

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 Thursday, 25 May 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 YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin
- Members Absent** : Hon David CHU Yu-lin
Hon MA Fung-kwok
Hon SIN Chung-kai
- 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)
- Mr Geoffrey A FOX
Senior Assistant Law Draftsman, Department of Justice

Ms Cynthia LEE
Government Counsel, Department of Justice

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

Action

- I. Clause-by-clause examination
(from clause 36 to clause 43 and Schedules 1 to 7)**
[Paper Nos. CB(2)2094/99-00(01) to (08), CB(2)2105/99-00(01) and
LS134/99-00]

Members agreed that discussion of the Administration's draft Committee Stage amendments (CSAs) and its response to outstanding issues should take place after clause-by-clause examination of the Broadcasting Bill (the Bill).

Clauses 36 to 40

2. Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) said that clause 36 provided that the Gambling Ordinance was not applicable to contests organised in connection with television programmes if the contests complied with the standards set out in the relevant code of practice. Clause 37 empowered the Telecommunications Authority to inspect and test equipment used by a licensee. Clause 38 required a licensee to submit specified annual returns to the Broadcasting Authority (BA). Clause 39 was related to the service of documents under the Bill and clause 40 sought to empower BA to specify the form of documents required under the Bill.

3. Members did not raise any queries on these clauses.

Clause 41 - Regulations

4. DS(ITB)(Ag) said that clause 41 empowered the Chief Executive in Council (CE in C) to make regulations for the purposes of the Bill.

Action

5. Miss Emily LAU sought clarification on the application of clause 41(1)(a), (b) and (c).

6. DS(ITB)(Ag) responded that clause 41(1)(a) provided that CE in C might by regulation impose requirements on the licensee in addition to the conditions laid down in Schedule 1 to the Bill to cope with unforeseen circumstances. The additional requirements would be subject to the positive vetting procedure of the Legislative Council (LegCo).

7. Miss Emily LAU suggested that the Administration might consider spelling out clearly the circumstances under which clause 41(1)(a) would be invoked. In reply, Senior Assistant Law Draftsman (SALD) said that the provision sought to cater for exceptional circumstances which were not covered under Schedule 1. In the event that the Administration was aware of a change in circumstances, it could amend the Schedule. DS(ITB)(Ag) pointed out that clause 41 was modelled on existing provisions in sections 17Q and 32A of the Television Ordinance and these provisions had not been invoked before. All known circumstances for the purpose of making Regulations were given in Schedule 1.

8. In response to Miss Emily LAU, SALD agreed to consider making it clearer in clause 41(1)(a) that the clause was applicable only to exceptional circumstances not covered in Schedule 1 to the Bill.

9. Regarding clause 41(1)(b), DS(ITB)(Ag) said that it provided BA with the flexibility to waive or dispense with the additional requirements imposed under sub-clause (1)(a). As the additional requirements imposed might be a general provision, there was a need for BA to revise the requirements in order to meet the need of a particular case.

10. Ms Cyd HO was concerned that clause 41(1)(b) might give too much discretion to BA. The Chairman reminded members that the regulations to be made by CE in E under subclause (1)(a) and (b) would be subject to the positive vetting procedure of LegCo. SALD pointed out that LegCo could modify the proposed regulations during the positive vetting process. He however agreed that clause 41(1)(b) could be improved to specify that BA's power to waive or dispense with the requirements could only be based on grounds specified in the Regulations.

Admin

11. On clause 41(1)(c), DS(ITB)(Ag) said that it empowered CE in C to specify additional requirements in respect of the beneficial ownership or control of voting shares in relation to Domestic Free or Domestic Pay television programme service licences. SALD pointed out that it would be too complicated to define beneficial ownership in Schedule 1. DS(ITB)(Ag) added that restrictions on disqualified persons and unqualified voting controllers were

Action

already spelt out under Parts 2 and 3 of Schedule 1 of the Bill, and that clause 41(1)(c) was only to deal with unforeseen and exceptional circumstances not provided in Schedule 1.

12. Miss Emily LAU expressed concern that clause 41(1)(e) conferred power on CE in C to make regulation without limitation in respect of restrictions on television programmes and advertisements. DS(ITB)(Ag) said that this was an existing provision under the Television Ordinance. He pointed out that in practice, requirements on the television programme and advertising standards would be stipulated in the codes of practice issued by BA.

Admin

13. To address members' concern, DS(ITB)(Ag) agreed that the regulations to be made by CE in C under all subclauses in clause 41, except subclause (1)(f), would be subject to the positive vetting procedure of LegCo.

Clause 42 - Amendment of Schedules 1 to 8, etc.

14. DS(ITB)(Ag) said that clause 42 set out that amendments to Schedule 1 would be subject to the positive vetting procedure of LegCo. The Administration would propose a CSA to Schedule 3 so that amendment to this schedule would also be subject to the positive vetting procedure of LegCo. Amendments of other schedules to the Bill would be subject to the negative vetting procedure of LegCo.

Clause 43 - Repeal, transitional and savings provisions and consequential amendments

15. Members raised no queries on the transitional and savings provisions on the repeal of the Television Ordinance (Cap. 52).

Schedule 1 - Disqualification for holding licences and restriction on voting control of voting controllers

[Paper No. CB(2) 2105/99-00(01)]

16. DS(ITB)(Ag) advised that the Administration had provided a comparison of the provisions in Schedule 1 with corresponding provisions in the Television Ordinance. He then took members through the comparison table [Paper No. CB(2)2105/99-00(01)].

Part 1 - Interpretation and application

17. DS(ITB)(Ag) said that apart from some textual amendments, the definition of "disqualified persons" had been revised to exclude the following -

- (a) the sole or dominant local telephone company;

Action

- (b) a programme supplier; and
- (c) a company which transmits sound or television material within or without Hong Kong.

18. Mr Andrew CHENG sought clarification on the proposed exclusions such as the programme suppliers. DS(ITB)(Ag) explained that in the light of market developments in a technological convergent environment, the Administration proposed to relax the restrictions on disqualified persons to promote the growth of the broadcasting industry and the development of Hong Kong as a regional broadcasting and communications hub. As regards concerns about a dominant programme supplier exercising control in a licensee, these were dealt with by the restrictions on voting controllers as specified in Schedule 1 and competition provisions in clauses 13 and 14 of the Bill. DS(ITB)(Ag) also explained in detail the meaning of "exercise control of a company" and "subsidiary company" in Schedule 1.

Part 2 - Disqualification for holding licences and restrictions on voting control

19. DS(ITB)(Ag) said that the restrictions on voting control by disqualified persons only applied to Domestic Free and Domestic Pay television programme services. However, a Non-Domestic television programme service licensee was not a disqualified person in relation to a Domestic Pay television programme service licence. Except with the prior approval of CE in C on grounds of public interest, a disqualified person could not become or remain the holder of a domestic free/domestic pay licence or exercise control of the licensee.

20. Miss Emily LAU asked about the Administration's response to the concern of Hong Kong Cable Television Limited [Paper No. CB(2)1541/99-00(01)] about the possibility that a dominant television broadcaster could extend its power to related markets. In this connection, she cited the example of Television Broadcasts Limited and Galaxy Satellite Broadcasting Limited (Galaxy) which were members of the same group.

21. Mr Andrew CHENG also raised similar concern and sought clarification as to whether Galaxy (a Non-domestic television programme service licensee) could hold an additional Domestic Pay television programme service licence in accordance with section 2(4) of Schedule 8 to the Bill.

22. In response, DS(ITB)(Ag) said that the concerns of Cable Television Limited only referred to a particular case concerning Galaxy. DS(ITB)(Ag) clarified that Galaxy was a disqualified person under the existing legislation as well as the Bill because the voting controller of Galaxy was also a Domestic Free service licensee. Prior approval of CE in C was therefore required if Galaxy was

Action

to hold or exercise control of a Domestic Pay licence. CE in C would consider whether a licence should be granted with regard to the public interest considerations under section 3(2) of Schedule 1. He said that the Administration had previously provided information on the public interest considerations.

Admin

23. At the request of Miss Emily LAU, DS(ITB)(Ag) agreed to consider spelling out the public interest considerations in section 3(2) of Schedule 1.

24. DS(ITB)(Ag) said that the provisions in sections 8 to 18 of Schedule 1 were modelled on section 17 of the Television Ordinance. Following the 1998 Review of Television Policy, the Administration considered that disqualified persons should also be subject to the same restrictions on voting controllers. Similar provisions were therefore drawn up based on the existing provisions on voting controllers in the Television Ordinance. DS(ITB)(Ag) said that the industry had raised no objection to the proposals during the consultation exercise in 1998.

Part 3 - Restrictions on voting control held by unqualified voting controllers

25. DS(ITB)(Ag) said that the provisions in Part 3 of Schedule 1 were based on section 17 of the Television Ordinance. Under the Bill, the restrictions on unqualified voting controllers would only apply to Domestic Free service licensees, while the incremental steps requiring BA's approval for control limits by unqualified voting controllers would be relaxed from 2%, 4%, 6%, 8% and 10% to 2%, 6% and 10%.

26. The Chairman noted that the deputations were in support of the proposed relaxation.

Part 4 - Restriction on licensees exercising control on disqualified persons

27. DS(ITB)(Ag) advised that the Television Ordinance currently restricted investments by a licensee in broadcasting-related businesses and all such investments must be approved by BA. The proposed section 33 in part 4 now proposed that such restrictions would only apply to investment by a Domestic Free or Domestic Pay service licensee in a disqualified person.

28. Responding to Miss Emily LAU, PAS(ITB) said that the definition of "exercising control" was stipulated in section 1(6) of Schedule 1. DS(ITB)(Ag) advised that in approving such investments, CE in C would take into account the public interest considerations according to section 3(2) of Schedule 1.

Admin

29. Miss Emily LAU suggested that the "public interest" considerations should also be specified in section 33 of Schedule 1. DS(ITB)(Ag) agreed to consider the suggestion.

Action

30. Mr Andrew CHENG pointed out that section 17B of the existing Television Ordinance contained more detailed provisions and that BA was currently the approving authority for investments by a licensee. He asked about the reason for changing the approving authority to CE in C under the Bill and the circumstances under which CE in C would grant approval for such investments.

31. DS(ITB)(Ag) responded that the policy intention was to encourage competition of broadcasting services and to remove unnecessary barriers for the development of the industry. Therefore, only those investments involving cross-media ownership and disqualified persons would still be subject to control under the Bill. The Administration therefore considered that the approving authority for such investments should more appropriately be CE in C, in line with the arrangement for approval of a disqualified person to hold a television programme service licence or to exercise control of a licensee.

Schedule 2 - Items which are not to be regarded as newspapers for the purpose of paragraph (c) of definition of "newspaper" in section 2(1)

32. DS(ITB)(Ag) advised that Schedule 2 stipulated the list of items which were not regarded as newspapers for the purpose of cross-media ownership restriction. Amendments to the list would be subject to the negative vetting procedure of LegCo.

33. Members did not raise any queries.

[The Chairman ordered a 15-minute break at 10:40 am.]

Schedule 3 - Services not to be regarded as television programme services

34. DS(ITB)(Ag) advised that Schedule 3 sought to set out services excluded from the application of the Bill. To address members' concerns raised at previous meetings, the Administration would propose a CSA to the effect that amendments to Schedule 3 would be subject to the positive vetting procedure of LegCo.

Admin

35. Responding to the Chairman, PAS(ITB) explained that services exempted under section 6 must satisfy all the conditions in section 6(a) to (d) of Schedule 3.

36. Members noted that the Administration had provided responses [Paper No. CB(2)2094/99-00(02)] to the concerns raised by deputations on the provisions in Schedule 3.

Schedule 4 - Domestic Free television programme service supplementary provisions

Action

37. DS(ITB)(Ag) said that Schedule 4 set out the supplementary provisions applicable to Domestic Free television programme service. Amendments to Schedule 4 would be subject to the negative vetting procedure of LegCo.

Part 1 - General

38. DS(ITB)(Ag) said that a Domestic Free licensee was required to broadcast television programmes supplied by Government or BA without charge as one of the licence conditions. All the existing commercial television broadcasting licensees did not raise objection to the requirement.

39. Miss Emily LAU asked about the English programme requirements for these licensees. DS(ITB)(Ag) said that to provide programming flexibility, the two existing licensees were allowed to broadcast in their English channels up to 20% of their daily broadcasts in languages other than English and Cantonese outside the prime time.

Admin

40. To facilitate members' understanding of the English programming requirements on commercial television broadcasting licensees, the Chairman requested and DS(ITB)(Ag) agreed to provide an information paper on the subject.

(Post-meeting note : The Administration's paper on English programming requirements on commercial television broadcasting licensees was circulated vide Paper No. CB(2)2149/99-00(01).)

41. Members also noted the Administration's response [Paper No. CB(2)2094/99-00(02)] to concerns raised by the deputations concerning the provisions in Schedule 4.

Part 2 - Effect of non-renewal or revocation of licence

42. Members noted that CE in C was required under section 8 of Schedule 4 to give 12 months notice to a licensee if the licence would not be renewed or extended. As regards section 9 or Schedule 4, the provisions were modelled on existing provisions in the Television Ordinance.

43. Members did not raise any queries.

Part 3 - Television programmes

44. DS(ITB)(Ag) said that section 10 of Schedule 4 provided that CE in C might specify the minimum duration of a television programme service.

Action

45. Responding to Miss Emily LAU, PAS(ITB) said that the provision was to avoid waste of resources on spectrum if a licensee only broadcast for a very short duration in a day.

46. Miss Emily LAU and the Chairman commented that it might not be necessary to specify the minimum duration requirement in legislation if the requirement was already a licence condition.

47. PAS(ITB)(Ag) clarified that this was an existing provision in the Television Ordinance which specified that the minimum duration of a television programme service was 5 hours for each day. DS(ITB)(Ag) added that the proposed section 10 of Schedule 4 would empower CE in C to specify the minimum service hours for new modes of broadcasting.

Admin

48. At the request of the Chairman, DS(ITB)(Ag) agreed to check whether the minimum duration of television programme service was already stipulated in the licence conditions.

49. On section 11 of Schedule 4, DS(ITB)(Ag) said that a policy change was proposed in the regulation of advertising time for television programme services. The advertising time restrictions would no longer apply to Domestic Pay service, while restrictions for Domestic Free service would be relaxed.

50. Ms Cyd HO sought clarification on the application of section 11(2) concerning the exemption from compliance with the advertising time restrictions. DS(ITB)(Ag) said that the provision was to cater for special cases such as broadcast of football matches. BA would take into account individual merits of each case in granting an exemption. He further explained that a licensee could decide whether to have breaks during a programme for advertising. It would not be a breach of the licence conditions if no breaks were provided in a broadcast hour.

51. The Chairman asked about the procedures for seeking prior approval for exemptions in urgent and unforeseeable circumstances.

Admin

52. DS(ITB)(Ag) advised that the licensee could seek covering approval from BA for the purpose of section 11(2) in exceptional circumstances. The Chairman said that section 11 did not seem to cater for special live events and she suggested the Administration to consider whether a notification system or covering approval mechanism should be introduced for exceptional circumstances. DS(ITB)(Ag) agreed to check whether such a system was already in existence.

Part 4 - Fees and charges

Action

53. The Chairman recapitulated that the Administration had already provided an information paper on "Licence fees of Television Broadcasting Licences" [Paper No. CB(2) 2094/99-00(06)]. Members noted that the Administration had agreed to members' suggestion that the annual licence fees should be prescribed by regulation, subject to the negative vetting procedure of LegCo.

Schedule 5 - Domestic Pay television programme service supplementary provisions

54. Members noted that amendments to this schedule would also be subject to the negative vetting procedure of LegCo.

Schedule 6 - Non-domestic television programme service supplementary provisions

55. Members noted that amendments to this schedule would be subject to the negative vetting procedure of LegCo.

Schedule 7 - Other Licensable television programme service supplementary provisions

56. Referring to the concern raised by Cable & Wireless HKT Limited and Cable & Wireless HKT VOD Limited [Paper No. CB(2) 1504/99-00(09)] that the aggregate number of households for the Other Licensable service licence was too high, Miss CHOY So-yuk asked why the limit was set at 200 000 households.

57. DS(ITB)(Ag) explained that the original proposal in the 1998 Consultation Paper was to set the limit at 300 000 households, and the number was subsequently lowered to 200 000 households in view of comments that the original ceiling was too high. If the target audience exceeded the limit of 200 000 households, the service providers should apply for a Domestic Free or Domestic Pay television programme service licence instead.

Admin

58. The Chairman suggested that the Administration should specify the circumstances for CE in C to grant exemption to the limit on the maximum aggregate of 200 000 households.

59. Ms Cyd HO was of the view that the aggregate number of 200 000 households was too high having regard to the fact that the programme content of Other Licensable service was subject to less stringent control than that of Domestic Free or Domestic Pay television programme service. On the other hand, Ms Cyd HO considered that there should be some flexibility in applying the restriction of 5 000 households to Other Licensable service licensees as some large housing estates might have more than 5 000 households.

Action

Admin

60. In view of members' concerns, the Chairman advised the Administration to review the maximum limit of 5 000 households and the maximum aggregate of 200 000 households for Other Licensable television programme service.

Action

Schedule 8 - Transitional and savings provisions

61. DS(ITB)(Ag) said that Schedule 8 stipulated the transitional arrangements for existing television programme service licensees.

62. The Chairman said that Cable & Wireless HKT Limited and Cable & Wireless HKT VOD Limited had suggested in their submission that as no similar transitional provision was proposed in the Telecommunication (Amendment) Bill 1999, the transitional provision in paragraph 4(2) of Schedule 8 was unnecessary. Senior Assistant Law Draftsman (SALD) advised that the provision was necessary so that agreements lawfully entered into before the gazettal date of the Bill would be exempted from the application of the competition provisions in clause 13 for a specified period. He said that the scope for applying the transitional arrangement under section 4(2) of Schedule 8 was rather limited.

63. Concerning section 5 of Schedule 8 which provided for the transitional arrangement on the payment of annual fees, PAS(ITB) said that as the regulation on payment of annual fees could only be made after the enactment of the Bill, the Administration would need to introduce a CSA to the effect that the Financial Secretary might, by notice in writing served on an existing licensee, specify the annual licence fee payable for the period of the year after the commencement of the Bill. Thereafter, the licensee would be required to pay the licence fees prescribed by regulation.

64. Members did not raise any queries.

Schedule 9 - Consequential amendments

65. PAS(ITB)(Ag) said that Schedule 9 proposed consequential amendments to existing ordinances which would be affected by the Bill and the repeal of the Television Ordinance.

66. Miss Emily LAU referred to section 14 of Schedule 9 and asked whether there were any differences between the new section 9 and the existing sections 9 to 9D of the Broadcasting Authority Ordinance. PAS(ITB)(Ag) said that the provisions on the regulation of satellite programmes had been deleted now that satellite programmes would be within the scope of Non-domestic television programme service under the Bill.

67. PAS(ITB)(Ag) advised that section 16 made it clear that all complaints related to anti-competitive behaviour should be dealt with by BA direct.

68. Members also noted that amendments had been made to the Broadcasting Authority Ordinance on BA's power to impose the higher financial penalty, and to require a licensee to make correction or apology in sound broadcasting service.

II. Administration's response to outstanding issues

[Paper No. CB(2) 2094/99-00 (03)]

69. Members noted that the Administration had accepted a number of members' suggestions and CSAs would be introduced accordingly.

70. Miss Emily LAU noted that the Administration did not agree to specify under clause 8 of the Bill that licensing criteria should be stipulated by way of subsidiary legislation. She asked about the reasons for the decision. DS(ITB)(Ag) said that the Bill already stipulated the important aspects of the licensing criteria. To provide flexibility in the licensing framework to cater for the fast changing broadcasting environment, the Administration considered that other assessment criteria should more appropriately be set out in the guidance notes to be issued by BA. DS(ITB)(Ag) assured members that BA was required under the Bill to issue guidance notes on the assessment criteria in respect of a licence application.

71. The Chairman agreed that it would be more appropriate to set out the assessment criteria in the guidance notes in view of the liberalisation of the television programme service market.

72. On the holding of public hearings, PAS(ITB)(Ag) said that the Administration had accepted members' views and would introduce CSAs to specify that BA should, in respect of a Domestic Free or Domestic Pay television programme service licence, conduct a public hearing where the licence was to be extended or renewed for a period of six years or more.

73. Miss Emily LAU asked why public hearing was not required for cases where the licence was to be renewed or extended for a period less than six years. DS(ITB)(Ag) advised that the licence period of a Domestic Free or Domestic Pay television programme service licence was usually 12 years, and a mid-term review would be held. As for Non-Domestic service or Other Licensable service licences, the licence period would differ in each case and might be less than 6 years. As these licensees provided service to specific groups of audience, the extension or renewal of such licences might not be of interest to the public.

74. Members also noted that the Administration had tabled a paper [Paper No. CB(2) 2094/99-00(07)] setting out the outline and approach of the draft guidelines on competition. Members agreed to discuss the paper at the next meeting scheduled for 30 May 2000 at 2:30 pm.

75. There being no other business, the meeting ended at 12:45 pm.

Action

Legislative Council Secretariat
10 November 2000