



INTERNATIONAL
FEDERATION OF
THE PHONOGRAPHIC
INDUSTRY
[HONG KONG GROUP]
LIMITED

To : Bills Committee on Broadcasting Bill
 - Hon Mrs Selina CHOW LIANG Shuk-ye, JP
 - Hon David CHU Yu-lin
 - Hon Cyd HO Sau-lan
 - Hon Ronald ARCULLI, JP
 - Hon MA Fung-kwok
 - Hon SIN Chung-kai
 - Hon YEUNG Yiu-chung
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk
 - Hon Andrew CHENG Kar-foo
 - Hon FUNG Chi-kin

From : Ricky Fung

Date : 31st May, 2000

Dear Chairman, members of the Bills Committee,

IFPI Hong Kong Group is submitting once more its opinion on the anti-competition section 13 of the Broadcasting Bill. The contents of this submission also make reference to the Bills Committee meeting of 30th May, 2000 when I and my colleague had the opportunity to put forward our views in person.

As we pointed out, our concern has always been on the very narrow sector oriented anti-competition approach taken by the Administration. Coupled with the exemption clauses under section 13, the interest of artistes, especially recording artistes are seriously at stake. We therefore strongly oppose the inclusion of any exemption under section 13 other than the CSA to clarify beyond doubt that any right arising from operation of the law relating to copyright and trademarks are not prejudiced. Here below is our recommendation to the sections, the strikeouts mean deletions.

13. Prohibition on anti-competitive conduct

- (1) Subject to subsections (4) and ~~(5)~~, a licensee shall not engage in conduct which, in the opinion of the Broadcasting Authority, has the purpose or effect or preventing or substantially restricting competition in a television programme service market.
- (2) The broadcasting authority may consider conduct to fall within subsection (1) as including, but not limited to-



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- (a) direct or indirect agreements to fix the price in a television programme service market;
 - (b) conduct preventing or restricting the supply of goods or services to competitors;
 - (c) direct or indirect agreements between licensees to share any television programme service market between them on agreed geographic or customer lines;
 - (d) limiting or controlling production, markets, technical development or investment;
 - (e) applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing them at a competitive disadvantage;
 - (f) making the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements.
- (3) Subject to subsection (4), a provision in an agreement is void in so far as it provides for or permits, whether directly or indirectly, conduct which contravenes subsection (1).
- (4) The Broadcasting Authority may-
- (a) on an application made to it in the specified form by a licensee;
 - (b) on a prescribed ground; and
 - (c) by notice in writing served on the licensee, exempt conduct specified in the application from subsection 91) subject to such conditions as the Broadcasting Authority thinks fit specified in the notice.
- ~~(5) Subsection (1) shall not operate to prevent any restriction imposed on-~~
- ~~(a) the inclusion in a television programme service of a television programme produced by the licensee of the service.~~
 - ~~(b) any person from using or exploiting his artistic talent or ability~~
- (IFPI HKG believes that there is a CSA in the process to remove 13(6), and the clarification on copyrights and trade marks)

Our deletions are based on the following reasons:

- With respect to 13(5)(a), we are of the view that the licensee does not need such



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an exemption because the inclusion or not of a television programme should not fall within the area of protection from competition but is clearly ownership that a licensee is capable of protecting itself by making use of all available copyright legislation.

- With respect of 13(5)(b), we are not against the reasonable use of artistic talent or ability; but by granting exemption, it will remove any incidents of use or exploitation from the scrutiny of the legislature on anti-competition abuses by any licensee.

We also have the follow comments on section 13 (4) (a) and (b). When a licensee is given a procedure to apply for exemption, it must do so on clear grounds. Here, the Administration allows the licensee to make application in "specified form" and on "prescribed ground" but neither the form nor the ground are known to us. We advocate that any form or ground must be set on high standards.

With reference to a suggestion raised at the meeting to defer the operative effect of sections 13, 14, 15, and 16 by the Administration. IFPI HKG opposes to such recommendation. If this suggestion was to be accepted, then the new Ordinance may have no protection against anti-competition by any licensees for the interim of duration uncertain at the moment. IFPI HKG supports that the new Broadcasting Ordinance to be effective immediately in full with the amended 13, 14, 15 and 16 in place.

We thank the Committee in considering our above views.

Yours truly,
For and on behalf of IFPI (Hong Kong Group) Ltd

A handwritten signature in black ink, appearing to be 'Ricky Fung', is written over a large, circular, scribbled-out area.

Ricky Fung
Chief Executive Officer