

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 Wednesday, 5 April 2000 at 10:45 am
in the Chamber of the Legislative Council Building

Members Present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon MA Fung-kwok
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

Members Absent : Hon Ronald ARCULLI, JP
Hon SIN Chung-kai
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)

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. Meeting with the Administration

Licensing criteria for television programme service licences

[Paper No. CB(2)1568/99-00(01)]

At the invitation of the Chairman, Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) briefed members on the Administration's paper which explained the criteria for the Chief Executive in Council (CE in C) in consideration of a licence application. He said that licensing criteria for television programme service licences would be set out in the Broadcasting Bill (the Bill) and guidance notes to be issued by the Broadcasting Authority (BA). The statutory criteria set out in the Bill included the following -

- (a) the applicant must be a local company within the meaning of the Companies Ordinance;
- (b) except for non-domestic and other licensable service licences, the majority of the directors and the majority of principal officers of the company must satisfy the residency requirements, i.e. they must have resided in Hong Kong for a continuous period of not less than 7 years;
- (c) no disqualified person should exercise control of a domestic free or domestic pay television programme service licensee unless his disqualification was disclosed in the application;
- (d) restriction on unqualified voting controllers; and
- (e) restriction on persons not regarded as fit and proper for the purpose of the Bill.

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DS(ITB)(Ag) said that, in addition to these statutory requirements, there were other assessment criteria which were contingent upon the prevailing market condition or technological developments. The existing assessment criteria were set out in the Guidance Note issued in August 1999, as detailed in paragraph 7 of the Administration's paper. To provide flexibility in the licensing framework to cater for the fast-changing broadcasting environment, the Administration considered it more appropriate to set out the assessment criteria in the form of guidance notes to be issued by BA.

2. Ms Cyd HO said that one main objective of the Bill was to ensure fair and effective competition in the provision of broadcasting services. She was concerned that a licensee holding a dominant position might seek to abuse its position in the television programme service market if he was also granted a licence for another category of television programme service. She therefore queried why the assessment criteria did not include anti-competitive practices or dominant position of a licensee.

3. DS(ITB)(Ag) explained that if an applicant was an existing licensee of a television programme service, he would be regarded as a disqualified person and was already subject to the restriction on cross-media ownership. He added that "disqualified persons" included licensees under the Bill (except that a Non-Domestic television programme service licensee was not a disqualified person in relation to a Domestic Pay licence), sound broadcasting licensees, advertising agents and proprietors of local newspapers, and their controllers. The associates of these persons were also disqualified persons. Under the Bill, disqualified persons were prohibited from exercising control of Domestic Free and Domestic Pay service licensees except with the prior approval of CE in C on grounds of public interest. A person was regarded to be "exercising control" of a company if he was the owner or voting controller holding more than 15% of the voting shares of that company.

4. Referring to paragraph 5(c) in the Administration's paper, Ms Cyd HO sought clarification on the circumstances where a disqualified person could be granted a licence for Domestic Pay or Domestic Free television programme service by CE in C.

5. DS(ITB)(Ag) responded that CE in C would take into account factors such as the effect on competition in the relevant service market, the impact on the development of the broadcasting industry and the overall benefits to the economy, before allowing a disqualified person to hold a licence or to exercise control of a licensee.

6. Ms Cyd HO was of the view that these factors should be expressly stated as part of the licensing or assessment criteria. DS(ITB)(Ag) reiterated that it was

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necessary to allow flexibility in the licensing system to enable the Administration and BA to respond quickly to the fast-changing broadcasting environment.

7. The Chairman suggested that consideration could be given to specifying the factors for granting exemption to disqualified persons in the Guidance Note. The arrangement could still provide sufficient flexibility for the approving authorities to revise the Guidance Note whenever necessary. Referring to the written submission of the Hong Kong Cable Television Limited [Paper No. CB(2) 1541/99-00(01)], the Chairman said that the industry was concerned about the rationale of the licensing criteria and the transparency of the licencing process. In this connection, the Chairman asked whether BA would consult the public before revising the Guidance Note.

8. Miss Emily LAU supported the Chairman's suggestion that there should be prior consultation on any revision to the Guidance Note. While she appreciated the need to enact the Bill as early as possible, she considered that the assessment criteria should be formulated in the form of subsidiary legislation subject to the negative vetting procedure of the Legislative Council (LegCo).

9. DS(ITB)(Ag) acknowledged members' concerns. He stressed that setting out the assessment criteria in the form of guidance notes was preferred in order to provide the necessary flexibility to cope with the rapid changes in the market.

10. In response to the Chairman, DS(ITB)(Ag) said that upon enactment of the Bill, the existing Guidance Note would have to be revised since there would be four categories of television programme service licences under the Bill.

11. Ms Cyd HO said that the Administration should provide the draft Guidance Note for the Bills Committee's consideration before the passage of the Bill as Members would need to know the licence assessment criteria before approving the Bill. She was also of the view that there should be public consultation on the Guidance Note.

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12. In view of members' concern, the Chairman advised the Administration to further consider members' views on the need for consultation and specifying the assessment criteria in the form of subsidiary legislation.

13. To prevent abuse of dominant position by a licensee, Ms LAU asked whether clause 8 should be amended so that the approving authorities should take into account whether a licensee had breached the competition provisions in clauses 13 and 14 when considering his application for another category of licence.

14. DS(ITB)(Ag) clarified that clause 8 dealt with the licensing procedures while Schedule 1 gave more details on the disqualification for holding licence

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and voting control. He reminded members that the objectives of the Bill were to widen programme choices for consumers and to promote the development of Hong Kong as a regional broadcasting and communications hub. Subject to statutory and regulatory requirements, the Administration would not prohibit any persons from entering the television programme service market. The only concern was whether there would be effective and fair competition. In this respect, the Administration believed that there were sufficient safeguards, such as the restrictions on disqualified persons, to prevent abuse of dominant position.

15. Miss Emily LAU referred to the submission of the Hong Kong Cable Television Limited that a loophole might exist in that a Domestic Free licensee could indirectly hold a Domestic Pay licence via an intermediary Non-Domestic licensee, especially if these companies were associates belonging to the same group. Miss CHOY So-yuk expressed similar concern and sought clarification on the situation.

16. Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) explained that a Domestic Free licensee, being a disqualified person, was prohibited from exercising control of a Domestic Pay licensee by holding, directly or indirectly, more than 15% of the voting shares of a Domestic Pay licensee without the approval of CE in C. He further pointed out that a disqualified person included an associate of a licensee. As regards the exclusion of Non-Domestic television programme service licence from the list of disqualified persons, DS(ITB)(Ag) explained that Non-Domestic television programme services did not primarily target Hong Kong. The exclusion would assist promoting the development of Hong Kong as a regional broadcasting and communications hub and providing diversified programmes to viewers.

17. Miss Emily LAU said that despite the restriction on voting control, she remained concerned about the way CE in C would exercise his discretionary power to grant exemptions.

18. DS(ITB)(Ag) said that the Administration would make reference to the assessment criteria stipulated in the 1999 Guidance Note when assessing the ten applications for Domestic Pay television programme service licences. The Administration expected that the assessment could be completed within this year.

19. Miss CHOY So-yuk asked about the licence renewal criteria. DS(ITB)(Ag) responded that the approving authorities would take into account the performance of the licensees, quality of programmes, proven managerial and technical expertise, etc in considering renewal applications. The quality of service required of a licensee would be specified in the licence, and prior approval was required for changes to the television programme service.

Administration's response to submissions from deputations

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[Paper No. CB(2)1572/99-00(01)].

20. Members noted that the Administration had tabled its response to some of the written submissions on the Bill made by deputations to the Bills Committee.

Scope of television programme service

21. DS(ITB)(Ag) said that one submission had suggested that regional broadcasting services uplinked from but not primarily targeting Hong Kong should be exempted from the application of the Bill. To this suggestion, the Administration was of the view that as these services were originated from, and might be receivable in Hong Kong, they should be subject to certain regulatory control. However, these services would only be subject to a minimum level of content control commensurate with the nature and pervasiveness of such service.

22. Ms Cyd HO questioned the basis for restricting the target audience of Other Licensable service to only 5 000 households.

23. DS(ITB)(Ag) responded that Other Licensable service was intended for targeting specific viewer groups. In the Consultation Paper on 1998 Review of Television Policy, it was proposed that Other Licensable service licensee might serve up to 5 000 households. If the licensee would like to provide services to more households, he could apply for additional licences provided that the aggregate number of households should not exceed 300 000 (i.e. 15% of the number of households in Hong Kong). However, in view of comments received during consultation, the aggregate number of households was lowered to 200 000 to reflect the 'niche' nature of the services. DS(ITB)(Ag) said that if the ceiling was set at a higher level, there would not be adequate differentiation between the Other Licensable service and the territory-wide Domestic Pay service which was subject to more stringent control.

24. In response to Mr MA Fung-kwok, DS(ITB)(Ag) explained that a licensee for Other Licensable services could apply for more than one licence for provision of different types of services subject to the aggregate number of households not exceeding 200 000. PAS(ITB) supplemented that section 1 of Schedule 7 of the Bill provided the details of the restriction on the number of households.

25. Ms Cyd HO expressed concern about the possibility of a few companies monopolizing the market for Other Licensable services.

26. DS(ITB)(Ag) said that the Other Licensable service licence was to enable provision of information services to niche or localised markets. Since there was no limit on the number of such licensees in a locality, it was unlikely that a monopoly situation would occur. The Administration believed that given the competition in the market, the quality of programme service provided would

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meet the taste and demand of viewers. He added that the extent of programme choice would largely be determined by the market, and that the level of regulatory control should commensurate with the nature of such services in order not to stifle the development of the market.

27. Responding to Ms Cyd HO, DS(ITB)(Ag) said that a licensee of Other Licensable service would need to seek the agreement of the respective Owners Incorporated or estate management companies for the transmission of service.

28. Miss CHOY So-yuk asked whether it was possible for organizations such as trade unions or political parties to apply for Other Licensable service licences targeting only their members. She also asked whether the limit on the maximum number of households would be relaxed for these cases.

29. DS(ITB)(Ag) reiterated that the Other Licensable service category was to cater for specific viewer groups and it would be necessary to set a maximum number of households for such service to differentiate it from the territory-wide Domestic Pay services. In granting a licence for Other Licensable services, consideration would be given to the coverage and content of the services, the target audience, and the technology applied to ensure that the services would be received only by the designated points.

30. The Chairman expressed concern that there could be enforcement problems for the Other Licensable television programme service. She said that a licensee might apply for more than one licence by making only slight modification to the programme content. She also referred to the joint submission of the Cable & Wireless HKT Limited and Cable & Wireless HKT VOD Limited [Paper No. CB(2)1504/99-00(09)] which pointed out that the aggregate number of households allowed to be served under Other Licensable service licence was on the high side.

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31. To address these concerns, the Chairman requested the Administration to provide further information on the rationale for setting the limit at 5 000 households for Other Licensable Services. She also requested the Administration to give consideration to providing some flexibility to such limits, as certain housing estates might have more than 5 000 households.

32. Mr YEUNG Yiu-chung sought clarification as to whether Non-Domestic television programme services was subject to content control.

33. DS(ITB)(Ag) said that as Non-Domestic licensees provided regional broadcasting service which did not primarily target Hong Kong, they would be subject to only a minimum level of content control. Nevertheless, Non-Domestic licensees must ensure that their services were in compliance with the laws and regulations in the recipient countries or places. The licensees should also ensure

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that the programmes did not offend public standards of taste and decency in the recipient countries.

34. In response to Mr YEUNG Yiu-chung's further enquiry, DS(ITB)(Ag) said that the Administration would act on complaints in respect of the content of Non-Domestic services which were receivable in Hong Kong. He said that no complaint had been received so far.

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35. The Chairman requested and DS(ITB)(Ag) agreed to provide comparison between the regulatory framework for different categories of licences.

Services excluded

36. Members noted that paragraphs 7-10 of the Administration's paper provided the rationale for excluding the audio and video services provided on the Internet, and free-to-air satellite television services uplinked from places outside Hong Kong and distributed by satellite master antenna television system from the application of the Bill. DS(ITB)(Ag) clarified that fixed telecommunication network services operators would be required to apply for an appropriate licence under the Bill if they wanted to provide broadcasting services. He also said that it was not the Administration's intention to include sound broadcasting services in the Bill for the time being pending the formulation of policy on digital audio broadcasting.

37. Miss Emily LAU said that while she agreed that audio and video services provided on the Internet should not be included in the proposed regulatory framework for the time being, she urged the Administration to take early action to review the feasibility of regulating services provided on the Internet with reference to overseas experience.

38. DS(ITB)(Ag) said that the policy intent was to exempt Internet services from the application of the Bill for the time being until the question of effective enforcement could be adequately addressed. He added that the Bill had already provided the flexibility so that Internet services could be included in the regulatory framework by way of subsidiary legislation should the need arise.

39. Mr MA Fung-kwok expressed reservations about excluding the services provided on the Internet from the regulatory framework and asked whether such services were currently subject to any legislative control. DS(ITB)(Ag) reiterated that the policy intent was not to regulate services on the Internet at the moment. He added that the content of audio and video programmes provided on the Internet was subject to the regulation of the Control of Indecent and Obscene Articles Ordinance.

40. The Chairman and Miss Emily LAU were of the view that regulation of

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services provided on the Internet was an important policy change requiring careful consideration and extensive public consultation. The Chairman advised that major policy matters as such should not be dealt with by the Bills Committee. However, in view of the fast development of Internet services, the Chairman advised the Administration to give early consideration to the issue.

41. Ms Cyd HO was of the view that amendments to the services excluded from the application of the Bill should be subject to the positive vetting procedure of LegCo. DS(ITB)(Ag) noted the suggestion.

42. The Chairman said that the Bills Committee could continue discussion of the Administration's paper at the next meeting.

II. Any other business

43. Members noted that the Television Broadcasts Limited had made further submission [Paper No. CB(2)1572/99-00(02)] responding to issues raised at the Bills Committee meeting held on 31 March 2000.

44. Members noted that the Chairman of BA would brief the Bills Committee on the functions, composition and operations of BA at the next meeting scheduled for 11 April at 8:30 am.

45. The meeting ended at 12:50 pm.

Legislative Council Secretariat

5 October 2000