

立法會
Legislative Council

LC Paper No. CB(2) 2596/99-00
(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 Thursday, 20 April 2000 at 10:45 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 SIN Chung-kai
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Members Absent : Hon David CHU Yu-lin
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
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)1722/99-00(01) and CB(2)1743/99-00(02)]

The Bills Committee continued discussion of the Administration's paper on "Competition provisions in relation to artiste contracts" from paragraph 8 onwards [Paper No. CB(2) 1722/99-00(01)].

Agency Contracts

2. At the invitation of the Chairman, Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) briefed members on the reasons why the use of "agents" as a means to bypass the competition provisions was unlikely to succeed, as set out in paragraph 8 (a) - (c) of the Administration's paper.

3. The Chairman noted that the actions of an agent, if it was a subsidiary company of the licensee, could be treated as that of the licensee. However, she expressed concern that if an agent which had direct association with a licensee imposed unreasonable restrictions on artistes, then such conduct would not be caught by the competition provisions.

4. Mr Andrew CHENG also sought clarification as to whether an agreement or understanding between a licensee and an agent, which had the purpose or effect of preventing or substantially restricting competition in a television programme service market, would be caught by the competition provisions of the Bill.

5. DS(ITB)(Ag) provided the following response to these concerns -

- (a) the competitions provisions in clause 13 covered both direct and indirect agreement which included contracts signed between artistes and agents;

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- (b) while clause 13 (5)(b) provided an exemption for artiste contracts, unreasonable contract terms or restrictions unrelated to the artistes' talents or ability might be regarded as anti-competition under clause 13(2)(f); and
- (c) if a licensee holding a dominant position in the market required artistes to enter into contracts with a specific agent, and if the terms or conditions were harsh or unrelated to the subject of the agreement, the conduct would fall within the scope of clause 14(5)(c).

6. In response to Mr Andrew CHENG's further enquires, Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) advised that clause 13(2)(a) - (f) gave examples of anti-competitive conduct and were by no means exhaustive. PAS(ITB) added that the reference to "conduct" in clause 13(2)(b) covered a wide range of activities.

7. The Chairman sought clarification as to whether specific terms in an exclusive artiste contract prohibiting the artiste's appearance in the programme of another television station were in breach of the competition provisions.

8. PAS(ITB) responded that individual contracts would unlikely have the effect of "preventing or substantially restricting competition in a television programme service market" as regulated under clause 13(1). However, the act of a dominant player, whether by direct or indirect agreement, would still be subject to clause 14. Therefore, if a licensee who was a dominant player entered into contracts with artistes by itself or through an agent, it would still be governed by clause 14. Nevertheless, BA would have to examine each case before deciding whether a licensee had abused its position under clause 14.

9. The Chairman remarked that the drafting of the Bill must be able to achieve the intended effect. Mr Andrew CHENG asked whether the Administration could specify in the guidelines those circumstances which would be regarded to be in breach of the competition provisions.

10. DS(ITB)(Ag) responded that clauses 13 and 14 provided the regulatory framework on anti-competition conduct and abuse of dominant position, and the guidelines to be issued by BA would provide guidance on the interpretation and general application of clauses 13 and 14. He reiterated that it would not be possible to list out all scenarios under clauses 13 and 14 and BA would have to consider the circumstances of each case before making a determination.

11. In response to the Chairman, PAS(ITB) said that "conduct" in clause 14(5)(c) covered "agreements" made or accepted by the relevant parties which included the artiste' agents.

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Response to submissions on the competition provisions in the Bill
[Paper No. CB(2)1743/99-00(02)]

12. DS(ITB)(Ag) took members through the Administration's paper at the request of the Chairman.

Scope

13. On the suggestion that a general competition law should be introduced to deal with anti-competitive conduct, DS(ITB)(Ag) said that it was Government's established policy to adopt a sector-specific approach for promoting competition in Hong Kong. The Administration had received general support for the incorporation of competition provisions in the Bill during consultation on the 1998 Review of Television Policy.

14. Regarding the proposal to extend the scope of the Bill to cover markets which had a co-dependent relationship with the television programme service market, DS(ITB)(Ag) said that the Administration considered it inappropriate to expand the jurisdiction of BA to cover non-broadcasting markets. The present arrangement as proposed under the Bill was similar to that of the Independent Television Commission in the United Kingdom.

15. The Chairman referred to the second submission of the International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI) [Paper No. CB(2)1702/99-00(01)] and requested the Administration to respond to the concerns about co-dependent markets.

16. DS(ITB)(Ag) responded that the competition provisions in the Bill aimed to regulate behaviour that would have an effect on competition in a television programme service market. It would be outside the jurisdiction of BA to regulate behaviour in related markets. He reiterated that it was Government's policy to adopt a sector-specific approach to promote competition in Hong Kong.

17. Ms Cyd HO said that she would follow up the issue on general competition law in other forum. However, she was concerned whether the Bill could effectively prevent a dominant licensee from restricting competition in a co-dependent market through its dominant position in the television programme service market.

18. The Chairman referred to IPFI's second submission regarding co-dependent relationship and asked the Administration whether the concerns of IFPI could be adequately addressed by the Bill. DS(ITB)(Ag) said that he would have to seek further advice from the consultant engaged for the competition issues. Nevertheless, he believed that BA would take into consideration all relevant factors before forming an opinion as to whether a licensee had contravened the competition provisions.

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19. To address the concerns on anti-competitive conduct in a co-dependent market as detailed in the second submissions of IFPI, Hong Kong Cable Television Ltd and the Consumer Council, the Chairman requested the Administration to provide a further response to the specific points raised. DS(ITB)(Ag) agreed.

Exemption by Broadcasting Authority

20. DS(ITB)(Ag) advised that exemption from the application of clause 13(4)(b) on prohibition of anti-competitive conduct could only be made by BA on a ground prescribed by regulation made by CE in C pursuant to clause 41(f). The regulation would be subsidiary legislation subject to the negative vetting procedure of the Legislative Council (LegCo).

21. Mr Andrew CHENG opined that consideration of exempting a conduct from the competition provisions was an important issue and that the prescribed grounds for exemption should be subject to the positive vetting procedure of LegCo. Ms Cyd HO supported the proposal.

22. DS(ITB)(Ag) advised that only a narrow scope of exemption would be proposed based on grounds such as promotion of technical progress in the television programme service market. If the regulation was to be subject to the positive vetting procedure of LegCo, it could not provide BA with the necessary flexibility to respond quickly to the rapid technological developments in the television programme service market.

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23. In view of members' concerns, the Chairman advised the Administration to further consider whether the regulation on prescribed grounds for exemption under clause 41(f) should be subject to the positive vetting procedure of LegCo. DS(ITB) (Ag) agreed.

Exclusive programmes

24. DS(ITB)(Ag) advised that the acquisition of exclusive programmes on a one-off basis would unlikely be regarded as breaching the competition provisions because the act would unlikely have an effect of restricting competition in a television programme service market.

25. The Chairman noted that the industry did not raise objection to the proposal and that clause 14 of the Bill had provided safeguards against abuse of dominant position by a licensee.

26. Mr Andrew CHENG sought clarification whether a television programme service licensee who chose not to broadcast a programme after acquiring an exclusive right of the programme would be regarded to have breached the

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competition provisions. He was concerned that such act would have the effect of restricting information and viewers' choice of programmes. Ms Cyd HO shared similar concern. At the request of the Chairman, the Administration agreed to provide a further response to the concern.

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Separate accounting

27. DS(ITB)(Ag) said that to facilitate investigation and to prevent cross-subsidization of businesses, a licensee was required to adopt accounting practices to clearly differentiate the different activities of its businesses.

28. The Chairman asked about the Administration's response to the submission of the Hong Kong Society of Accountants [Paper No. CB(2) 1569/99-00(01)] concerning the circumstances under which BA would direct a licensee to adopt an accounting practice pursuant to clause 16(2) of the Bill.

29. DS(ITB)(Ag) clarified that clause 16(1)(a) required a licensee to adopt accounting practices which could be readily understood, otherwise BA could, in accordance with clause 16(2)(c), direct the licensee to adopt an accounting practice which was consistent with generally accepted accounting practices in Hong Kong. Assistant Legal Adviser 3 added that a similar provision was proposed in the Telecommunication (Amendment) Bill 1999.

Competition guidelines

30. DS(ITB)(Ag) said that the competition guidelines were under preparation and would be made available for consultation as soon as possible.

31. Mr Andrew CHENG stressed that the draft guidelines must be made available before the enactment of the Bill. The Chairman said that although the guidelines were not subsidiary legislation requiring LegCo approval, members would like to study the guidelines before these were promulgated. She therefore urged the Administration to provide the draft competition guidelines for the Bills Committee's deliberations as soon as possible. DS(ITB)(Ag) noted the request.

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II. Any other business

32. Members noted that the Administration had tabled a paper entitled "Policy issues raised at the Bills Committee meetings" [Paper No. CB(2)1774/99-00(01)] which would be discussed at the next meeting scheduled for 26 April 2000 at 4:30 pm.

33. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat

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5 October 2000