

**The Legislative Council
Bills Committee on the Broadcasting Bill**

Policy Issues Raised at the Bills Committee Meetings

Purpose

This paper addresses three issues raised at the meetings of the Bills Committee on the Broadcasting Bill (the Bill), namely, “public interest” considerations for “disqualified persons”, the definition of “other licensable television programme service” and prohibition of television programmes by Court.

“Public Interest” Considerations for “Disqualified Persons”

2. Section 3(2) of Schedule 1 to the Bill stipulates that unless the Chief Executive in Council (CE in C), on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise –

- (a) a person shall not become or remain the holder of a licence if he is a disqualified person; and
- (b) a person shall not exercise control of a licensee if he is a disqualified person.

This provision is only applicable in respect of the domestic free television programme service and domestic pay television programme service licences.

3. “Disqualified persons” include licensees under the Bill (except that a non-domestic television programme service licensee is not a disqualified person in relation to a domestic pay television programme service licence), sound broadcasting licensees, advertising agents and proprietors of local newspapers, and their controllers. The associates of these persons are also disqualified persons.

4. Matters that may be taken into consideration in determining “the public interest so requires” include the effect on competition in the relevant service market, the extent to which viewers will be offered more diversified programme choices, the impact on the development of the broadcasting industry and the overall benefits to the economy. More details are set out below:

(a) Effect on competition in the relevant service market

The following considerations are relevant:

- (i) the number of existing players in the relevant service market;
- (ii) the existence of any market entry barriers;
- (iii) plurality of ownership in the relevant service market; and
- (iv) whether there are sufficient safeguards to ensure that the disqualified person and the licensee will operate at arm’s length and as independent entities.

(b) The extent to which viewers will be offered more diversified programme choices

The likely increase in the programme choice of viewers and whether the proposal will make accessible programmes otherwise not available in the market.

(c) The impact on the development of the broadcasting industry

The extent to which the proposal will contribute to technical development, stimulate service innovation, and promote the growth and development of the industry.

(d) The overall benefits to the economy

The extent to which the proposal will contribute to the creation of new job opportunities and the promotion of Hong Kong as a regional broadcasting,

telecommunications and information technology hub.

Definition of “Other Licensable Television Programme Service”

5. Under the Bill, “other licensable television programme service” means a television programme service which is intended or available for reception –

- (a) free of charge in Hong Kong or on payment, whether periodically or otherwise, of a subscription in Hong Kong; and
- (b) by an audience of not more than 5,000 specified premises.

6. Members and deputations have asked why the number 5,000 was chosen and whether this number would accommodate most of the housing estates in Hong Kong.

7. The proposal for creating a new category of “other licensable television programme services” was put forward in the consultation paper on 1998 Review of Television Policy in the following form:

“These are to cover small-scale, niche or localised television programme services targeting specific viewing groups e.g. hotel guests, foreign nationals living or working in Hong Kong or residents living in a locality and in terms of target audience not exceeding, say 5,000 households (or less than 20,000 people)/premises/set-top boxes to be rented or sold, etc. Like domestic pay services, parental locking device should be required for access to the services. Licences belonging to this category should be issued by the BA.”

8. We had chosen 5,000 as the maximum number of households as this type of service was meant to be small-scale operations and, as such, are subject to less stringent regulation compared with domestic free or domestic pay services. The proposed number of households was largely perceived by respondents to the Consultation Paper as proportionate in terms of audience reach and degree of regulation. Judging from the overall responses, we believe that the cap at 5,000 households should be appropriate.

9. We have obtained information on the number of households in individual housing estates. At present, there are about 532 public and private housing estates with over 500 households in Hong Kong. Of these, a great majority of 461 public and private housing estates, representing about 87%, consist of less than 5,000 households. The largest housing estate in Hong Kong has about 15,000 households. This number appears to be on the high side for a localised and niche market.

Prohibition of Programmes by Court

10. Clause 35(1) of the Bill prohibits a television programme service licensee from including in its licensed service a television programme, or any part thereof, that is likely, in Hong Kong, to inter alia,

- (a) incite hatred against any group of persons by reference to colour, race, sex, religion, nationality or ethnic or national origins; and
- (b) gravely damage public health or morals.

Upon application by the Chief Secretary for Administration (Chief Secretary) under Clause 35(2), a prohibition order may be issued by the Court of First Instance under Clause 35(4).

11. One deputation has proposed that the scope of Clause 35(1) of the Bill should be narrowed down to the effect that it should apply only where (a) a programme constitutes “incitement to violence or to such hatred against any group of persons that violence is the likely result”; or (b) where the programme is likely to “directly and seriously harm public health or the morals of children under 18 years of age” (the proposed changes are underlined).

12. Our policy intent, as regards paragraph 10(a) above, is to prohibit all incitement of hatred among the specified groups irrespective of whether violence is the likely result. This is necessary for respect of the rights of others and for the protection of public order (*ordre public*) and falls well within the scope of the Bill of Rights of Hong Kong.

13. In view of our policy intention, we do not consider that there is a need or any strong justification to further narrow down the scope of Clause 35(1) of the Bill.

14. As regards paragraph 10(b) above, our policy intent is to protect public health and public morals generally (which are other exceptions under Article 16) and *not just those of minors*. The protection is already qualified and will apply only where the programme in question is likely to “gravely damage” public health or morals. Our legal advice is that “gravely” appears to be as restrictive, if not more so, than “directly and seriously”. Moreover, the reference to “public morals” is the exact wording of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). As such, the prohibition in paragraph 10(b) above is consistent with both ICCPR and the Bill of Rights of Hong Kong.

15. In connection with the above, Members have expressed concern on whether the Chief Secretary has power to require a licensee to furnish programmes to her prior to broadcast under the Clause. Clause 35(5) stipulates that where the Chief Secretary makes an application to the Court of First Instance for an order to prohibit a programme, the Court of First Instance may, by order, require the licensee to produce to it any material in the possession or control of the licensee which relates to the television programme the subject of the application. Our legal adviser has confirmed that the **only** authority to make the relevant orders under Clauses 35(4) and (5) is the Court of First Instance, and the matter is entirely at the Court’s judicial discretion.

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