

Bills Committee on Broadcasting Bill

Response to Submissions from Deputations

Purpose

This paper sets out the Administration's response to some of the submissions on the Broadcasting Bill made by deputations to the Bills Committee.

Background

2. In March 2000, the Bills Committee issued an open invitation for submissions on the Broadcasting Bill (the Bill). Interested parties were also invited to make oral representations at the Bills Committee meeting held on 31 March 2000. Altogether, 14 deputations attended the meeting and another seven submitted written submissions only. The name list of the deputations is at the Annex.

General

3. We are very encouraged that all the deputations support in principle the Bill and our objectives to widen programme choice, encourage investment, ensure fair competition and promote Hong Kong as a broadcasting hub. We note that most concerns relate to the scope and implementation of the competition provisions, in particular, whether they are effective in addressing anti-competitive behaviour in the broadcasting market.

4. The following paragraphs highlight the major issues raised by the deputations, and set out the Administration's response to these issues. Our response to those comments concerning the competition provisions of the Bill will be set out in a separate paper to be submitted to the Bills Committee.

Scope of Television Programme Services

5. The majority of the submissions are supportive of our proposal that television programme services should be categorized into four types in accordance with the pervasiveness and nature of the services. One submission suggested that regional broadcasting services uplinked from but do not primarily target Hong Kong (i.e. non-domestic services) should be exempted from the application of the Bill. Given that such services originate from and may also be receivable in Hong Kong, we consider that they should be subject to a level of regulatory control which is commensurate with the nature of such services. As non-domestic services do not primarily target Hong Kong, they will only be subject to a minimum level of content control under the new regulatory framework. For example, non-domestic licensees must ensure the acceptability of their services in, and to comply with the laws and regulations of the relevant authorities of, the recipient countries or places.

6. Other deputations also commented on the definition of other licensable television programme services and the aggregate number of households that a licensee may be allowed to serve. It should be noted that this category of service is intended for niche or localised markets targeting specific viewer groups such as hotel guests or residents living in a locality. In the *Consultation Paper on 1998 Review of Television Policy*, we proposed that an other licensable service may serve up to 5,000 households. This proposed cap was a ballpark figure only and a licensee may apply for additional licences if they would like to provide services to more households, provided that the aggregate number of households would not exceed 15% of the total number of households in Hong Kong (i.e., 300,000 households). During the consultation period, there were views that the aggregate number of households should be lowered to reflect the “niche” nature of these services. We have accordingly reduced this figure to 200,000 households. We believe that our proposal would appropriately differentiate the other licensable services from the territory-wide domestic pay services on one hand, and enable commercial viability of such services on the other.

Services Excluded

7. There were suggestions that audio and video services provided on the Internet should not be exempted from the application of the Bill. We consider that the existing mode of operation of such services is, at the

moment, still different from broadcasting, and their pervasiveness is not yet comparable to television programme services currently operating in Hong Kong. Our policy intent is that this type of services should be exempted from the application of the Bill for the time being unless and until its pervasiveness and mode of operation draw much closer to broadcasting and the question of effective enforcement can be addressed. To allow flexibility in our regulatory regime to cater for the fast-changing broadcasting and multi-media environment, we have specified this exemption in a schedule of the Bill so that it can be amended by subsidiary legislation.

8. It has been suggested that free-to-air satellite television services uplinked from places outside but receivable in Hong Kong should not be exempted from the application of the Bill as they may not measure up to public standards and expectations and may offend the tastes and decency of the community. We should like to point out the Government has all along adopted an “Open Sky” policy on broadcasting whereby free-to-air satellite television services are allowed to be distributed by satellite master antenna television (SMATV) system without a licence. We do not see strong justifications for changing this policy which is important to ensure the community’s freedom of access to information from around the world. It should be noted that the content of such services distributed by SMATV systems is subject to the regulation by other relevant ordinances, e.g., Control of Indecent and Obscene Articles Ordinance.

9. One deputation commented that fixed telecommunication network services (FTNS) operators who wish to provide broadcasting services should not be exempted from the application of this Bill. We should like to clarify that FTNS operators will be required to apply for an appropriate licence under the Bill if they would like to provide broadcasting services. Clause 5 of the Bill provides that a person shall not provide a broadcasting service except under and in accordance with a licence.

10. Several submissions asked whether the Bill would also apply to sound broadcasting services. We have decided not to include sound broadcasting services in the Bill for the time being pending the formulation of policy on digital audio broadcasting. We are in the process of examining the market and regulatory issues concerning the introduction of digital audio broadcasting services. We plan to formulate the relevant policy proposals for consultation with the industry and the community later this year. Sound broadcasting services will

continue to be regulated under the Telecommunication Ordinance and the Broadcasting Authority Ordinance for the time being. With the benefit of and having regard to the forthcoming consultation exercise, we will consider whether and how the Broadcasting Ordinance, if enacted, should be amended to embrace sound broadcasting services. The Bill is structured in such a way that it will easily accommodate sound broadcasting when we are ready to do so.

Regulation of Broadcasting Services

11. One deputation suggested that we should make it an offence to import and re-export digital satellite decoders which can receive satellite television services licensed in places outside Hong Kong. It also suggested that the holders or owners of such digital satellite decoders should be required to hand them back to the Government for disposal. We believe that this concern should be adequately addressed by Clause 7 of the Bill which provides that a person shall 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 a broadcasting service which is not licensed on a subscription basis. We, however, do not consider it appropriate to make it an offence to use such decoders in Hong Kong as a user may not be able to distinguish whether a decoder is authorized or not in Hong Kong.

Requirements Relating to Licensed Services

12. There were mixed views on whether “the sole or dominant supplier of a local public switched telephone service” and “a company which supplies material for broadcasting by a licensee (programme supplier)” should be removed from the list of disqualified persons. In the light of market developments in a technological convergent environment, we consider it appropriate to relax the disqualified persons restrictions to promote the growth of the broadcasting industry. Our original intention of specifying the dominant supplier of a local public switched telephone service as a disqualified person was to prevent over domination of both the fixed telecommunication networks and cable TV network. We have now decided to separate the licensing regime for “transmission” and “provision” of television programme services. Since licences issued under the Bill will be “content” licences, it would no longer be appropriate to retain this category of disqualified person in the Bill. As regards the concern on abuse of dominant position in the

telecommunications market, this should more appropriately be addressed by the competition safeguards in the telecommunications regulatory regime. As regards “programme suppliers”, as new services will come on stream very shortly, we expect to see an increase in viewers’ choice in a gradually liberalized television market. That being the case, we do not consider it necessary to restrict cross-control of television and “programme suppliers”. Such restriction would have the effect of hindering investment by local and overseas programme suppliers into our broadcasting industry.

13. There was a suggestion that the current advertising time restrictions on domestic free licensees should not be relaxed. It is our assessment that, over the years, viewers are becoming more sophisticated and the general quality of advertising has improved significantly. We therefore believe that licensees should be given more flexibility to package, schedule and design the format of advertisements in a gradually liberalised TV market. At the same time, we must also ensure that any relaxation of the current restrictions would not result in the bunching of advertising which might otherwise obtrude on viewing pleasure. What we have now proposed in the Bill represents a sensible balance of the above-mentioned factors. The current advertising time restrictions will continue to apply during the prime time viewing hours, i.e. 5 p.m. to 11 p.m. At other times, licensees will be allowed to freely package their advertisements subject to the restriction that the aggregate advertising time shall not exceed 18% of the total broadcasting time in that period.

14. One deputation argued strongly in favour of strengthening the licensing terms to promote culture and arts programmes. At present, we have stipulated positive programming requirements on free-to-air TV licensees as part of the licence conditions. For example, they are required to broadcast not less than 60 minutes of documentary programmes per week, two half-hour current affairs programmes per week, two hours of children’s programmes per day, one half-hour programme each for young persons and senior citizens per week and 30 minutes of arts and culture programmes per week. In addition, domestic free licensees are required to broadcast programmes supplied by the Government (i.e., RTHK’s programmes) in accordance with section 3 of Schedule 4 to the Bill. We consider that these positive programming requirements are reasonable and necessary to ensure that licensees discharge their obligations as broadcasters in view of the pervasiveness of their services. In a multi-channel and multi-media environment, there will be new and expanded opportunities for the broadcast of a wide variety of programmes to cater for the demand of different sectors of the

community. In step with the global trend towards de-regulation, we do not consider it appropriate to impose further regulatory requirements which may interfere with the editorial freedom of the broadcasters.

15. One deputation suggested that all television programme service licences should be made available for public inspection. We should like to point out that all existing licences contain a condition to the effect that licensees shall make available for public inspection a copy of their licences at their registered offices and at the Television and Entertainment Licensing Authority (TELA). All the existing licences are also available for downloading at the websites of ITBB and TELA.

16. As regards comments on the licensing criteria, Members may wish to note that the key considerations in the assessment of licence applications are set out in the paper entitled *Licensing Criteria for Television Programme Service Licences* submitted to the Bills Committee on 1 April 2000.

Enforcement of Licences and Sanctions

17. It has been suggested that the financial penalty which the Broadcasting Authority (BA) may impose on a licensee should be revised in such a way that it should be capped to 10% of licensees' revenue. At present, under the Television Ordinance, the maximum financial penalty is \$50,000 for the first occasion on which a penalty is imposed, \$100,000 for the second occasion and \$250,000 for any subsequent occasion. We have proposed in the Bill to increase these levels by four times to \$200,000, \$400,000 and \$1,000,000 respectively. We have also proposed that a licensee should be required to include a correction and/or apology in its licensed service if the BA finds the licensee to have contravened a regulatory requirement. We feel our proposal under the Bill already has sufficient deterrent effect on licensees and would serve our policy objective of providing a predictable, proportionate and level-playing regulatory framework.

18. There was a suggestion that mandatory public hearings should be introduced in the grant, extension, renewal, suspension or revocation of a licence. We agree that public hearing is a useful exercise in gauging public opinion on the performance of broadcasting licensees. It has, in fact, been a long standing practice of the BA to conduct public hearings on the renewal of licences for domestic services. However, holding public hearings for the grant of new licences is not appropriate as the

most essential part of the licence applications, i.e., the applicants' business proposals, which contain commercially sensitive information, will have to be withheld from the hearing. Furthermore, there is a need to ensure that our licensing system is as user-friendly and cost-effective as possible in order to remain attractive for local and overseas investors. It is worth noting that in Australia and UK, there is no statutory requirement for the holding of a public hearing in connection with the grant or renewal of a licence.

Broadcasting Authority

19. Several deputations have commented on the composition and operation of the BA. In this connection, we would like to further elaborate that the BA is an independent statutory authority charged with the responsibility for regulating the broadcasting industry. The establishment, membership and modus operandi of the BA are stipulated in the Broadcasting Authority Ordinance. The BA comprises nine non-official members drawn from various sectors of the community and three public officers. Their knowledge, experience and expertise in different fields enable the BA to discharge its functions in the most effective manner.

20. As a regulator of the broadcasting industry, the BA often considers commercially sensitive information submitted by licensees at its meetings. Under the Television Ordinance and the Bill, such information must be treated by the BA in confidence. It is therefore not appropriate to conduct the BA meetings in public. There is, however, no lack of openness in the operation of the BA. The BA holds press conference and issues press release after every meeting to explain its decisions and deliberations. The BA also publishes summary of complaint cases dealt with by the BA on a monthly basis. To enhance its transparency within the confines of the law, the BA has opened up its Codes of Practice Committee meetings since January 1997.

21. The BA will continue to be supported by the Office of the Telecommunications Authority (OFTA) and the TELA in discharging the functions required of it. The BA will tap the expertise of OFTA, which is well-experienced in the enforcement of competition provisions in the telecommunications sector. TELA has also engaged a consultant with experience in competition laws in other jurisdictions to help draw up the competition guidelines for consultation with the industry soon. Under the Bill, the BA is empowered to deal with competition complaints direct

and, in so doing, it can seek expert advice as it sees fit. In the longer term, TELA will engage its own consultants and develop its own expertise in competition matters and there is therefore no reason to cast doubt on the BA's ability to deal with competition issues competently and effectively.

Miscellaneous

22. One deputation questioned why the role and functions of RTHK are not included in the Bill. We would like to clarify that the purpose of the Bill is to provide for a licensing and regulatory framework for commercial rather than public broadcasting services. The regulatory provisions in the Bill such as advertising time restrictions and ownership restrictions, etc. are not applicable to RTHK.

23. There were arguments that the provisions of the Telecommunication (Amendment) Bill and the Broadcasting Bill should present a consistent policy platform for the regulation of telecommunications and broadcasting services. We are generally agreeable to this view. There are, however, bound to be some differences to cater for the specific broadcasting and telecommunications environments which have not yet been fully converged. In this regard, we are aware that the Assistant Legal Adviser of the Legislative Council has taken note of the differences between the two Bills in her letter to ITBB dated 28 March 2000. We will address these issues in our reply to her in due course.

24. As regards those comments concerning the drafting aspects of individual provisions of the Bill, we propose that they should be addressed during the stage of clause-by-clause examination.

5 April 2000

Information Technology and Broadcasting Bureau

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**Name list of deputations which have
submitted representations on the Broadcasting Bill**

1. Alcatel China Holdings Pte. Ltd.
2. APT Satellite Holdings Limited
3. Asia Satellite Telecommunications Co. Ltd.
4. Asia Television Limited
5. Consumer Council
- *6. Elmsdale Media Limited
7. Galaxy Satellite Broadcasting Limited
- *8. Hong Kong Arts Development Council
9. Hong Kong Cable Television Limited
- *10. Hong Kong Commercial Broadcasting Co., Ltd.
11. Hong Kong Development and Strategic Research Centre
12. Hong Kong Journalist Association
13. International Federation of the Phonographic Industry (Hong Kong Group) Limited
- *14. Joint Submission of the Cable & Wiereless HKT Limited and the Cable & Wireless HKT VOD Limited
15. Kwun Tong Resident Union
- *16. Metro Broadcast Corporation Limited
17. Pacific Satellite International Limited
- *18. Satellite Television Asian Region Limited
19. Satellite Television Rentals Limited
20. Television Broadcasts Limited
- *21. Turner International Asia Pacific Limited

*Written submissions only