

立法會
Legislative Council

LC Paper No. CB(2) 2592/99-00
(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 Friday, 31 March 2000 at 10:45 am
in the Chamber of the Legislative Council Building

- Members Present** : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon MA Fung-kwok
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon FUNG Chi-kin
- Members Absent** : Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
- 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)

Ms Ava CHIU
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Attendance by : Consumer Council
Invitation

Mrs CHAN WONG Shui
Chief Executive

Dr HUNG Tin-hau, Victor
Chief Trade Practices Officer

Hong Kong Development and Strategic Research Centre

Mr Mathias WOO
Chairman

Hong Kong Journalists Association

Mr Cliff BALE
Representative

Kwun Tong Resident Union

Mr CHAN Wah-yu
Representative

Alcatel China Holding Pte Ltd

Mr Wilson LEE
Regional Manager

APT Satellite Holdings Limited

Mr CHAI Yong
Director, Satellite Control Centre

Mr LO Kin-hang, Brian
Assistant to President/Company Secretary

Asia Satellite Telecommunications Ltd

Ms Sabrina CUBBON

General Manager, Marketing

Mr William LEUNG
Manager Business, Planning

Galaxy Satellite Broadcasting Limited

Mr Michael CHAN
Director

Mr Stanley TANG
General Manager

International Federation of the Phonographic Industry
(Hong Kong Group) Ltd

Mr Ricky FUNG
Chief Executive Director, IFPI (Hong Kong Group) Ltd

Mr Sean MOK
Deputy Director, IFPI Asian Regional Office

Pacific Satellite International Ltd

Mr Vincent TSANG
Director of Sales & Marketing

Satellite Television Rentals Ltd

Mr Daryl GOLDBY
Engineer

Asia Television Limited

Mr KWAN Wai, Peter
Head of News

Mr KWONG Hoi-ying
Consultant & Acting Head of Programme

Hong Kong Cable Television Ltd

Mr Desmond CHAN
Corporate Lawyer

Ms CHAN So-kuen
Senior External Affairs Manager

Television Broadcasts Limited

Mr T K HO
General Manager, Television Broadcasting

Mr Stephen CHAN
Controller, Programme Division and External Affairs
Division

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 deputations

At the invitation of the Chairman, representatives of 14 deputations presented their views on the Broadcasting Bill (the Bill).

Consumer Council

[Paper No. CB(2)1504/99-00(04)]

2. Mrs CHAN WONG Shui of the Consumer Council said that the Consumer Council supported the objectives of the Bill particularly those provisions strengthening the competition safeguards. Mrs CHAN said that their main concerns were -

- (a) it was possible for a non-licensee in a related market to exercise control over a licensee. For example, a programme supplier could have a business relationship with a dominant television player to adversely affect the position of its competitors;
- (b) general competition laws should be introduced to provide a "safety net" for emerging competition issues and to deal with any anti-competitive conduct that might fall outside the scope of sector-specific legislation;

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- (c) on exemption of programme restriction, the Administration might consider defining a programme produced by a licensee as one which was "wholly" or "substantially" produced, in order to differentiate such programmes from those "acquired" by a licensee with only nominal production by the licensee;
- (d) the Administration should consider introducing some safeguards for artistes contracts, e.g. by limiting the maximum period for a licensee to bind an artiste to a contract;
- (e) the penalties proposed in the Bill should be aligned with those in the Telecommunication (Amendment) Bill 1999, particularly those on anti-competitive conduct. The Consumer Council also suggested linking the level of financial penalty to the pecuniary benefits derived by the licensee in order to provide more deterrence; and
- (f) the Consumer Council suggested to include in the Code of Conduct prohibition of unfair and misleading advertising or marketing.

3. Miss Emily LAU sought additional information on the Consumer Council's views on the regulation of new media services such as Internet services. Mrs CHAN WONG Shui responded that the Consumer Council had not carried out detailed study on the regulation of Internet services. However, the Bills Committee might wish to discuss with the Administration the need for regulating Internet services in the light of its rapid development and its impact on the market participants in the broadcasting sector.

Hong Kong Development and Strategic Research Centre
[LC Paper No. CB(2)1549/99-00(01)]

4. Mr Mathias WOO of the Hong Kong Development and Strategic Research Centre welcomed the policy objectives of the Bill. In their view, there were five areas that required further consideration -

- (a) as the public had the right to know, the Bill should include provisions on making available the licence contents for public inspection;
- (b) the Administration should enhance transparency in the operation of the Broadcasting Authority (BA) and the appointment of BA members;
- (c) the Bill had not addressed the role of RTHK as a public broadcaster;
- (d) there should be provisions on the prohibition of monopoly or oligopoly in programme production and the indirect control of artistes; and

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- (e) consideration should be given to the setting up of a public broadcasting channel.

5. In response to Miss Emily LAU, Mr Mathias WOO said that the Hong Kong Development and Strategic Research Centre would provide more concrete proposals on the above concerns.

Hong Kong Journalists Association
[LC Paper No. CB(2)1476/99-00(02)]

6. Mr Cliff BALE representing the Hong Kong Journalist Association (HKJA) said that HKJA was mainly concerned about provisions relating to the freedom of expression, as follows -

- (a) on section 35(1), prior censorship of programmes should be limited to only two circumstances, i.e. "incitement of such hatred against any group of persons that violence is the only result" and "directly and seriously harm public health or morals of children below 18 years";
- (b) to enhance transparency, the Administration should consider introducing mandatory public hearings for the grant, extension, renewal, suspension and revocation of a licence, except in cases where commercial secrets were involved; and
- (c) the Administration should give assurance that the search and seizure of journalistic materials should only be made under the relevant provisions of the Interpretation and General Clauses Ordinance.

7. Miss Emily LAU asked whether HKJA accepted the proposal in section 35(2) that Government could censor television programmes by applying for a court order to prohibit the programmes. Mr BALE agreed to provide further information after the meeting on HKJA's position regarding pre-censorship of television programmes. In this connection, members agreed to defer discussion of the circumstances under which the Chief Secretary for Administration might apply for a court order to prohibit a programme.

HKJA

(Post-meeting note : The second submission of HKJA was circulated to members vide LC Paper No. CB(2)1650/99-00(01).)

Kwun Tong Resident Union
[LC Paper No. CB(2) 1504/99-00(03)]

8. Mr CHAN Wah-yu of the Kwun Tong Resident Union expressed support for the introduction of the Bill. He then took members through the submission.

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He said that the programme standard of pay television service should be relaxed while Internet services should be brought under the regulation of the Bill.

Alcatel China Holding Pte Ltd

9. Mr Wilson LEE of Alcatel China Holding Pte Ltd said that he represented Internet service providers and made the following comments -

- (a) Internet services should be regulated under the Bill as it was the global trend that the provision of audio and video services on the Internet would become more popular. Since Internet could be transmitted through cable or satellite networks, regulation of Internet services could avoid unnecessary disputes over grey areas in future; and
- (b) the regulation of fixed telecommunications network services (FTNS) would depend on the role of individual operators in broadcasting. If the FTNS operators participated in programme supply, they should be regulated for the purpose of the Bill. However, those who only provided the network for transmission purpose should be exempted from regulation.

10. Responding to the Chairman's enquiry on how to regulate the Internet services, Mr Wilson LEE said that it was technically feasible to use Internet technology only for transmitting television programmes for local viewers without opening the network to overseas. He was therefore of the view that production of programmes for broadcast in Hong Kong through the Internet should be regulated.

APT Satellite Holdings Limited

11. Mr LO Kin-hang, Brian of APT Satellite Holdings Limited expressed general support for the Bill. He said that consideration could be given to examining the feasibility of regulation of Internet services.

Asia Satellite Telecommunications Ltd

12. Ms Sabrina CUBBON representing Asia Satellite Telecommunications Ltd expressed general support for the Bill. She said that it was unclear as to whether Internet services was within the meaning of broadcasting and she considered that Internet services should be regulated. In addition, to promote the development of Hong Kong as a regional broadcasting and communications hub, she considered that free-to-air satellite television services uplinked from places outside Hong Kong should be exempted from the application of the Bill, since

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these services did not target Hong Kong. She further said that the views expressed in the company's submission on the Consultation Paper on 1998 Review of Television Policy were still valid.

(Post-meeting note : The Asia Satellite Telecommunications Co. Ltd. had subsequently given agreement for circulating its submission to members vide LC Paper No. CB(2)1674/99-00(01).)

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13. On the regulation of free-to-air satellite television services uplinked from places outside Hong Kong, Secretary for Information Technology and Broadcasting (Ag) (SITB(Ag)) said that she would provide a written response to the views expressed.

14. As the regulation of Internet services would have far-reaching implications, Miss Emily LAU requested the industry to give concrete proposals on how to regulate Internet services without stifling its development. Mr Ronald ARCULLI opined that the principle of equity should apply when considering introducing regulation of Internet services.

Galaxy Satellite Broadcasting Limited (Galaxy)
[LC Paper No. CB(2)1549/99-00(02)]

15. Mr Michael CHAN of Galaxy took members through the submission [LC Paper No. CB(2)1549/99-00(02)] which was tabled at the meeting. Galaxy was in full support of Government's broadcasting policy objectives and the content of the proposed Bill. Its views on some specific aspects of the Bill were given below -

- (a) the limit of 200 000 premises allowed for the category of "Other Licensable Services" was too high and that it should be lowered;
- (b) free-to-air satellite television services uplinked from places outside but receivable in Hong Kong should also be subject to monitoring as the programmes might not measure up to public standards and expectations;
- (c) it welcomed the provision on criminalising the import, manufacture, sale, offer for sale or let for hire an unauthorized decoding service for viewing encrypted television programmes without payment;
- (d) it welcomed the proposal that dominant FTNS licensees should require the approval of the Chief Executive in Council (CE in C) in order to exercise control on a Domestic Free service licensee who was dominant in the pay television market; and

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- (e) it welcomed the abolition of the advertising and subscription royalties scheme, to be replaced by an annual licence fee.

16. Responding to Miss Emily LAU, Mr Michael CHAN clarified that the proposed regulation of free-to-air satellite television services uplinked from places outside but receivable in Hong Kong was referring to those services being distributed by satellite master antenna television (SMATV) systems. The system operators should be held responsible for the content of the broadcasting services.

International Federation of the Phonographic Industry (Hong Kong Group) Ltd (IFPI)

[LC Paper No. CB(2)1504/99-00(02)]

17. Mr Ricky FUNG of IFPI said that IFPI's major concern was on the high concentration of ownership in the existing television market would lead to the proprietary control of related industries as well as the contents and technology of the industry. Moreover, the convergence of different media in the digital environment would create more mutual dependence between these media and the traditional free access television sector. Sometimes, the interdependence would give rise to tension. Against this background, Mr FUNG made the following comments -

- (a) to enhance the transparency of the regulatory framework, the Bill should expressly provide for a complaint procedure for BA to investigate complaints relating to disqualified persons;
- (b) the proposed exemption of artiste contracts should be removed when there was a change in the industry practice and mode of operation;
- (c) copyright protection provisions should be incorporated in the licensing conditions for both television and radio broadcasters.

18. The Chairman sought clarification on the concept of co-dependent relationship. Mr Ricky FUNG pointed out that the record industry had a close mutual dependent relationship with television broadcasters. Television broadcasters wished to air music programmes from record companies to meet viewers' demand, while record companies wanted to promote their artistes and products on television.

19. Miss Emily LAU noted that IFPI proposed to add the word "distorting" to clause 13(1) and she asked about the reasons for the proposal. Mr Sean MOK of IFPI explained that the proposal aimed to introduce a wider competition concept with reference to the UK Competition Act and the EC Treaty. He said there were common law cases on the interpretation of the word "distorting". Mr MOK agreed to provide further information in this respect.

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(Post-meeting note : IFPI provided supplementary information in its second submission which was circulated to members vide LC Paper No. CB(2)1702/99-00(01).)

20. Mr MA Fung-kwok asked for more information on IFPI's stance about exemptions of artistes contracts. Mr Sean MOK responded that IFPI's major concern was that during contract negotiation, a dominant licensee might abuse its dominant position by forcing talents and artists to enter into exclusive contracts before agreeing to grant free air-time for promotion.

Pacific Satellite International Ltd

21. Mr Vincent TSANG of the Pacific Satellite International Ltd expressed concern that the maximum number of 5 000 households for Other Licensable Services was too low. As the number of households in a housing estate might exceed 5 000, Mr TSANG urged the Administration to set a higher ceiling for such licences. He also suggested that consideration should be given to allowing these service providers to negotiate with owners' corporations in public housing estates for the provision of pay broadcasting service.

Satellite Television Rentals Ltd

[LC Paper Nos. CB(2)1476/99-00(03) and (04)]

22. Mr Daryl GOLDBY from Satellite Television Rentals Ltd expressed strong support for the early enactment of the Bill, in particular clause 5. However, he was of the view that clause 6 was unclear and suggested that the following should also be made offences under the Bill -

- (a) export of unauthorized decoders;
- (b) import and re-export of digital satellite decoders which could receive satellite television services licensed in places outside Hong Kong; and
- (c) use of unauthorised decoder in Hong Kong.

23. Principal Assistant Secretary for Information Technology and Broadcasting clarified that clause 6 of the Bill was mirrored on the Television Ordinance under which the sale of unauthorized decoder was regulated. The Administration believed that the deputation's concern had been addressed by clause 7 which provided that a person should not, in the course of trade or business, import, manufacture, sell, offer for sale or let for hire any decoder for use by a Television Receive Only System to receive broadcasting service which was not licensed on a subscription basis. He said that the Bill did not seek to regulate the use of such decoders.

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Asia Television Limited (ATV)

[LC Paper No. CB(2) 1504/99-00(01)]

24. Mr KWONG Hoi-ying representing ATV expressed support for the Bill and urged for early enactment of the Bill. He said that the current drafting of the Bill had adequately addressed the concerns of the broadcasting industry.

25. The Chairman sought clarification on paragraph 3 of ATV's submission which proposed flexibility in enforcement. Mr KWONG Hoi-ying said that this was only a reminder that Government should respond to changes in the community's taste and technology for broadcasting and make necessary adjustments in enforcement and in the legislative provisions. In this connection, he cited the examples of demands for Putonghua programmes. In response to the Chairman, Mr KWONG said that the exemption of programmes produced by a licensee would not have much impact on the industry. He believed that a single supplier or licensee could not monopolise the market and that the programme supplier or producer would rely on the copyright protection clauses specified in the contracts.

Hong Kong Cable Television Ltd (HK Cable)

[LC Paper No. CB(2)1541/99-00(01)]

26. Mr Desmond CHAN representing HK Cable highlighted the concerns of HK Cable as follows -

- (a) the provisions on competition and dominant player in the Bill were too general. BA should therefore issue detailed guidelines as soon as possible to enable the industry to comply with the requirements;
- (b) with regard to the extension of power by a dominant player to other sectors of a market, there were concerns that Galaxy, a subsidiary company of Television Broadcasts Limited (TVB) could apply for a domestic pay television programme service licence under section 4(1)(b) of Schedule 1 to the Bill. As such, the TVB Group might be able to hold a domestic free television programme service licence, a non-domestic television programme service licence and a domestic pay television programme service licence. The concentration of power in the television programme service market was against the principle of fair competition;
- (c) as competition involved very complicated issues requiring the relevant expertise and substantial time in the analysis, there were doubts that BA with its present structure and support could adequately deal with the enforcement of competition provisions. Overseas experience revealed

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that competition legislation was normally dealt with by full-time agencies;
and

- (d) protection of exclusive programme rights was necessary to prevent broadcast of the same programme on all television stations at the same time.

Clerk

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27. Miss Emily LAU shared the view that the composition and support for BA should be reviewed in the light of its new responsibilities. She suggested and members agreed that the Chairman or member(s) of BA should be invited to the Bills Committee meeting to discuss BA's role and functions. The Chairman also requested the Administration to provide a response to the concern about the operation of and support given to BA.

(Post-meeting note : A meeting with the Chairman of BA was scheduled for 11 April 2000.)

Television Broadcasts Limited (TVB)
[LC Paper No. CB(2)1549/99-00(03)]

28. Mr T K HO representing TVB expressed general support for the Bill. He then took members through the written submission of TVB which was tabled at the meeting.

29. Miss Emily LAU asked about TVB's policy on artiste contracts. Mr T K HO responded that substantial investment was made to promote the work of an artiste and exclusive contracts would only be made with mutual agreement.

30. In response to the Chairman, Mr T K HO said that TVB believed that exclusive programmes rights should be allowed.

31. Referring to the concern raised by HK Cable about the dominant position played by TVB Group in the television programme service market, Mr T K HO said that Galaxy and TVB were two separate companies with different management. Moreover, free television service and domestic pay television service were two different markets. Mr Michael CHAN of Galaxy was of the view that the principle of competition was to provide more choices for viewers, and that Domestic Pay and Domestic Free were two different markets.

32. Mr MA Fung-kwok was concerned that given the dominant position of TVB Group in both markets, the TVB Group might have an unfair advantage over other operators in their negotiations with programme suppliers. Mr T K HO stressed that programme acquisition for TVB and Galaxy would be conducted by different personnel of the two companies, and the sourcing of programmes would be different. He pointed out that programme suppliers would also seek to

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maximize their profits by carving out different licensing windows for different modes of transmission. It was the price offered by an individual operator for its particular window that would have impact on the programme supplier's decision.

33. The Chairman thanked the representatives of the deputations for attending the meeting. She welcomed further views from deputations on specific issues raised to enable follow-up by the Bills Committee. She also requested the Administration to provide written response to the deputations' submissions.

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II. Any other business

34. Members agreed that the next meeting should be held on 5 April 2000.

35. There being no other business, the meeting ended at 1 pm.

Legislative Council Secretariat

5 October 2000