

## Bills Committee on Broadcasting Bill

## Administration's Response to Outstanding Issues Raised by Deputations

<u>Subject/Clause</u>	<u>Concern</u>	<u>Administration's response</u>
<p>1. <b>Clause 2</b> (Interpretation)</p> <p>Other licensable television programme service (C495) <u>(see also Schedule 7)</u></p>	<p><b>Turner International Asia Pacific Limited</b> [CB(2)1504/99-00(09)]</p> <ul style="list-style-type: none"> <li>- Government to clarify that holders of other licensable television programme service licences (category 4 licence) will be allowed to establish downlink facilities for the reception of programming;</li> <li>- <u>Suggests</u> category 4 licensees should be exempted from applying for a separate licence to govern their downlink facilities if licensed under the Bill.</li> </ul>	<p>The Bill is technology and transmission neutral. Licensees under the Bill may make use of transmission facilities of others or, subject to appropriate licensing under the Telecommunication Ordinance, establish their own transmission facilities for the carriage of their television programme services. Accordingly, holders of other licensable television programme service licences may apply for an appropriate transmission licence (e.g. satellite master antenna television licence) if they would like to establish their own transmission facilities for the reception and distribution of their television programme</p>

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Definition		service to consumers.
	The definition of “provide” does not exclude the mere supply of content and is unclear whether a content supplier need to be licensed.	Clause 5(1) of the Bill provides that a person shall not provide a broadcasting service except under and in accordance with a licence. Mere supply of content to a licensee does not constitute a broadcasting service.
2. <u>Clauses 3 and 4</u> (Code of practice and guidelines)	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p><u>Suggests</u> requiring BA to consult the industry, rather than “such bodies representative of licensees”, in considering new or revised code or practice.</p>	While it has been the practice of the BA to consult the industry before issuing a code of practice, we consider it appropriate that we make it a <u>statutory requirement</u> for the BA to consult only such bodies representative of licensees to which the code will apply. This avoids any unnecessary litigation concerning the definition of the industry.

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<p>3. <b>Clause 7</b> (Decoders, etc.)</p>	<p><b>Satellite Television Rentals Limited</b> [CB(2)1476/99-00(03) and (04)]</p> <p>(b) to criminalize import and re-export of decoder authorised for use in places outside Hong Kong.</p>	<p>The purpose of Clause 7 is to prohibit the import and sale etc. of decoders for use by a TVRO system to receive a subscription TV service not licensed in Hong Kong. This is to ensure subscription TV services in Hong Kong are regulated on a level playing field. Smuggling and piracy issues, which are tackled under other laws in Hong Kong, are outside the scope of the Broadcasting Bill.</p>
	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p><u>Considers</u> BA ought to obtain a warrant from the court before entry to any</p>	<p>We explained to the Bills Committee during the clause-by-clause examination that the entry to</p>

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	premises, both domestic and commercial premises.	domestic premises should deserve a high level of procedural safeguards than that to commercial premises.
<p>4. <b>Clause 9</b> (Recommendation of BA on licence application)</p>	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p><u>Considers</u> confining the protection against disclosure only to legal professional privilege insufficient safeguards.</p>	<p>We believe the comments should be related to Clause 25. We will propose a CSA to address this concern.</p>
<p>5. <b>Clause 10</b> (Grant of licence)</p>	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504-00(09)]</p> <p>Lacks a mechanism for approving the</p>	<p>We explained to the Bills Committee during</p>

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	transfer of licences and hence <u>suggests</u> including relevant procedures in the Bill.	clause-by-clause examination that Clause 10(8) is to prevent the “trading” of licences. Under an open television programme service market, companies interested in providing television programme service may apply for an appropriate licence under the Bill.
<p><b>7. <u>Clause 13</u></b> (Anti-competitive conduct)</p>	<p><b>IFPI</b> [CB(2)1702/99-00(01)] (second submission)</p> <p>- <u>Strongly urges</u> Government to strengthen Clauses 13 and 14 by preventing dominant licence holders from engaging in anti-competition in other “co-dependent markets”.</p>	<p>We have responded to the concerns relating to “co-dependent relationship” in the Bills Committee paper entitled “Competition Provisions” issued on 9 May 2000. In brief, we do not consider it appropriate to extend the jurisdiction of the BA to markets other than the broadcasting market. For the same reason, we do not agree to IFPI’s submission dated 6 May to extend the jurisdiction of the BA to the market of programme suppliers. In any case,</p>

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		<p>the behaviour of licensees which has an effect on competition in the television market will be subject to the competition provisions of the Bill. We will propose a CSA to make it beyond doubt that the conduct of the subsidiary of a licensee will be considered as that of the licensee for the purposes of the competition provisions of the Bill.</p>
<p><i>(Clause 13 cont'd)</i></p>	<p><b><u>Clause 13(1)</u></b></p> <ul style="list-style-type: none"> <li>- <u>Proposes</u> replacing “substantially” with “distorting” as the notion of substantially restricting competition is ambiguous and confining. The proposed amendment is modelled on Section 2(1)(b) of the UK Competition Act and Article 81(1) of the EC Treaty.</li> </ul>	<p>We will propose a CSA to add the wording “distorting” to Clause 13(1).</p>

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<i>(Clause 13 cont'd)</i>	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p>- <u>Suggests</u> replacing Clause 13(5) with a general exception in the Bill for intellectual property.</p>	<p>We will propose a CSA to put it beyond doubt that Clause 13 shall not prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.</p>
	<p><b>Consumer Council</b> [CB(2)1504/99-00(04)]</p> <p><u>Suggests</u> Government to define “produced” as “wholly” or “substantially” produced in order to differentiate such programmes from those “acquired” by a licensee with only nominal production.</p>	<p>We will propose a CSA to that effect.</p>

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<i>(Clause 13 cont'd)</i>	<p><b>Clause 13(6) Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p>To delete Clause 13(6)</p>	<p>No objection. We will propose a CSA to that effect.</p>
<p><b>8. Clause 14</b> (Abuse of dominance)</p>	<p><b>Consumer Council</b> [CB(2)1674/99-00(02)] (second submission)</p> <p>- Administration to respond specifically to concerns relating to “prohibition of cross ownership”.</p>	<p>The detailed considerations for exemption of a disqualified person from exercising control of a licence are set out in the Bills Committee Paper No. CB(2)1774/99-00(01). We will also propose a CSA to put it beyond doubt that the conduct of a subsidiary of a licensee will be regarded as that of the licensee for the purpose of the competition provisions of the Bill.</p>

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<p><b>9. <u>Clause 17</u></b> (Abuse of dominance)</p>	<p><b>Consumer Council</b> CB(2)1504/99-00(04)]</p> <p><u>Suggests</u> Government to consider including provisions requiring general public consultation on an exemption to be granted by the BA to the requirement for a domestic free/pay service to provide universal television service throughout Hong Kong.</p>	<p>We explained to the Bills Committee during the clause-by-clause examination that general public consultation is not appropriate for the purpose of this clause since such exemption, if granted, will usually be in respect of localised areas. Nonetheless, we will propose a CSA to the effect that the BA shall issue guidelines to specify the factors that it will take into account in considering an exemption under this Clause.</p>
<p><b>12. <u>Clause 21</u></b> (Limitations on agreements by licensee)</p>	<p><b>Turner International Asia Pacific Limited</b> [CB(2)1504/99-00(07)]</p> <p><u>Suggests</u> to incorporate principles contained in Clauses 13 and 14 into Clause 21.</p>	<p>We explained to the Bills Committee during the clause-by-clause examination that Clause 21 is not related to the competition provisions. Its purpose is to prevent interference of</p>

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		programming independence of licensees. We will change the sub-heading of this Clause for the sake of clarity.
<p><b>15. <u>Clause 24</u></b> (Investigation of licensee's business)</p>	<p><b>Hong Kong Journalist Association</b> [CB(2)1476/99-00(02)]</p> <p><u>Seeks assurance</u> that journalistic material under Section 24 should only be seized under the relevant provisions of the Interpretation and General Clauses Ordinance.</p>	<p>We have explained that the seizure of journalistic material is protected under Part XII of the Interpretation and General Clauses Ordinance (Cap. 1). Nonetheless, for clarity's sake, we will propose a CSA to make it clear that Clause 24 is subject to Part XII of Cap. 1.</p>
<p><b>16. <u>Clause 25</u></b> (Enforcement of licences)</p>	<p><b>Hong Kong Cable Television Limited</b> [CB(2)1541/99-00(01)]</p> <p><u>Suggests</u> BA's right to disclose licensees' information should be subject to the prevailing civil</p>	<p>We will propose a CSA to the effect that a third party will not be required to give any information or document which the person</p>

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	procedural rules.	could not be compelled to give in civil proceedings before the Court of First Instance. We will also propose a CSA to the effect that the BA shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure.
<p><b>22. Schedule 3</b> (Services excluded)</p>	<p><b>Turner International Asia Pacific Limited</b> [CB(2)1504/99-00(07)]</p> <p>Supports the general provisions and suggests having a specific and separate exemption from licensing for SMATV operators who carry programming of licensees.</p>	<p>The statutory law governing the “transmission” and “provision” of television programme service would be separated and provided for under the Telecommunication Ordinance and Broadcasting Bill respectively. SMATV operators would need to apply for an appropriate “transmission” licence (e.g. SMATV licence) under the Telecommunication Ordinance. Under Schedule 3 of the Bill, a</p>

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		<p>service consisting of the conveyance, without variation or alteration of contents of a licensed service and a service consisting of free-to-air satellite television programmes uplinked from places outside Hong Kong will not be regarded as television programme services for the purpose of the Bill.</p>
<p><i>(Clause 22 cont'd)</i></p>	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p>Amendment to Schedule 3 should not be subject to Chief Executive in Council's approval, but that the standard legislative process should be applied.</p>	<p>We will propose a CSA to the effect that amendment to Schedule 3 will be subject to the approval of the Legislative Council.</p>

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<p>25. <u>Part 4 of Schedule 4</u> (Royalties and licence fees)</p>	<p><b>Satellite Television Asian Region Limited</b> [CB(2)1504/99-00(08)]</p> <p><u>Disagrees</u> with the full cost recovery principle for calculating annual licence fee and <u>suggests</u> some of the costs be met by general revenue of the Administration.</p>	<p>It is the general government policy that licence fees which reflect the government costs in administering the licences should be charged on the full-cost recovery principle.</p>
	<p><b>Metro Broadcast Corporation Limited</b> [CB(2)1476/99-00(05)]</p> <p>As for licence fees, proper cost accounting and cost control procedures should be put in place and the licensees should know how the costs are incurred before full-costs should be restored.</p>	<p>To be addressed in a forthcoming paper.</p>

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<p><b>26. <u>Schedule 8</u></b> Transitional provision</p>	<p><b>Cable &amp; Wireless HKT Limited and Cable &amp; Wireless HKT VOD Limited</b> [CB(2)1504/99-00(09)]</p> <p>As no similar transitional provision is proposed in the Telecommunication Bill, the transitional provision (paragraph 4(2) of Schedule 8) is unnecessary.</p>	<p>As the scope of the competition provisions in the Bill is much wider than that of the free competition clause in existing broadcasting licences, we consider it necessary to provide a transitional arrangement whereby agreements lawfully entered into before the gazettal date of the Bill will be exempted from Clause 13 for 2 years from the gazettal date.</p>
<p><b>30. <u>Other issues</u></b></p>	<p><b>Hong Kong Cable Television Limited</b> [CB(2)1541/99-00(01)]</p> <p>- <u>Suggests</u> defining relevant market in accordance with competition theory.</p>	<p>In line with other overseas jurisdiction, we consider it not appropriate to define “market” in law. We will propose a CSA specifying that the BA will issue guidelines indicating the</p>

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	<p>Specifying the proposal for associated carriage licence.</p>	<p>manner it proposes to perform the functions conferred on it under Clauses 13 &amp; 14 of the Bill.</p> <p>Under the Telecommunication (Amendment) Bill, depending on the types of "transmission" licences, the form of such licences will be prescribed by regulation or published in gazette.</p>

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Information Technology and Broadcasting Bureau