

**Legislative Council
Bills Committee on Broadcasting Bill**

**New Functions of the Broadcasting Authority under the
Broadcasting Bill**

Purpose

This paper informs Members of the new functions (including duties and powers) conferred upon the Broadcasting Authority (BA) by the Broadcasting Bill (the Bill).

Background

2. At the meeting on 11 April 2000, Members requested that a paper comparing the functions of the BA under the Television Ordinance and the Bill be prepared by the Administration for Members' information.

The BA's new functions

3. A table comparing the major functions of the BA under the existing regulatory regime of the Television Ordinance (Cap. 52) and the proposed regulatory regimes under the Bill is at Annex. The major changes are highlighted in the following paragraphs.

Licensing powers

4. Under the Television Ordinance, all the television broadcasting licences are issued by the Chief Executive in Council (CE in C). The CE may appoint the BA to consider applications and make recommendations thereon to the CE in C (Section 8(1)). Under the Broadcasting Bill, the BA may issue two categories of licences by itself, namely, non-domestic television programme services and other licensable television programme services. It is a mandatory function for the BA to consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and to make recommendations thereon to the CE in C.

Enforcement of competition provisions

5. The BA, which is currently charged with the statutory responsibility for regulating the broadcasting industry, will be given specific powers to enforce the competition provisions. In this regard, the BA is empowered under the Bill to require a licensee to supply information relating to its business (Clause 24(1)), to obtain information from third parties through a magistrate (Clause 25), to investigate and determine anti-competitive conduct (Clause 13(1)); to determine dominance in a television programme service market (Clause 14(2)); to exempt anti-competitive conduct on a ground prescribed by regulation (Clause 13(4)); to require a licensee to cease and desist from an anti-competitive conduct (Clause 15); and to impose financial penalty (Clause 27).

Sanctioning powers

6. The current maximum levels of financial penalty that the BA may impose on a licensee are \$50,000 for the first occasion, \$100,000 for the second occasion and \$250,000 for any subsequent occasion. These levels are now increased by four times to \$200,000, \$400,000 and \$1,000,000 respectively (Clause 27). In addition, the BA is also empowered to direct a licensee to include a correction and/or apology in its licensed service if the BA finds the licensee to have contravened a provision in a code of practice, a requirement under the Bill, a licence condition or a direction, etc. of the BA (Clause 29). The enhanced powers of the BA will afford the BA effective sanctions in discharging its statutory regulatory functions.

17 April 2000

Information Technology and Broadcasting Bureau

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**Major Differences of the BA's Functions under
the Television Ordinance and the Broadcasting Bill**

Functions	Television Ordinance	Broadcasting Bill
<u>General</u>		
1. To make a determination, direction or decision only on reasonable grounds and having regard to relevant considerations, and to provide reasons in writing for it.	Not provided.	Provided for in Clause 2(11).
<u>Codes of Practice and Guidelines</u>		
2. To issue codes of practice.	Section 28.	Clause 3. BA may also approve codes of practice not prepared by it.
3. To issue guidelines.	Not provided.	Clause 4.
<u>Licensing Provisions</u>		
4. To grant, amend, extend, renew and revoke licences.	The powers to grant licences etc. are only vested with the Chief Executive in Council (CE in C).	Such powers in respect of domestic free and domestic pay television programme services are assigned to CE in C while the same powers in respect of non-domestic and other licensable services are assigned to the BA under Clauses 8(2), 10(2) and (4), 11(1) and 31.
5. To recommend to the CE in C on applications of licences.	Section 8(1).	Clause 9(2), only in respect of domestic free and domestic pay television programme services.

Functions	Television Ordinance	Broadcasting Bill
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| 6. | To determine whether a television programme service is primarily targeting Hong Kong, therefore indirectly determine the category a service should belong. | Not provided as the Ordinance only regulates domestic services. | Provided for in Clause 12. |
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Competition Provisions

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| 7. | To determine anti-competitive conduct. | Not provided. | Clause 13(1). |
| 8. | To determine dominance in a television programme service market. | Not provided. | Clause 14(2). |
| 9. | To exempt anti-competitive conduct on a ground prescribed by regulation. | Not provided. | Clause 13(4). |
| 10. | To require a licensee to cease and desist from anti-competitive conduct. | Not provided. | Clause 15. |
| 11. | To direct a licensee to adopt an accounting practice for the purpose of securing separate accounting where the licensee also holds a licence under the Telecommunication Ordinance. | Not provided. | Clause 16(2). |

Fit and Proper Persons

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| 12. | To determine whether a licensee and the persons exercising control of the licensee are fit and proper persons. | Not provided. | Clause 20(2). |
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Enforcement of Licences and Sanctions

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| 13. | To obtain information from non-licensees | Not provided. | Clause 25. The provision will facilitate |
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Functions	Television Ordinance	Broadcasting Bill
through a magistrate.		the investigation on complaints about anti-competitive conduct.
14. To impose financial penalty.	Section 37. Only up to \$250,000.	Clause 27. The maximum penalty is increased to \$1,000,000.
15. To direct a licensee to include correction or apology in its service for contravention of provisions in the Broadcasting Ordinance, licence, codes of practice etc.	Not provided.	Clause 29(1)

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