

Submission from Cable & Wireless HKT Limited

1. Prohibition of Transfer of Licence

1.1 The restriction is inconsistent with the existing legislation and licence conditions

The prohibition of transfer of licence as stipulated in clause 10(8) of the Bill marks a significant departure from the existing legislation and licence conditions of various broadcasting licences. At the moment, most broadcasting licensees can apply to the Chief Executive in Council (CE in C) for transfer of licence in pursuant to clause 11A(3) of the Television Ordinance (Cap.52):

"On the application of a licensee the Chief Executive in Council may approve the assignment of its licence to any other company competent to apply for a licence subject to such conditions as may be specified by the Chief Executive in Council."

The existing approval mechanism allows licensees to apply to the CE in C whenever there is a business need for transfer of licence. The CE in C may approve or disapprove licensees' applications, and it may also impose conditions on the approval as it thinks fit. We consider that the existing mechanism can strike a balance between the needs for administration control and commercial flexibility. We are surprised that there is no explanation on this significant policy change in either the Explanatory Memorandum or the Brief to the Legislative Council.

1.2 The restriction is inconsistent with the regulatory regime of telecommunications market

It is worth noting that the prohibition significantly deviates from the regulatory regime of the telecommunications industry. Most telecommunications licences have provisions allowing licensee to transfer its licence subject to the prior consent of the Telecommunications Authority (TA). For example, the Fixed Telecommunications Network Services (FTNS) licence contains the following clause (General Condition 4(1) of the FTNS licence) for transfer of licence:

"The licensee may only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee."

1.3 Transfer of shareholding vs. transfer of licence

We understand that the Administration has explained to the Members that if a merger involves only a change in shareholding of a licensee, the proposed restriction on transfer of licence will not apply. We welcome the Administration's clarification, but would like to point out that transfer of shareholding is not always a preferable option in a sophisticated business environment. In the age of convergence of the broadcasting, telecommunications and information technology markets, television broadcasters may also operate other lines of business which fall outside of the scope of the broadcasting licences. So the shareholding of a licensee may not be solely for the ownership of the broadcasting business but may also include other non-broadcasting business. The restriction will make any merger proposals impossible if

a licensee only wants to transfer its broadcasting business to another company. We consider that the restriction may become an obstacle to the development of the Hong Kong broadcasting industry, especially in today's dynamic business environment. CWHKT holds the view that the Bill should not categorically bar the transfer of licence but procedures including the requisite approval steps should be stipulated to cater for the requirements of commercial flexibility in the transfer of licence.

1.4 Impacts on customer service if transfer of licence is prohibited

We note the comments made in the Administration's written response provided to the Bills Committee (Ref. No. CB(2)2094/99-00(04)). It states that transfer of licence is not needed because any companies interested in providing television programme service may apply for a broadcasting licence under the open licensing regime. We would like to point out that the Administration's response has only addressed one possible scenario. There are other scenarios in which transfer of licence is a preferable option in the light of service continuity. For instance, under the Bill, if a licensee wants to discontinue its broadcasting business subject to the provisions on termination of licence, the licensee cannot transfer its services and customers to another licensee who is interested in operating the business. Customers would suffer as a result. However, if transfer of licence is allowed (subject to appropriate approval mechanism as above-mentioned), the licensee could make appropriate transfer arrangements with another interested existing or potential licensee so that the services could be continuously provided to the customers.

2. Other Licensable Television Services

2.1 Circumvention of the 4-tier licensing system

CWHKT has expressed concerns about the possible circumvention of the 4-tier licensing system because of the maximum limit of 200,000 premises for the "other licensable television services". From the experience of the existing pay television licensee, a limit of 200,000 premises represents a significant portion of the broadcasting premises in Hong Kong. As the "other licensable television services" licensees will be subject to more relaxed licence conditions than the domestic pay television licensees, we are concerned that potential pay television service providers would be used as a means to circumvent the 4-tier licensing system. We therefore request that there should be sufficient safeguards in either the legislation or the licence conditions to ensure that the licensees of "other licensable television services" and their associates would not be able to circumvent the licensing regime.

2.2 Guideline on "Other Licensable Television Services"

CWHKT notes the Administration's clarification that the BA would only grant additional licences for "other licensable television services" to an existing licensee in the same category if the BA is satisfied that the services operated under the individual licence are different from each other. However, there is no detailed information supplied by the Administration about the factors that will be considered by the BA in assessing the difference among the licensee's services. We strongly recommend that the BA should set out clearly the criteria for determining whether the services provided under individual "other licensable TV services" licence of a

licensee are different from each other. Obviously, it is CWHKT's view that the programmes of the licences should at least be substantially, if not entirely, different in order that two licences can be granted to same licensee.