

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 Tuesday, 11 April 2000 at 8:30 am
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 Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo

Members Absent : Hon SIN Chung-kai
Hon CHOY So-yuk
Hon FUNG Chi-kin

Public Officers Attending : Ms Eva CHENG
Acting Secretary for Information Technology and
Broadcasting

Mr Eddy CHAN
Acting Deputy Secretary for Information Technology
and Broadcasting (1)

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

Mr Esmond LEE
Acting Commissioner for Television and Entertainment
Licensing

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

Attendance by : Broadcasting Authority
Invitation

Mr Norman LEUNG, JP
Chairman

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

Staff in : Miss Connie FUNG
Attendance Assistant Legal Adviser 3

Miss Betty MA
Senior Assistant Secretary (2) 1

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I. Meeting with the Administration and Chairman of the Broadcasting Authority
[Paper Nos. CB(2) 1572/99-00(01) to (02), CB(2)1650/99-00(01) to (02) and CB(2)1656/99-00(01)]

The Chairman welcomed Mr Norman LEUNG, Chairman of the Broadcasting Authority (BA), and representatives of the Administration to the meeting.

2. At the invitation of the Chairman, Mr Norman LEUNG briefed members on the functions, composition and operations of BA. He said that the BA was a statutory body established in September 1987 under the Broadcasting Authority Ordinance (Cap.391). Its role was to regulate licensed television and radio broadcasters in Hong Kong through the provisions in the Television Ordinance (Cap.52), the Telecommunication Ordinance (Cap. 106) and the Broadcasting Authority Ordinance (Cap. 391). The BA discharged its duties through a number of committees, such as the Complaints Committee and the Codes of Practice Committee. To enhance the accountability of BA's work, Mr Norman LEUNG said that BA had adopted various improvement measures, such as -

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- (a) holding press conference after each regular meeting to explain the decisions of BA;
- (b) opening meetings of the Codes of Practice Committee to the public; and
- (c) publishing complaints information in the Complaints Bulletins for public access.

Mr Norman LEUNG said that the Bill would confer new powers on BA, such as the granting of Non-Domestic and Other Licensable television programme services licences, and enforcement of the competition provisions. To meet the new challenges ahead, the secretariat staff of BA would attend training in the United Kingdom especially to acquire knowledge on the enforcement of competition legislation.

3. Acting Commissioner for Television and Entertainment Licensing (CTEL(Ag)) then briefed members on the role of the Television and Entertainment Licensing Authority (TELA) in providing support to BA. He said that apart from providing secretariat service to BA and its Complaints Committee and Codes of Practice Committee, TELA also processed public complaints on broadcasting matters. CTEL had been delegated the authority to investigate complaints and would refer those cases which had prima facie evidence to the Complaints Committee of BA. The subject of a complaint would be given a reasonable period of seven days to make representations in writing or orally. The Complaints Committee would then review the case and make recommendations to BA which was empowered to impose sanctions on licensees for breaches of the licensing and programming requirements. Depending on the nature or seriousness of the breaches, BA might impose sanctions ranging from advice, strong advice, warning, serious warning to financial penalty. The complainants, the licensees and relevant parties would be informed of the outcome of the complaints, and licensees aggrieved by the decision of BA could appeal to the Chief Executive in Council (CE in C).

4. CTEL(Ag) further said that from September 1998 to August 1999, BA received a total of 4 380 new complaints. Out of the 3 550 cases processed by TELA during the period, 298 cases were classified minor breaches and 3 252 were unsubstantiated. TELA had referred 617 complaints to the Complaints Committee for consideration, 564 cases of them were found substantiated and 53 unsubstantiated. Complaints dealt with by the Complaints Committee would be published in the annual report of BA.

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Handling of complaints

5. Mr YEUNG Yiu-chung enquired about the nature of the 564 substantiated complaints. He also asked how BA would handle complaints concerning the moral standard of programmes.

6. Mr Norman LEUNG clarified that the 564 substantiated complaints were mostly focussed on a few programmes which had attracted many complaints at about the same time. Most complaints were against scheduling of programmes involving sex and violence (which were unsuitable for children and youth) during family viewing hours. Mr LEUNG said that there were not many complaints concerning the moral standards of a programme, and when these were received, BA would make reference to precedent cases in Hong Kong and overseas before determining whether the case was substantiated. Usually BA would adopt a more stringent standard for family viewing hours and children's programmes.

Licensing powers

7. Miss Emily LAU asked what changes had been made to BA's powers as proposed in the Bill and whether BA had adequate support to discharge the new functions.

8. Mr Norman LEUNG said that under the existing Television Ordinance, all television broadcasting licences were issued by CE in C after considering the assessment and recommendations of BA. The Bill proposed that BA would be the licensing authority for Non-Domestic and Other Licensable television programme services licences. He envisaged that the nature of work in respect of the assessment of licence applications would be more or less the same as before, and that BA would be capable of performing the new functions competently. However, the workload would increase as and when the market was open to more players.

9. Miss Emily LAU sought clarification as to whether BA would have new duties in the processing of licence applications.

10. Mr Norman LEUNG explained the current procedures for BA to assess and recommend on licence applications. He said that the same mechanism would be adopted for processing licence applications under the Bill. He further said that licence applications were usually considered by a working group comprising representatives of the Office of Telecommunications Authority (OFTA), Information Technology and Broadcasting Bureau and BA. The working committee would interview the applicants to clarify information in the applications if necessary. The working committee was responsible for making initial assessment on the application and following up outstanding issues before

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making a recommendation to BA. BA would consider factors such as the coverage of service and the financial soundness and managerial/technical expertise of the applicants before recommending to CE in C.

11. Mr Ronald ARCULLI enquired whether consequential amendments should be made to the Broadcasting Authority Ordinance to enable BA to discharge its new functions. Mr Norman LEUNG clarified that the powers of BA were now conferred by the Television Ordinance and later by the Bill upon its enactment. Unless there was a policy change in the structure of BA, no consequential amendments other than those proposed in the Bill would be necessary.

Public hearings for licence-related issues

12. The Chairman asked why BA did not hold public meetings to consider the grant of licences. Mr Norman LEUNG responded that open meetings were considered inappropriate because sensitive commercial information such as the financial position of applicants would be discussed in the consideration of licence applications. However, public hearings could be held for renewal of licences to gauge the views of the public on the performance of the licensees.

13. In view of the wide powers of BA, Mr Andrew CHENG considered that there should be greater transparency of BA's operation. He suggested that all meetings should be open to the public except where sensitive commercial information was involved.

14. Mr Norman LEUNG responded that the Television Ordinance stipulated that all sensitive commercial information submitted by licensees at BA meetings should be treated by BA in confidence. Although he personally had no objection to conducting meetings in public, the BA had to safeguard the confidentiality of the commercially sensitive information submitted in accordance with the relevant statutory provisions. Moreover, partial disclosure of information would be misleading as the whole picture was not presented to the public. He was of the view that the operation of BA was already very transparent as BA would issue press releases and convene press conferences after every regular meeting to explain BA's decisions and deliberations. Moreover, meetings of the Codes of Practice Committee were now also open to the public.

15. To address the legal constraints, Mr Andrew CHENG enquired whether the Administration would consider amending the legislation to allow BA to conduct its meetings in public. Miss Emily LAU shared the concern of Mr Andrew CHENG. She considered that the meetings of BA should be held in public as far as practicable. She also asked why no public hearings were conducted for suspension and revocation of licence as this would have serious

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impact on the licensee and the international image of the broadcasting industry in Hong Kong.

16. Mr Norman LEUNG said that there was no precedent on suspension or revocation of a television programme service licence in Hong Kong. However, he assured members that given the seriousness of the matter, BA would definitely handle such cases with great care. He said he had an open mind about conducting public hearings for suspension and revocation of licences. SITB(Ag) added that BA could suspend a licence for a period not exceeding 30 days if the licensee contravened clause 30 of the Bill. She advised that the holding of public hearings would inevitably delay the sanctions to be imposed by BA in case of a very serious offence or repeated offences of a licensee.

17. Miss Emily LAU considered that suspension of a television programme service licence would definitely arouse wide public concern and therefore the Administration should consider holding public hearings and specifying in the Bill the procedures for reaching a decision on suspension or revocation of licence. To address members' concerns, the Chairman advised the Administration to consider introducing public hearings for suspension of licence under clauses 30-32 of the Bill.

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18. Responding to Mr Ronald ARCULLI, SITB(Ag) said that under clause 2(11) of the Bill, BA was required to provide reasons in writing for making a determination, direction or decision. These would include suspension and revocation of licence.

19. Ms Cyd HO expressed concern that if no public hearings were held for the consideration of the grant of a licence application, especially that of Other Licensable service, the applicant or parties concerned would not be able to lodge appeals or raise objections to BA's decision. SITB(Ag) replied that there were redress channels for licensee including a person seeking to be a licensee aggrieved by a decision of BA to appeal to CE in C.

20. The Chairman said that in the case of an application for Other Licensable service licence, the affected residents in the locality or the target viewer group might want to put forward their views to BA before a decision was made. However, the interested parties might not be aware of such applications because of lack of information. To address this concern, the Chairman requested the Administration to consider the suggestion of holding public hearings for this category of licence applications. The Administration noted the suggestion.

21. Mr Ronald ARCULLI drew members' attention to the difference between section 21 of the Broadcasting Authority Ordinance and clause 31 of the Bill regarding the requirement for conducting an inquiry in case of revocation of a licence. He pointed out that the Broadcasting Authority Ordinance did not

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specifically require an inquiry to be held in public. To enable members to better understand the changes proposed in the Bill, the Chairman requested the Administration to provide a comparison of the provisions to highlight the differences between existing legislation and the proposed provisions in the Bill. SITB(Ag) agreed.

Appeal mechanism

22. Mr Andrew CHENG commented that the Bill did not provide for an appeal mechanism against the decision of BA. Mr Norman LEUNG pointed out that under the existing procedures, a licensee could make further representations after BA had informed him of the intended sanction. When further representations were received, BA would review the sanctions in the light of the further representations. If the licensee was not satisfied with BA's decision, he could make an appeal to CE in C. SITB(Ag) added that BA was an independent statutory body empowered to impose sanctions for breaches of the statutory and licensing requirements. In addition to the internal review mechanism of BA and the appeal channel to CE in C, an aggrieved party could also seek judicial review of a decision made. She said that the current arrangement already provided a proper balance in dealing with appeals and objections in relation to television programme service licences.

23. Mr Andrew CHENG was not satisfied with the current arrangements for dealing with appeals. He was of the view that an appeal should be dealt with by an independent party other than the one who made the decision. As members of the Complaints Committee were also members of BA, he considered that there should be an external appeal mechanism in addition to the internal review system.

24. Miss Emily LAU echoed the same concern. She envisaged that the number of complaints would increase substantially after the introduction of Other Licensable service licences. She therefore urged the Administration to put in place a proper appeal mechanism to enhance the transparency of the regulatory framework.

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25. The Chairman requested the Administration to consider the suggestion for an appeal mechanism in the light of members' comments.

Enforcement of competition provisions

26. Ms Emily LAU sought clarification on the difference between the competition provisions proposed in the Bill and those already included in existing licences. Acting Deputy Secretary for Information Technology and Broadcasting said that the Bill sought to stipulate a more stringent requirement on anti-competitive practices than that required of the existing licensees,

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especially those licensees who held a dominant position in the market. To facilitate members' consideration of the provisions in the Bill, Miss Emily LAU requested the Administration to provide a comparison table highlighting the existing and proposed restrictions on anti-competitive conduct.

27. Ms Emily LAU expressed concern as to whether BA would have adequate support and resources for BA to perform its enhanced functions conferred by the Bill, e.g. the enforcement of competition provisions. She noted that TELA had engaged a consultant who was experienced in competition laws in other jurisdictions and that TELA would also develop its own expertise in competition matters. Given the complexity of competition issues, Miss Emily LAU was concerned whether BA members would have sufficient knowledge and expertise to enforce the competition provisions.

28. Mr Norman LEUNG responded that although BA had no previous experience in handling competition complaints, he believed that given the professional background and diversity of experience of its members, BA would be able to take the new challenges. BA could also seek the expert advice of OFTA and the consultant who was now drawing up the competition guidelines for consultation with the industry. SITB(Ag) added that OFTA had expertise in the enforcement of competition provisions in the telecommunications sector, and BA could seek assistance from OFTA when necessary. Moreover, TELA would arrange overseas attachment for its staff to learn from the experience of those countries in the enforcement of competition law.

29. Mr Andrew CHENG asked whether licensees who chose not to broadcast a programme after acquiring exclusive rights of such programme would be considered to be in breach of the competition provision.

30. Mr Norman LEUNG said that it was common practice in the broadcasting industry for broadcasters to acquire exclusive programme rights. He pointed out that exclusive sports programme acquired by a licensee could still be broadcast in the news programme of other licensees. BA normally would not interfere with the commercial or editorial decisions of a licensee.

31. SITB(Ag) added that according to the precedent cases in overseas jurisdictions, an exclusive contract acquired through a competitive process would very unlikely be regarded as anti-competitive. However, if the exclusive agreement was for a prolonged period rather than for a one-off programme, the behaviour described by Mr Andrew CHENG might be regarded as anti-competitive and BA would examine the circumstances of each case in detail before making a determination.

32. Mr Andrew CHENG said that to provide sufficient deterrence against anti-competitive conduct, the penalty should be pegged with the economic gain

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of the programme in question. He pointed out that similar approach was adopted in the Telecommunication (Amendment) Bill 1999.

33. Mr Norman LEUNG advised that a financial penalty would only be imposed in serious cases. He said that the Bill already sought to increase the maximum financial penalty from \$250,000 to \$1,000,000. In addition, having regard to the operational experience of the United Kingdom, it was proposed in the Bill that the BA should be empowered to direct licensees to make correction or apology in its television programme. This approach was considered to have greater deterrence than imposing financial penalty.

34. The Chairman considered the suggestion of pegging the financial penalty with the economic gain of the programme in question worth pursuing and advised the Administration to give consideration to the proposal.

Supporting service for BA

35. Ms Emily LAU expressed concern about the independence of BA given that its administrative support and resources were provided by the Administration. She said that licensees might have an impression that BA was an executive arm of the Administration on broadcasting and related issues. She considered that it would be more appropriate for BA to have an independent secretariat and a full time Chairman to cope with the enhanced functions of BA.

36. Mr Norman LEUNG stressed that BA was already an independent statutory body empowered to make impartial decisions. Although BA sought legal advice from the Department of Justice, BA was not obliged to accept the advice. He said that BA had full discretion in exercising its statutory powers.

37. The Chairman asked about the resources to be made available to BA for the enforcement of competition provisions. SITB(Ag) said that there would be adequate secretariat support for BA in the initial year through internal redeployment of resources. The Administration could consider providing additional resources to BA if necessary based on the initial year's operational experience. She said that any additional allocation would be reflected in the total allocation for TELA which was responsible for providing secretariat support to BA. Assistant Commissioner for Television and Entertainment Licensing (Broadcasting) added that there were some 40 staff members in TELA dealing with broadcasting issues who would also provide supporting service to BA. Moreover, BA could also seek the expert advice of OFTA and its competition consultant on competition issues.

38. In reply to the Chairman, SITB(Ag) said that the staff cost for licensing functions in TELA and OFTA would be taken into account in calculating the licence fees to achieve full cost recovery.

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39. Ms Cyd HO commented that to further enhance the independence of BA, consideration might be given to making BA financially autonomous so that it could engage its own legal experts.

II. Any other business

40. The next meeting was scheduled for 18 April 2000 at 8:30 am.

41. The meeting ended at 10:40 am.

Legislative Council Secretariat

5 October 2000