 2000.

45. The Chairman thanked members of the Bills Committee and representatives of the Administration for their efforts in expediting the scrutiny of the Bill.

III. Any other business

46. There being no other business, the meeting ended at 6:45 pm.

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Legislative Council Secretariat
10 November 2000