

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, 18 April 2000 at 8:30 am
in Conference Room B 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 CHOY So-yuk
Hon Andrew CHENG Kar-foo
- Members Absent** : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
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

[Paper Nos. CB(2)1572/99-00(01), CB(2)1722/99-00(01) and (02)]

The Bills Committee continued discussion of the Administration's response to submissions from deputations [Paper No. CB(2)1572/99-00(01)].

Regulation of broadcasting services

2. Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) said that one deputation had raised concern about the import and re-export of digital satellite decoders which could receive satellite television programme services licensed in places outside Hong Kong. (DS(ITB)(Ag)) said that the concern had been adequately addressed by clause 7 of the Bill. The Administration believed that it would be inappropriate to create an offence on the use of such decoders in Hong Kong, as the user might not be able to distinguish whether a decoder was authorized or not in Hong Kong.

3. The Chairman noted that it was the general policy to control illegal trading at source rather than to regulate private uses.

Restriction on disqualified persons

4. On the question of whether a dominant supplier of a local public switched telephone service should be a disqualified person, DS(ITB)(Ag) said that the original intention was to prevent over-domination of both the fixed telecommunication networks and cable television network in the market. However, as the Administration now decided to separate the "transmission" licence from a "service" licence, it would not be appropriate to retain this category of disqualified person in the Bill which only dealt with the "service" or "content" licences.

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5. Responding to the Chairman, DS(ITB)(Ag) explained that abuse of dominant position of a fixed telecommunication network supplier would be subject to the competition provisions in the Telecommunication Ordinance.

6. As regards excluding "programme suppliers" from the list of disqualified persons, DS(ITB)(Ag) said that as an increase in viewers' choice was expected in a gradually liberalized television market, it would not be necessary to restrict cross-control of television stations and "programme suppliers".

7. In response to the Chairman, DS(ITB)(Ag) clarified that while programmer suppliers were disqualified persons under the existing legislation, they could apply for television service licences under the Bill subject to the competition provisions in clause 13. He further said that abuse of a dominant position by a programme supplier, if he was also a television programme service licensee, would be subject to clause 14 which imposed stringent control on anti-competitive behaviour.

Advertising time restrictions

8. DS(ITB)(Ag) said that at present, the advertising time for commercial and subscription television was subject to a maximum of 10 minutes in an hour. Moreover, breaks within a programme and intervals between two programmes should not exceed 3.5 minutes and 5 minutes respectively. The Administration now proposed to relax the current restrictions on advertising time outside the prime time viewing hours between 5 pm and 11 pm. The licensees would in future be allowed to freely package their advertisements outside 5 pm-11 pm, provided that the aggregate advertising time did not exceed 18% of the total broadcasting time in that period. Licensees of Domestic pay, Non-Domestic and Other Licensable services would not be subject to advertising time restrictions.

9. Responding to the Chairman, DS(ITB)(Ag) said that theoretically speaking, a Domestic Free licensee could arrange for a block broadcast of advertisements in the non-prime viewing hours. However, given the liberalisation of the television market, he believed that licensees would package their advertising time based on viewers' responses. To ensure that the viewers were aware that they were watching paid advertisements, BA would issue codes of practice in this respect. Assistant Commissioner for Television and Entertainment Licensing (Broadcasting) advised that broadcast of API was subject to a maximum of 1 minute per clock hour.

10. Mr SIN Chung-kai said that he had no strong views on the proposed relaxation of advertising time as there would be an increase in the number of service providers in the liberalised market.

11. Since important changes were proposed for the advertising time

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restrictions, the Chairman requested the Administration to provide a paper to explain the policy and proposed arrangements for the advertising time of a television programme service, highlighting the differences between existing and proposed arrangements.

Culture and arts programmes

12. DS(ITB)(Ag) advised that the Administration did not propose to add a specific requirement for broadcasting arts and culture programmes, because there were already positive programming requirements for the existing free-to-air television licensees. These included requirements to broadcast, during specified periods, programmes on documentary, current affairs, and arts and culture as well as programmes for children, young persons and senior citizens. These licensees were also required to broadcast programmes supplied by Radio Television Hong Kong. The Administration considered it necessary to strike a balance between ensuring that licensees discharged their obligations as broadcasters to the community and minimising regulatory restrictions which might interfere with editorial freedom of broadcasters. Moreover, in anticipation of the multi-channel and multi-media environment, he anticipated that a wider variety of programmes would be made available for different sectors of the community.

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13. The Chairman pointed out that free-to-air television licensees normally attached less importance to art and culture programmes because of commercial considerations. Moreover, the positive programming requirements only aimed at specific target groups rather than promoting arts and culture. The Chairman therefore suggested the Administration to consider requiring Domestic Free licensees to broadcast arts and culture programmes in specified time slots. Mr MA Fung-kwok expressed support for the Chairman's suggestion. The Administration noted the suggestion.

Public inspection of licences

14. Responding to one deputation's suggestion about disclosing the content of all television programmes service licences, DS(ITB)(Ag) advised that it was already a licence condition that all licensees should make available for public inspection a copy of their licences at their registration offices and at the Television and Entertainment Licensing Authority (TELA). The existing licences were also available for downloading at the websites of TELA and the Information Technology and Broadcasting Bureau.

15. Mr SIN Chung-kai opined that the Administration should consider incorporating such requirements in the Bill. The Chairman was of the view that the existing arrangement as described in paragraph 14 already achieved the purpose. Assistant Legal Adviser 3 confirmed the view of the Chairman.

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Enforcement of licences and sanctions

16. The Chairman pointed out that the Telecommunication (Amendment) Bill 1999 proposed to cap the financial penalty to 10% of the licensee's revenue. She asked whether it was also possible to peg the financial penalty for a television programme service licensee at a certain percentage of the revenue of the programme. Mr Andrew CHENG supported the suggestion. He said that past records showed that the financial penalty imposed on licensees was on the low side and could not have much deterrent effect.

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17. DS(ITB)(Ag) responded that the sanction imposed by BA would depend on the nature and seriousness of the contravention. A warning would be issued for less serious offence while the most serious case could result in suspension or revocation of licence. As for the financial penalty, the Bill proposed to increase the maximum fine from \$250 000 to \$1 million and this should provide sufficient deterrence. The Chairman was of the view that the Administration should study the feasibility of pegging the financial penalty to the revenue of a programme, and requested the Administration to provide a paper on the actual financial penalty imposed in previous cases. DS(ITB)(Ag) agreed.

18. Mr MA Fung-kwok and Mr SIN Chung-kai considered that the proposed levels of financial penalty were sufficient for breaches of programme content requirements. Nevertheless, they supported the proposal to peg the financial penalty at a rate of the revenue generated from the anti-competitive behaviour.

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19. The Chairman commented that it might be difficult for BA to clearly differentiate the two types of breaches. To facilitate members' further deliberation of the matter, she suggested that the Administration should include in the paper the criteria and considerations for imposing financial penalty on anti-competitive behaviour and breaches of programme content requirements. DS(ITB)(Ag) agreed.

20. On the suggestion that public hearings should be held for the grant, extension, renewal, suspension or revocation of a licence, the Chairman enquired about the Administration's position on the matter. DS(ITB)(Ag) responded that it had been a long standing practice of BA to conduct public hearings on the renewal of licences for domestic services. However, it would be inappropriate to hold public hearings for the grant of new licences as commercially sensitive information such as the financial position of the applicants and business proposals would be discussed. The public might also have no interest in the grant of Non-Domestic Service licences which did not primarily target viewers in Hong Kong. As regards suspension of licence, DS(ITB)(Ag) said that the Administration would need to consider whether holding public hearings would

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cause undue delay in taking action in very serious cases. The Administration would provide a response to the suggestion.

21. While agreeing that it was inappropriate to disclose commercially sensitive information related to licence applications, Mr Andrew CHENG was of the view that the decisions made by BA and the factors taken into consideration should be made known to the public. In this connection, BA could consider holding public hearings on general discussions. Miss CHOY So-yuk commented that holding public hearings would also enhance the accountability of BA.

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22. In view of members' concerns, the Chairman requested the Administration to consider the proposal of holding public hearings for suspension and revocation of licence. She also requested for information on the arrangements in the United States, Canada and other overseas countries. DS(ITB)(Ag) agreed to provide a response.

Broadcasting Authority

23. Members noted that the Administration had provided further information on the new functions conferred on BA by the Bill [Paper No. CB(2)1722/99-00(02)].

24. Mr Andrew CHENG expressed concern about the adequacy of support for BA, for example, whether BA had an independent legal adviser to enable it to perform the enhanced functions. Mr CHENG was concerned that the Department of Justice (D of J) could not designate full time staff to advise BA on the enforcement of competition provisions. He considered that BA should have an independent secretariat and a legal adviser.

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25. DS(ITB)(Ag) responded that under the Broadcasting Authority Ordinance, TELA was the executive arm of BA which was an independent statutory body. TELA would therefore provide the necessary support and assistance to BA. He assured members that adequate legal service would also be provided to BA for performing its enhanced functions. The Administration would take note of members' concerns when considering support services for BA.

26. The Chairman noted that despite the expanded power of BA, no representative from the broadcasting industry was appointed to BA. She therefore inquired about the criteria for appointing a member to BA.

27. DS(ITB)(Ag) said that BA's role was to regulate the broadcasting industry to ensure that the licensees were in compliance with the licensing conditions and the programme content did not offend public standards of taste and decency. It was believed that such monitoring work should best be carried out by

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independent members from outside the industry to avoid any possible conflict of interests. He added that membership of the broadcasting regulatory bodies in overseas countries also did not comprise representatives of the industry. For example, the Independent Television Commission, the Broadcasting Standard Committee and the Radio Authority in the United Kingdom also had a structure similar to that of BA in Hong Kong. DS(ITB)(Ag) said that non-official members of BA were drawn from various sectors of the community. The Administration would take into account their knowledge, experience and expertise in different fields in making the appointment in order to ensure that BA could discharge its functions in the most effective manner.

28. The Chairman commented that to give credibility of the ruling and decision of BA, BA might need to seek professional advice from broadcasting experts. Mr SIN Chung-kai also expressed concern as to whether the secretariat of BA could provide the necessary support to BA as TELA had many other responsibilities. He therefore suggested re-organising TELA to meet the new challenges. The Chairman said that the proposal on the structure of TELA could be followed up by the relevant Panel.

29. Referring to paragraph 23 of the Administration's paper, the Chairman said that the Bills Committee would follow up the issues raised in the Assistant Legal Adviser's letter when the Administration's reply was received.

Competition provisions in relation to artiste contracts
[Paper No. CB(2)1722/99-00(01)]

30. At the invitation of the Chairman, DS(ITB)(Ag) briefed members on the proposed exemption of restrictions imposed on any person from using or exploiting his artistic talent or ability from the application of clause 13 (prohibition of anti-competitive conduct).

31. The Chairman pointed out that there would be practical difficulties in enforcing the proposed exemption as an exclusive contract with an artiste might cover a very wide range including prohibition on the artiste's appearance in the programme of the other television stations. In these circumstances, it would be difficult to enforce the competition provisions in the Bill.

32. DS(ITB)(Ag) responded that BA would have to examine the clauses in individual contracts before determining whether a particular restriction on an artiste's talents was in breach of the competition provisions.

33. Principal Assistant Secretary for Information Technology and Broadcasting described the procedures for determining an anti-competitive conduct under clause 13. He said that when a complaint about unreasonable provisions in an artiste contract was received, BA would assess whether the

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restriction in question was exempted under clause 13(5), and if so, clause 13 would not be applicable. If the restriction was not exempted under clause 13(5), BA would examine whether the restriction would be caught under clause 13(1), i.e. whether it had the effect of preventing or substantially restricting competition in a television programme service market. If it was substantiated that the restrictions were within the meaning of clause 13(1), BA could declare that a specific provision in the contract was void in accordance with clause 13(3).

34. Mr MA Fung-kwok said that it would be unrealistic if BA was to enforce the competition provisions by relying on complaints, as no artistes would have the courage to make a complaint to BA about unreasonable contract terms. He was of the view that BA should take a proactive approach to investigate anti-competitive conduct. He also urged BA to draw up detailed guidelines specifying the types of anti-competitive terms or behaviour. Miss CHOY So-yuk shared similar concerns.

35. Mr David CHU considered it difficult or inappropriate to regulate industry practice by legislation although he agreed with the general competition provisions in the Bill.

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36. Mr Andrew CHENG commented that the Administration should strike a balance between giving recognition to a commercial arrangement and ensuring fair and effective competition. In this connection, he requested the Administration to provide information on overseas court rulings on anti-competitive conduct in order to illustrate what behaviour was regarded as anti-competitive. He also urged the Administration to provide draft guidelines and draft codes of practice for members' perusal.

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37. Responding to members' concerns, DS(ITB)(Ag) advised that -

- (a) BA would be empowered to carry out investigations on any alleged anti-competitive conduct and abuse of dominance, irrespective of whether there was a complaint. However, the lodging of a complaint could provide the necessary information to facilitate investigation by BA. BA would assess in accordance with clause 14(5) whether a dominant licensee had abused its dominant position by imposing harsh or unrelated conditions in the artistes' contracts; and
- (b) the Administration had engaged a consultant to draw up the draft Guidelines on competition provisions with reference to overseas experience. Drafting work for the Guidelines was in progress and the industry would also be consulted on the draft Guidelines before implementation.

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II. Any other business

38. The Bills Committee agreed to continue discussion of the competition provisions at the next meeting scheduled for 20 April 2000 at 10:45 am.

39. The meeting ended at 10:45 am.

Legislative Council Secretariat

5 October 2000