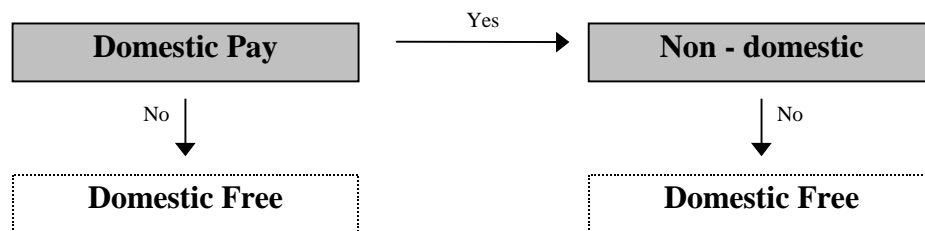




**3RD SUBMISSION BY HONG KONG CABLE TELEVISION LIMITED
TO THE BILL COMMITTEE ON BROADCASTING BILL
OF THE LEGISLATIVE COUNCIL**

1. The loophole in S.4(1)(b) of Schedule 1, Broadcasting Bill

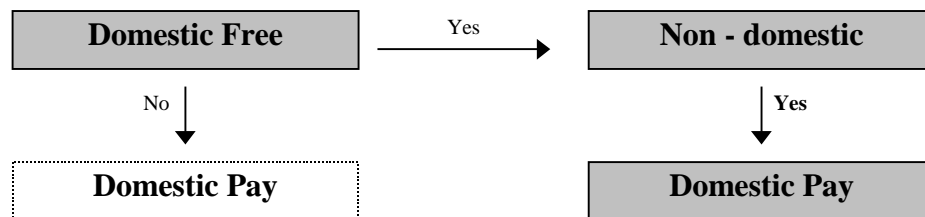
1.1 The purpose of S.4(1)(b), Schedule 1 is to prevent monopolization of the domestic TV market. Thus while a domestic licensee is free to hold upto 100% of a non-domestic licence, the domestic licensee is disqualified from holding another domestic licence. A non-domestic licensee is also disqualified from holding a domestic licence, but in relation to the free service only! The effect of the 1st part of S.(4)(1)(b) is summarised below:



In other words:

- (a) A domestic pay licensee cannot directly hold a domestic free licence.
- (b) A domestic pay licensee cannot indirectly hold a domestic free licence via an intermediate non-domestic licensee.

1.2 The 2nd part of S.4(1)(b), namely the exception, deviates from the legislative purpose (i.e. one domestic licensee, one domestic licence only). The effect of the 2nd part of S.4(1)(b) is summarised below:



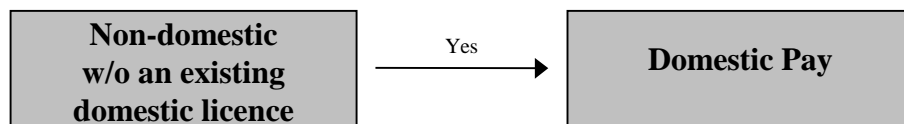
In other words:



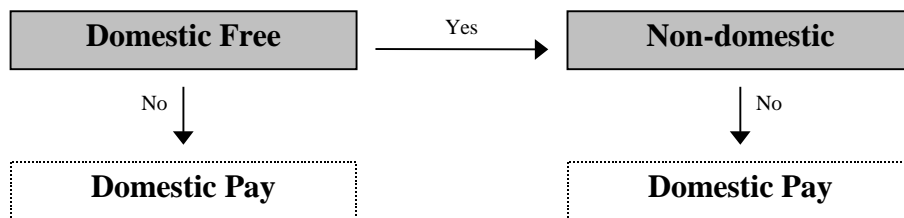
- (a) A domestic free licensee cannot directly hold a domestic pay licence.
- (b) A domestic free licensee CAN INDIRECTLY hold a domestic pay licence via an intermediate non-domestic licensee.

2. Proposed Amendment to Close the Loophole

2.1 The loophole can be closed easily without affecting the interests of the purely non-domestic licensees (e.g. STAR TV). We propose only a non-domestic licensee without holding an existing domestic licence by itself or by its associates should be allowed a domestic pay licence. Thus:



And:



2.2 In terms of the wordings, our proposal and the explanatory notes are attached.

Hong Kong Cable Television Limited
May 2000



**Proposed Amendment (as underlined) to S.4(1), Schedule 1
& S.1 of the Broadcasting Bill**

In Schedule 1:

4. Disqualification of licensees to prevent accumulation of interests in licensed services
- (1) Subject to subsection (2), any one of the following shall be a disqualified person in relation to a licence --
- (a) a licensee in the same category of licence;
 - (b) a licensee in a different category of licence, including a non-domestic television programme service licence and an other television programme service licence (except that a non-domestic television programme service licensee is not a disqualified person in relation to a domestic pay television programme service licence subject to paragraph (c));
 - (c) a non-domestic television programme service licensee is a disqualified person in relation to a domestic pay television programme service licence if that non-domestic television programme service licensee or its associate is holding another licence or is exercising control of another licensee;
 - (d) a person who exercises control -
 - (i) in the licensee mentioned in paragraph (a) or (b); or
 - (ii) in the non-domestic television programme service licensee mentioned in paragraph (c);
 - (e) an associate of a person who is a disqualified person by virtue of paragraph (a), (b), (c) or (d).



In Section 1 of the Bill:

1. Interpretation

"influence", in relation to a corporation, means the power of a voting controller to ensure-

- (a) by means of the holding of shares or possession of voting power in or in relation to that or any other corporation;
- (b) by virtue of any powers conferred by the memorandum or articles of association regulating that or any other corporation; or
- (c) by any other means.

that the affairs of the first-mentioned corporation are conducted in accordance with wishes of the voting controller;

Explanatory notes:

- 1. In Schedule 1, 'licence' has been defined as 'domestic free licence' or 'domestic pay licence'. Unless expressly stated, the word 'licence' in Schedule 1 does not cover 'non-domestic' and 'other licensable'. 'Licensee' should be similarly interpreted.
- 2. The heading is amended to make clear the intention of disqualifying certain licensees from the domestic free and domestic pay licence.
- 3. By virtue of the new s.4(1)(b), a purely non-domestic licensee say Star TV can hold upto 100% of a domestic pay licence because neither Star TV nor its associate is holding an existing domestic free or domestic pay licence. Thus the interests of such purely non-domestic licensees have not been prejudiced by the proposed amendment.
- 4. By virtue of the new s.4(1)(c), a non-domestic licensee with existing domestic interests by itself or its associate is disqualified from holding a further domestic pay licence .
- 5. The result being a domestic free licensee cannot hold a domestic pay licence both directly (as restricted by s.4(1)(b)) and indirectly (as restricted by s.4(1)(c)). Likewise, a domestic pay licensee cannot hold a domestic free licence both directly and indirectly.
- 6. The definition of 'influence' is extended because this has a bearing on the definition of 'associated corporation' and hence 'associate'. The existing definition deems X as an associate of Y on the basis of two factors only:



- (a) Whether X holds shares of Y
- (b) Whether the memorandum & articles of association of Y gives X any powers

Nevertheless, there are other ways for X to influence the affairs of Y and these have not been covered in the existing definition. The proposed extension of the definition will close such loophole.

- End -