

The Legislative Council
Bills Committee on the Broadcasting Bill

Response to the Third Submission by
Hong Kong Cable Television Limited

Purpose

This paper sets out the Administration's response to the third submission by the Hong Kong Cable Television Limited (HKCTV) to the Bills Committee regarding section 4(1) of Schedule 1 to the Broadcasting Bill (the Bill).

Background

2. HKCTV alleged in its submission that section 4(1)(b) of the Bill (which does not classify a non-domestic licensee as a disqualified person in respect of a domestic free or domestic pay licensee) might create a loophole enabling a domestic free licensee to indirectly hold a domestic pay licence via an intermediary non-domestic licensee.

The Administration's Response

3. We should like to clarify that, for the reasons set out in the following paragraphs, the provisions relating to "disqualified persons" (DP) in the Bill already fully address the concern expressed by HKCTV. In other words, there would not be such a loophole as stated in HKCTV's submission.

4. The following DP provisions in the Bill are relevant -
- (a) section 3(2)(b) of Schedule 1 provides that unless the Chief Executive in Council (CE in C), on application by a licensee, is satisfied that the public interest requires and approves otherwise, a person shall not exercise control of a domestic free or a domestic pay licensee if he is a DP;
 - (b) a person exercises control of a corporation if he is a director or principal officer of, or the beneficial owner or a voting controller of more than 15% of the voting shares, in the corporation (section 2(6) of Schedule 1 refers);
 - (c) under section 4(1) of Schedule 1, a domestic free licensee, a person who exercises control of the licensee and an associate of the licensee are DP in relation to a domestic pay licensee.
5. In accordance with the above provisions, there would be a “two-way” control restricting a domestic free licensee from indirectly holding a domestic pay licence. Firstly, a domestic free licensee, being a DP, is prohibited from exercising control of a domestic pay licensee. This, in effect, means that a domestic free licensee cannot directly, or indirectly through another corporation (irrespective of whether that intermediary corporation is a DP or not), own more than 15% of the voting shares of a domestic pay licensee.
6. Secondly, if a non-domestic licensee or its associate holds or exercises control of a domestic free licence, the non-domestic licensee would become an associate of a domestic free licensee, thus rendering itself a DP in relation to a domestic pay licensee. In other words, that non-domestic licensee would be prohibited from holding a domestic pay licence.

7. The above arrangements described in paragraphs 5 and 6 would apply unless express approval is obtained from the CE in C under para. 4(a) above.

8. We also do not agree to HKCTV's proposal to extend the definition of the wording "influence" in relation to a corporation. The existing definition, which is identical to that in the Television Ordinance, is based on objective facts, i.e. whether a voting controller holds shares of the corporation or whether the memorandum or articles of association of the corporation gives powers to the voting controller. HKCTV's proposal gives the wording "influence" too wide a meaning that the relevant provisions would, in practice, become unenforceable.

Conclusion

9. The above analyses clearly indicate that the DP provisions in the Bill are comprehensive and adequate for the purpose of implementing our policy intent. We consider that the proposed amendments by HKCTV are redundant and that it would be clearly inappropriate to accept their proposals which appear to have been based on a serious misunderstanding of the regulatory framework either under the existing or the proposed legislation.

Information Technology and Broadcasting Bureau

1 June 2000