

立法會
Legislative Council

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

Ref : CB2/BC/12/99

Bills Committee on Broadcasting Bill

Minutes of Meeting
held on Tuesday, 14 March 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 Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon SIN Chung-kai
Hon Emily LAU Wai-hing, JP

Non-Bills Committee Member

Hon Howard YOUNG, JP

Members Absent : Hon David CHU Yu-lin
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
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)

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. Election of Chairman
(8:30 am - 8:35 am)

Mrs Selina CHOW was elected as Chairman of the Bills Committee.

2. The Bills Committee accepted the late application of Mr FUNG Chi-kin to join the Bills Committee according to House Rule 23.

II. Meeting with the Administration
(8:35 am onwards)

[LegCo Brief issued by the Information Technology and Broadcasting Bureau (File Ref. : ITBB(CR) 9/19/1(00) Pt. 7)]

Purpose of the Bill

3. Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) conducted a power-point presentation to brief members on the Broadcasting Bill (the Bill) which proposed a technology-neutral statutory framework for the licensing and regulation of television programme services. PAS(ITB) also highlighted the main features of the Bill, the proposed abolition of royalties and the increased penalty for breaching the statutory requirements and provisions in the codes of practice issued by the Broadcasting Authority (BA). Members also noted that the Bill would incorporate competition provisions and exemptions from these provisions.

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Public consultation

4. The Chairman then invited the Administration to brief members on the main concerns of the industry and interested parties during the consultation on the 1998 Review of Television Policy (the Review), and whether the Administration had made any changes in response. PAS(ITB) said that 46 submissions had been received from the industry and individuals during consultation on the Review. The respondents were generally in support of the proposals which they considered would generate new business opportunities, promote the growth of related industries and enable investors to harness the convergent technologies.

5. Ag. Secretary for Information Technology and Broadcasting (SITB(Ag)) said that the Administration had made the following changes in the drafting of the Bill in order to address concerns expressed during consultation -

- (a) programme suppliers were now excluded from the list of disqualified persons;
- (b) "dominant FTNS licensees" were also excluded from the list of disqualified persons for the purpose of the Bill as these persons would more appropriately be regulated by the Telecommunications Ordinance; and
- (c) the industry supported generally the competition provisions, in particular those provisions to prevent a licensee from abusing its dominant position in the television programme service market. With reference to overseas experience, the Administration now proposed to limit the scope of exemption to only two conditions, i.e. television programmes produced by the licensee and the exclusive contracts with artiste. The Administration had also amended the provisions on preventing abuse of the dominant position of a licensee and BA would issue guidelines in this respect after the Bill had come into effect.

6. The Chairman inquired how the Administration would determine that a licensee was in a dominant position in the television programme service market. SITB(Ag) replied that the BA would not only look at the market share of the licensee but also other factors such as the respective market shares of other licensees, whether there were predatory pricing or price discrimination, and whether there were any barriers for entry to the market, etc.

7. Miss Emily LAU asked about the feedback of the industry on the proposal to increase the levels of maximum financial penalty.

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8. SITB(Ag) said that the proposed increase in financial penalty simply reflected the inflation adjustment since the last revision was made some twelve years ago. The industry had not raised any objection during the public consultation on the Review. She added that a licensee could appeal through the existing channels if aggrieved by a decision of BA.

9. At the suggestion of Mr Ronald ARCULLI, SITB(Ag) agreed to provide a summary of the submissions received by the Administration on the consultation paper on the 1998 Review of Television Policy.

(Post-meeting note : The Administration subsequently provided a summary of submissions which was circulated to members vide Paper No. CB(2) 1476/99-00.)

Licensing and regulation

10. Mr SIN Chung-kai said that when the legislative proposal was discussed at a meeting of the Panel on Information Technology and Broadcasting, deputations expressed concern about the determination of dominance in the market. It seemed to him that the Bill allowed existing licensees of domestic free television programme services to apply for other categories of television programme service licences. He therefore asked whether there were any safeguard provisions such as ownership control in the Bill.

11. SITB(Ag) responded that under the Bill, existing licensees were regarded as disqualified persons and cross-media ownership would not be permitted except with the prior approval of the Chief Executive in Council (CE in C). However, existing licensees of domestic free television programme services could still apply for a licence to provide other categories of television programme service. The Administration was currently examining ten applications for domestic pay television programme services. In considering whether an existing licensee of domestic free television programme service should be allowed to hold a licence in another category of television programme service, the Administration would have to carefully consider various factors such as whether the application would bring about more programme choice to the general public and whether there would be sufficient assurances that the operation of the two categories of television programme services would be independent of each other. She added that there were safeguard provisions in the Bill to this effect.

Licensing criteria

12. Miss Emily LAU inquired about the criteria to be adopted by CE in C in granting approval for broadcasting service licences. She asked whether encouraging competition was the major consideration and whether those applicants already in a dominant position in the market would be accorded lower priority.

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13. SITB(Ag) said that the Administration supported the principle of introducing more competition in the television programme service market. If there were no physical or technological constraints, no limit would be set on the number of licences to be issued. However, there would be different considerations if only a few more licences could be issued given the technological constraints. In granting the approval, CE in C would take into account the overall benefits that the application would bring to the economy. In addition to providing a wider choice to the viewers, the Administration would need to ensure fair competition in the provision of broadcasting services in the multi-media environment. Given the rapid market changes, the Administration would have to strike a balance between encouraging competition and widening programme choices.

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14. Miss Emily LAU inquired about the reasons for not stipulating the approval criteria in the Bill. She considered that there should be greater transparency in the exercise of discretionary power by the CE in C. At the request of the Chairman, SITB(Ag) agreed to provide a paper explaining the approval criteria to be adopted by CE in C, and the reasons for not stipulating the criteria in the Bill.

Services excluded

Services provided on the Internet

15. The Chairman noted from Schedule 3 to the Bill that services provided on the Internet would be exempted from the application of the Bill. She asked whether consideration would be given to the possibility of regulating the provision of services on the Internet in the near future.

16. SITB(Ag) said that the Administration had an open mind on the issue. However, the Administration did not consider it appropriate to put the provision of services on the Internet under the broadcasting regulatory regime at present as the pervasiveness of Internet was not yet comparable to television programme services. To provide flexibility in the regulatory framework to cater for the fast-changing broadcasting and multi-media environment, the proposed exemptions were to be specified in a schedule to the Bill so that amendments could be made by way of subsidiary legislation in future. The Administration would keep a close watch on the development of services provided on the Internet and would introduce legislative amendments if necessary.

17. Mr SIN Chung-kai opined that regulation of services on the Internet would need very careful consideration. He pointed out that currently services provided on the Internet were not regulated in other jurisdictions. If Hong Kong started regulating such services ahead of other countries, it would likely stifle the development of and investment in Internet services in Hong Kong. Mr Ronald

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ARCULLI considered that it was very difficult, if not impossible, to regulate services provided on the Internet. The Chairman said that the problem was not unique to Hong Kong and advised that the Bills Committee might not be the appropriate forum to discuss the policy issue relating to regulation of Internet services. Miss Emily LAU agreed that it would be premature at the present stage to regulate services provided on the Internet. However, she stressed that the Administration should keep a close watch on the development of Internet services and take prompt actions should the need arise.

Free-to-air satellite television services

18. The Chairman asked about the regulation of free-to-air satellite television services uplinked from places outside but receivable in Hong Kong. She was concerned that exemption for such services would create loopholes in enforcement. SITB(Ag) responded that these services were presently allowed to be received and distributed by satellite master antenna television (SMATV) systems for domestic use. The Administration had no intention to prohibit the installation and use of SMATV system, and the licensee of SMATV system would be held responsible for the content of programmes received and distributed by his system.

19. Mr Ronald ARCULLI asked about the regulation of television programme services produced in places outside Hong Kong but receivable in Hong Kong. SITB(Ag) said that in line with the open-sky policy on broadcasting, free-to-air satellite television services uplinked from places outside but receivable in Hong Kong were allowed to be distributed by SMATV systems without the need for a licence. The content of such programmes would be subject to the regulation by the Control of Indecent and Obscene Articles Ordinance.

20. Responding to Mr Howard YOUNG, SITB(Ag) said that all forms of pay television programmes uplinked from places outside Hong Kong and did not primarily target Hong Kong would be within the meaning of non-domestic television programme (Non-Domestic) service under the Bill.

Competition provisions

21. The Chairman inquired whether programmes purchased by a licensee would also be exempted from the competition provisions. SITB(Ag) said that the exemption provided under clause 13 would be too wide if purchased programmes were included in the category.

22. Mr MA Fung-kwok then asked about the criteria for applying the competition provisions to exclusive programmes acquired by a licensee. SITB(Ag) said that based on overseas experience, programmes acquired under an exclusive contract for a prolonged period (as against those one-off

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programmes) and that such contract had the purpose or effect of substantially restricting competition would be subject to the competition provisions.

23. Responding to Mr Ronald ARCULLI, SITB(Ag) said that the principle of the regulatory framework proposed in the Bill was similar to that of the Telecommunication (Amendment) Bill 1999, and the competition provisions in both Bills were formulated based on the experience in Europe. However, the Telecommunication (Amendment) Bill did not provide for any exemptions.

24. Miss Emily LAU noted that BA would issue guidelines on exclusive contracts with artistes. She sought information on the content of the guidelines and whether these would be formulated by way of subsidiary legislation. SITB(Ag) said that the Administration would consult the industry before issuing the guidelines. As the principal ordinance would spell out the general principles for regulation of exclusive contracts (e.g. provisions which were harsh or unrelated to the subject of the contracts would be considered as anti-competitive), the Administration considered it more appropriate to formulate the guidelines administratively rather than by subsidiary legislation. Moreover, as individual contracts would vary, the guidelines would also incorporate illustrative examples. SITB(Ag) added that the consultant on competition laws had advised that, based on overseas experience, the court would examine the specific provisions of individual contracts in case of a dispute. Miss Emily LAU was not satisfied with the explanation and reiterated that the Administration should consider issuing the guidelines by way of subsidiary legislation.

25. The Chairman expressed concern that it would be difficult to enforce the prohibition against the inclusion of irrelevant provisions in the contracts with artistes. She considered that the Administration could consider specifying in the Bill the circumstances under which exclusive artiste contracts would be regarded as having contravened the competition provisions.

26. Mr MA Fung-kwok expressed similar concerns. He pointed out that it was not uncommon for a licensee of television programme service to act as agent of some artistes. It was therefore possible that a licensee could make use of his position to prohibit his artistes from taking part in the competitors' production.

27. SITB(Ag) responded that the Administration was aware of the situation. She pointed out that such circumstances would fall under clause 13(5)(b) of the Bill preventing restrictions on any person from using or exploiting artistic talent and ability. BA would issue guidelines in this respect and members would be consulted on the draft guidelines in due course.

28. Mr MA Fung-kwok said that the crux of the problem was whether the licensees would be bound by the guidelines and whether BA was sufficiently empowered to enforce the provisions in the guidelines concerning anti-competitive conduct. To address members' concerns, the Chairman requested the

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Administration to provide an information paper on the application of competition provisions in Part V of the Bill. SITB(Ag) agreed.

Ownership and investment control

29. Mr Howard YOUNG asked about the residency requirements for ownership control. SITB(Ag) responded that clause 2 of the Bill provided the definition of "ordinarily resident of Hong Kong" which was the same as that in the Television Ordinance. PAS(ITB) added that "qualified voting controller" was defined in Part 1 of Schedule 1 to the Bill.

30. Miss Cyd HO expressed concern about preventing the control of the television programme service market by a few corporations. SITB(Ag) said that the Bill contained provisions to safeguard competition and to prevent abuse of dominant position as well as provisions on disqualified persons and restrictions on cross-media ownership.

Item K broadcasters

31. Responding to the Chairman, SITB(Ag) said that currently "item K broadcasters" were not required to be licensed under the Telecommunication Ordinance and were not subject to the regulation of BA, although they hired the facilities of Cable and Wireless HKT International Limited to uplink their programmes. To address the anomaly, "item K broadcasters" would be brought under regulation of the Bill subject to a two-year transitional period.

Prohibition and proscription by court

32. Responding to Miss Emily LAU, SITB(Ag) said that clause 35 in the Bill mirrored the provisions in the Television Ordinance, i.e. the Chief Secretary for Administration might apply to the Court of First Instance for an order under the section.

Royalties and licence fees

33. Responding to the Chairman, SITB(Ag) said that the industry supported the abolition of advertising and subscription royalties as this would save the licensees a substantial amount of money. The licensee would be required to pay licence fee at full cost as a quid pro quo for the abolition of royalties. It was estimated that an annual fee of about \$28 million would be collected from existing licensees whereas the royalties received in last year amounted to \$264 million.

Date of next meeting

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34. To enable members to have a better understanding of the implications of the Bill on the industry and other concerned parties, Miss Emily LAU suggested and members agreed to invite public submissions on the Bill. Members also agreed that concerned parties, including those who had previously made submissions on the Review, should be invited to present their views to the Bills Committee.

35. Members agreed to meet deputations at the next meeting to be held on 31 March 2000 at 10:45 am. Members also agreed to schedule two further meetings for 5 and 11 April 2000.

(Post-meeting note : A press release and invitations for submissions were issued on 15 March 2000.)

36. There being no other business, the meeting ended at 9:55 am.

Legislative Council Secretariat

5 October 2000