

立法會
Legislative Council

LC Paper No. CB(2) 2597/99-00
(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 Wednesday, 26 April 2000 at 4:30 pm
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 Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo

Members Absent : Hon Cyd HO Sau-lan
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
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)

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. Meeting with the Administration

(4:30 pm - 5:30 pm)

[Paper Nos. CB(2)1774/99-00(01) and CB(2)1778/99-00(02)]

Policy issues raised at the Bills Committee meetings

[Paper No. CB(2)1774/99-00(01)]

At the invitation of the Chairman, Acting Deputy Secretary for Information Technology and Broadcasting (DS(ITB)(Ag)) briefed members on the Administration's response to certain policy issues raised at previous meetings.

"Public interest" considerations for "disqualified persons"

2. DS(ITB)(Ag) advised that when deciding whether a "disqualified person" should be a licensee, or should be allowed to exercise control of a licensee, in respect of the Domestic Free and Domestic Pay television programme services, the Chief Executive in Council (CE in C) would take into account the following "public interest" considerations -

- (a) the effect on competition in the relevant service market;
- (b) the extent to which viewers would be offered more diversified programme choices;

Action

- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.

Definition of Other licensable television programme service

3. DS(ITB)(Ag) said that the limit of 5 000 households was derived on the basis of a survey that about 87% of the private and public housing estates in Hong Kong consisted of less than 5 000 households. The proposed limit of 5 000 households was generally accepted by respondents during the consultation exercise in 1998.

4. Noting that 13% of the housing estates in Hong Kong consisted of more than 5 000 households, the Chairman asked whether two or more licences would be required for providing television programme service to residents in these housing estates.

5. DS(ITB)(Ag) said that an applicant was not allowed to apply for two licences for providing the same television programme services. If the target audience exceeded 5 000 specified premises, the applicant should apply for either a Domestic Pay or Domestic Free television programme service licence.

6. The Chairman considered that the maximum number of households of 5 000 households was rather arbitrary. She said it would be unreasonable to require the applicant to apply for two licences or a Domestic licence for providing television programme service to residents in a housing estate. She suggested that there should be some flexibility in the Broadcasting Bill (the Bill) so that the Broadcasting Authority (BA) could waive the upper limit of 5 000 households if the intention of the service was only for reception by a single housing estate. DS(ITB)(Ag) agreed to consider the suggestion.

Admin

7. Mr SIN Chung-kai asked whether consideration would be given to exempting services targeting at a small group of audience from the licensing requirement. DS(ITB)(Ag) responded that the proposed Other Licensable service licences were to cater for the provision of small scale television programme service to niche groups and residents in a locality. Since it was technically feasible for television programmes to be broadcast through the closed circuit television systems in housing estates, the Administration considered it necessary to bring such services under regulation. Otherwise, such services would become another type of domestic television programme service. However, Other Licensable service licensees would likely be subject to less stringent programme content control than the Domestic Free and Domestic Pay licensees.

Action

8. Responding to Mr SIN Chung-kai, DS(ITB)(Ag) said that a television programme locking device was required for access to pay television programmes, including the Other Licensable service programmes. The requirement was to ensure that the service was accessible to only a specific target group in view of the less stringent regulation of such services.

Prohibition of programmes by courts

9. DS(ITB)(Ag) said that one deputation had proposed to limit the scope of clause 35(1)(a) of the Bill to incitement which would likely result in violence, and the scope of clause 35(1)(c) to damage of public health or morals of children under the age of 18 years. DS(ITB)(Ag) explained that it was the policy intent to prohibit all incitement of hatred against any group irrespective of whether it would likely result in violence. He added that clause 35(1) was consistent with the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights. Regarding the concerns on clause 35(1)(c), DS(ITB)(Ag) said that the policy intent was to protect public health and public morals generally and not just those below 18 years of age. The Administration therefore considered that there was little justification to further narrow down the scope of these clauses. He further said that legal advice had confirmed that the Court of First Instance was the only authority to make an order to prohibit a programme or to require the licensee to produce any material relating to the programme under clause 35(4) and (5) respectively.

10. Responding to the Chairman, DS(ITB)(Ag) confirmed that under the Television Ordinance and the Bill, the Chief Secretary for Administration (Chief Secretary) would have to apply to the Court of First Instance for an order to prohibit a programme under clause 35(4) & (5).

11. The Chairman expressed concern about the application for an interim order ex parte and on affidavit by the Chief Secretary to the Court of First Instance, especially when the programme in question had not yet been broadcast. DS(ITB)(Ag) replied that the Court of First Instance must satisfy itself that such application was justified on grounds of urgency before issuing the interim order. In reply to Mr SIN Chung-kai, Senior Assistant Law Draftsman (SALD) advised that if a licensee objected to the order, he could make representations to the Court of First Instance. The Court would take into account the representations in the consideration of the application for an interim order.

12. Mr Andrew CHENG considered that "incitement of hatred" was a subjective judgement and that the Administration should specify the criteria for determining what constituted an incitement of hatred. In this connection, he opined that the degree of severity of an incitement of hatred should be comparable to a general breakdown in law and order as provided in clause 35(1)(b).

Action

13. Mr SIN Chung-kai shared Mr CHENG's concern. He asked whether it would be easier to judge the severity of an incitement based on its outcome.

Admin

14. The Chairman disagreed that an incitement of hatred should be judged by the result because it would be difficult to quantify or visualize the harm and damage done to a particular group. She considered that the motive of an incitement should be considered in determining whether a television programme incited hatred against any group. As prohibition of television programmes was a controversial issue, the Chairman advised the Administration to give careful consideration to members' views.

Advertising time restrictions for television

[Paper No. CB(2)1778/99-00(02)]

15. Members noted that the Administration had provided additional information on the proposed changes to the regulation of advertising time for television programmes.

16. The Chairman sought clarification on the calculation of advertising time for Domestic Free service. DS(ITB)(Ag) explained that for the prime time viewing period from 5:00 pm to 11:00 pm, the aggregate advertising time should not exceed 10 minutes per clock hour. For the remaining time in the day, the aggregate advertising time should not exceed 18% of the total broadcasting time. Assistant Commissioner for Television and Entertainment Licensing (Broadcasting) advised that advertising magazine programmes would count towards the limit of advertising time. If an advertisement was presented in the format of a programme, it must be flagged at the beginning and the end of the advertisement.

Other concerns

Admin

17. Members noted the Secretariat's summary on the submissions received by the Bills Committee [Paper No. CB(2)1778/99-00(01)] and the Assistant Legal Adviser 3 (ALA3)'s letter to the Administration seeking clarification of certain points in the Bill [Paper No. CB(2)1743/99-00(01)]. DS(ITB)(Ag) advised that the Administration would provide a response to the outstanding issues as soon as practicable.

Admin

18. The Chairman reminded the Administration to provide a response to address some deputations' concern about the basis and procedures for determining licence fees.

(Post-meeting note : The Administration had provided the information vide Paper No. CB(2)2094/99-00(06).)

II. Clause-by-clause examination

(5:30 pm - 6:30 pm)

19. At the request of the Chairman, DS(ITB)(Ag) highlighted the major differences between the provisions in the existing Television Ordinance and those in the Bill, before the Bills Committee proceeded to clause-by-clause examination of the Bill.

Clause 1 - Short title and commencement

20. Members did not raise any queries.

Clause 2 - Interpretation

21. In reply to the Chairman, DS(ITB)(Ag) said that the definitions in the Bill were largely modelled on those in existing legislation, except that a new paragraph (b) was proposed for the definition of "associate". The addition was to enable BA to declare, by notice in the Gazette, that persons specified in the notice were not associates subject to clause 2(b). ALA3 pointed out that such notices would not be subsidiary legislation according to clause 2(9).

22. DS(ITB)(Ag) further said that new terms such as "broadcasting service", "disqualified person", "other licensable television programme service", "specified premises" and "television programme service locking device" had been added in the Bill.

23. Responding to the Chairman, Principal Assistant Secretary for Information Technology and Broadcasting (PAS(ITB)) said that under clause 2(5), CE in C might by notice in the Gazette declare a service to be a television programme service. The provision was to provide flexibility to cater for technological developments in the broadcasting market. The notice made under this section would be subsidiary legislation.

24. On clause 2(9)(e), ALA3 advised that the scope for exemption from the requirement of disclosing information or a document was confined to legal professional privilege in the Bill. However, in the Telecommunication (Amendment) Bill 1999, the exemption covered all categories of privileged documents or information. She therefore asked whether the Administration would consider providing similar provisions under clause 2(9) of the Bill. DS(ITB)(Ag) agreed to consider the suggestion.

Admin

25. On clause 2(11), ALA3 said that there was a similar provision in the

Action

Admin

Telecommunication (Amendment) Bill 1999 for which the Administration had proposed an amendment specifying that the Telecommunications Authority would have to give reasons for its opinion. DS(ITB)(Ag) responded that the Administration would consider whether a similar amendment should be made to clause 2(11) in the Bill.

Clause 3 - Approval of codes of practice by Broadcasting Authority

26. Responding to the Chairman, PAS(ITB) said that clause 3 empowered BA to approve and issue codes of practice by notice in the Gazette. SALD added that it was a standard provision in respect of codes of practice.

27. Mr Ronald ARCULLI sought clarification on the legal status of the codes of practice and guidelines to be issued by BA. SALD said that contravention of a provision in a code of practice would be liable to sanctions and financial penalty under clauses 27, 29, 30 and 31. However, no sanctions would be imposed for non-compliance with the guidelines which only serve to provide guidance on how BA would exercise its statutory power.

28. Mr Ronald ARCULLI noted that the codes of practice were not subsidiary legislation and asked whether the broadcasting industry would be consulted on the contents. SALD advised that BA was required under clause 3(8) of the Bill to consult the representatives of the licensees to which the codes of practice (and their revision) would apply. He said that it was the standard practice of BA to consult the industry and licensees when drawing up the relevant codes of practice. He reminded members that meetings of the Codes of Practice Committee were open to the public.

29. As contravention of the code of practice could lead to legal sanctions including suspension of licence, members asked whether there would be appeal channels for objection to the provision in the code of practice. ALA3 advised that a licensee aggrieved by a decision of BA could appeal to CE in C under clause 33.

30. Mr Ronald ARCULLI said that the industry had expressed concern about the inadequate consultation and lack of appeal channel for the codes of practice. He said he would follow up the issue when the Bills Committee examined the relevant provisions in the Bill.

31. Mr Andrew CHENG expressed concern that BA could withdraw its approval of any codes of practice under clause 3(4). SALD responded that it was a standard provision in respect of codes of practice to enable the authority to withdraw a requirement which was no longer in practice. DS(ITB)(Ag) supplemented that BA could also approve the codes of practice drawn up by the

Action

licensees and clause 3(4) would enable BA to withdraw such approval in the light of circumstantial changes.

32. In response to Mr Andrew CHENG, PAS(ITB) advised that codes of practice approved by the BA under clause 3(1) was applicable to licensees only.

Clause 4 - Guidelines

33. DS(ITB)(Ag) said that BA might issue guidelines for the guidance of licensees in relation to the functions conferred upon it by the Bill. It was envisaged that BA would issue guidelines on licence applications, abuse of dominant position and anti-competitive conduct.

Date of next meeting

34. Members agreed that the next meeting should be held on 2 May 2000 at 2:30 pm.

35. The meeting ended at 6:20 pm.

Legislative Council Secretariat

5 October 2000