

立法會
Legislative Council

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Report of the Bills Committee on Broadcasting Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Broadcasting Bill (the Bill).

Background

2. Following the public consultation on the 1998 Review of Television Policy, a policy decision was taken to implement the recommendations arising from the Review, and to provide separate legislation for the regulation of "transmission" and "provision" of television programmes. The regulation of transmission networks and services is dealt with by the Telecommunication (Amendment) Bill 1999, while the licensing and regulatory framework for the provision of television programme services is provided for in a technology-neutral Broadcasting Bill.

The Bill

3. The Bill seeks to repeal the Television Ordinance (Cap. 52) and to provide a new regulatory regime for the provision of television programme services to cater for the fast-changing broadcasting and multi-media environment, with the following policy objectives -

- (a) to widen programme choice to cater for diversified tastes and interests of the community;
- (b) to encourage investment, innovation and technology transfer in the broadcasting industry;
- (c) to ensure fair and effective competition in the provision of broadcasting services;

- (d) to ensure that broadcasting services provided are up to the expectations and do not offend the tastes and decency of the community; and
- (e) to promote the development of Hong Kong as a regional broadcasting and communications hub.

4. The Bill consists of eight parts and nine schedules. The schedules set out the details on the regulatory provisions such as the conditions for disqualification for holding licences and restriction on voting control, programming requirements and advertising time. The schedules can be amended by way of subsidiary legislation.

The Bills Committee

5. Members agreed at the House Committee meeting on 18 February 2000 to form a Bills Committee to study the Bill. Chaired by Hon Mrs Selina CHOW, the Bills Committee held a total of 13 meetings (equivalent to 19 two-hour sessions) to discuss with the Administration and deputations from the broadcasting industry and interested organizations. Discussion was also held between the Bills Committee and the Chairman of the Broadcasting Authority (BA) on its current operation and the new functions to be conferred on BA by the Bill.

6. The membership list of the Bills Committee is in **Appendix I**. A list of the 22 organizations which have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

7. Members of the Bills Committee are generally in support of the objectives of the Bill to provide wider programme choices to cater for different interests in the community and to ensure fair competition in the provision of broadcasting services. While the industry agrees with the principles of the new regulatory regime, some deputations have expressed concern about the scope of the Bill, the new competition provisions, the meaning of disqualified persons and the proposed exemptions from competition clauses in the Bill. Some members are also concerned about the new powers of the BA. The Bills Committee has therefore held detailed discussions with the Administration and the BA Chairman on the application of competition safeguards and the legal effect of these provisions.

8. The deliberations of the Bills Committee are summarized below.

Scope of the Bill

9. In response to concerns raised by members and the industry, the Administration has clarified that the Bill seeks to regulate television programme services and excludes sound broadcasting and Internet services for the time being. In clause 2 of the Bill, "television programme service" is defined as the provision of a service that includes television programmes for transmission by telecommunications that are readily accessible to (or made available to) the general public in or outside Hong Kong; or to persons in two or more specified premises (such as hotel rooms or domestic households) simultaneously or on demand, whether on a point-to-point or a point-to-multipoint basis.

10. In view of the advancement of technology and increasing popularity of the Internet, a few members suggest the Administration to consider expanding the scope of the Bill to include regulation of audio and visual services provided on the Internet. The Administration has responded that the existing mode of Internet services is still different from broadcasting and their pervasiveness is not yet comparable to those television programme services currently operating in Hong Kong. As in overseas countries, there is also the problem of effective enforcement over services provided on the Internet. Nevertheless, the Administration fully recognizes the need to provide flexibility for the regulatory regime and the excluded services (such as Internet) are now listed in Schedule 3 so that it can be amended by subsidiary legislation when necessary.

11. The Administration has also advised that sound broadcasting will continue to be regulated under the Telecommunication Ordinance pending formulation of policy on digital audio broadcasting. The industry and the community will be consulted on the policy proposals. Members note that the Bill has been structured in such a way that it can easily accommodate sound broadcasting later on.

12. Since the services proposed for exclusion in Schedule 3 can be amended to cater for future development, the Bills Committee has requested that Schedule 3 should be subject to the positive vetting procedures of the Legislative Council (LegCo). The Administration has agreed to the suggestion and will move an amendment to clause 42(1) accordingly.

13. One deputation has suggested that free-to-air satellite services uplinked from places outside Hong Kong but receivable in Hong Kong should not be excluded from regulation of the Bill, as there are worries that the content of such programmes may not meet the public expectations and may offend the taste of the community of Hong Kong. The Administration has explained that under the Open Sky policy, free-to-air television services are already allowed to be distributed by satellite master antenna television (SMARTV) system without a licence. The content of these programmes is however subject to the

regulation of the Control of Indecent and Obscene Articles Ordinance and other relevant legislation. The Administration considers that there is no strong justification for changing the policy.

The licensing and regulatory framework

Categorization of television programme services

14. While the current regulatory regime for television services is largely based on the mode of transmission (such as terrestrial television, cable television and satellite television), the Bill proposes a technology-neutral regulatory system separating the "content" from the "carriage" of television services. The existing order of regulation and licensing of television programme services is therefore revamped and regrouped into the following four categories -

- (a) domestic free television programme service (Domestic Free);
- (b) domestic pay television programme service (Domestic Pay);
- (c) non-domestic television programme service (Non-Domestic); and
- (d) other licensable television programme service (Other Licensable) .

15. The Administration has advised that subject to physical or other constraints, no pre-set limit is imposed on the number of licences to be issued. The assessment criteria other than the statutory provisions are set out in the Guidance Note for applications issued in August 1999.

16. The Bills Committee notes that the domestic service categories are those services targeted at Hong Kong and which are intended or available for reception by over 5 000 specified premises. The Domestic Free category covers free-to-air television programme services targeting the whole population in Hong Kong and are supported by local advertising revenue. This category covers Television Broadcasts Limited and Asia Television Limited. The Domestic Pay category refers to those services aimed at catching the greatest number of Hong Kong households and supported either by subscription revenues or by both subscription and local advertising revenues. Hong Kong Cable Television Limited and Cable & Wireless HKT VOD will come under this category. A Domestic Free licensee is prohibited from holding also a Domestic Pay licence to prevent a monopoly market. The Chief Executive in Council will continue to be the licensing authority for the two domestic service categories.

17. As regards Non-Domestic and Other Licensable services, members note that the licensing authority will be BA upon enactment of the Bill. The existing satellite television uplink and downlink licensees such as Hutchison Hong Kong Limited and Galaxy Satellite Broadcasting Limited will be deemed to be Non-Domestic licensees. Since Non-Domestic programme services are not primarily targeted at Hong Kong, they will be subject to less stringent control than the Domestic Free and Domestic Pay services. The Other Licensable services cover those small scale, niche or localized television programme services targeting specific viewer groups such as hotel guests, foreign nationals working in Hong Kong, or residents within a locality.

The maximum number of households for Other Licensable services

18. Members have questioned the basis for restricting the target audience of Other Licensable service to only 5 000 households. They are concerned that some housing estates may have more than 5 000 households, and it will be unreasonable to require the applicant to apply for two licences or a territory-wide Domestic Licence for providing a small scale television programme service to residents in a housing estate. The Administration has explained that the limit of 5 000 households is derived on the basis of a survey that about 87% of the private and public housing estates in Hong Kong consist of less than 5 000 households. Nevertheless, the Administration has agreed that some flexibility can be provided in the Bill so that BA can waive the upper limit of 5000 households if the intention of the service is only for reception by a single housing estate. The Administration will introduce amendments to clause 2(1) and add a new clause 2(11A) to this effect.

19. On the aggregate number of households for Other Licensable services, members have also asked whether the limit of 200 000 households is reasonable. The Administration has explained that the original proposal in the 1998 Consultation Paper was to set the limit at 300 000 households (which represents 15% of the total number of households in Hong Kong). The number was subsequently lowered to 200 000 households in view of comments that the original ceiling was too high.

Residency requirements for directors and principal officers

20. Members note that the present residency requirement for the majority of directors and principal officers will continue to apply to Domestic Free and Domestic Pay services, while only one director or principal officer of the Non-Domestic or Other Licensable services will need to be resident of Hong Kong. The relaxation for the latter categories is to minimize entry barriers for the trade to facilitate diversification and growth of market.

21. The Administration has informed the Bills Committee that the restriction on non-residents (unqualified voting controllers) exercising control of licensees has also been relaxed. Section 20(1) of Schedule 1 to the Bill reflects the slightly relaxed requirement for obtaining BA's approval to increase voting control of a licensee.

Restrictions on disqualified persons (Schedule 1)

22. Disqualified persons are persons prohibited from exercising control of Domestic Free and Domestic Pay licensees except with the prior approval of the Chief Executive in Council on grounds of public interest. While a Domestic Free licensee cannot hold a Domestic Pay licence, there is no prohibition for the former to apply for a Non-Domestic licence.

23. In the light of market developments in a technological convergent environment, the Administration has proposed to relax the restrictions on disqualified persons to promote the growth of the broadcasting industry. As the licences issued under the Bill are only "content" licences, the Administration considers that it is no longer appropriate to disqualify the dominant supplier of a local public switched telephone service (which is transmission service) from applying for a television programme service licence. The concern about abuse of dominance in the telecommunications market is dealt with by the competition safeguards in the telecommunications regulatory regime.

24. The industry has expressed different views regarding the definition and restrictions on "disqualified persons" in the Bill. The Administration has clarified that "disqualified persons" include licensees under the Bill (except that a Non-Domestic television programme service licensee is not a disqualified person in relation to a Domestic Pay licence), sound broadcasting licensees, advertising agents and proprietors of local newspapers, and their controllers. The Administration has stressed that "associates" of these persons are also "disqualified persons" under sections 4, 5, 6 and 7 of Schedule 1.

25. The Hong Kong Cable Television Limited has however expressed worries that a loophole may exist in that a Domestic Free licence can indirectly hold a Domestic Pay licence via an intermediary Non-Domestic licensee. The Administration has assured members that this has been adequately addressed through restriction on voting control and inclusion of "associates" in the definition of disqualified persons in the relevant sections of Schedule 1. Members note that a Domestic Free licensee, being a disqualified person, is prohibited from exercising control of a Domestic Pay licensee by holding, directly or indirectly, more than 15% of the voting shares of a Domestic Pay licensee. The meaning of "exercise control" has been elaborated in section 1(5)-(7) of Schedule 1. Moreover, if a Non-Domestic licensee or its associate

holds or exercises control of a Domestic Free licensee, the Non-Domestic licensee will become an associate of a Domestic Free licensee and will be prohibited from holding a Domestic Pay licence. Members generally accept the Administration's clarification of the definition of "disqualified persons" and "associates" in the Bill.

26. Noting that the Chief Executive in Council may approve, under section 3(2) of Schedule 1, a disqualified person to be a licensee or to exercise control of a licensee on grounds of public interest, members have asked the Administration to specify the public interest considerations for granting such approval. To address the concern, the Administration has agreed to introduce a new subsection (3) to spell out the considerations for public interest which include the effect on competition in the relevant service market, the overall benefits to the economy, the impact on the choice of viewers and the development of the broadcasting industry.

Fit and proper persons

27. Members note that clause 20 of the Bill imposes a new requirement that a licensee and any person exercising control of the licensee shall be a fit and proper person. To facilitate BA in enforcing the requirement, some members suggest that the licensee should also have a duty to report to BA whether the person(s) concerned has a criminal record and whether there have been changes in the business records. The Administration agrees to introduce amendments to this effect.

Code of Practice and other licensing conditions

28. Clause 3 empowers BA to issue codes of practice to provide practical guidelines for licensees to comply with the licensing requirements. Clause 22 also requires a licensee to comply with the provisions in a Code of Practice and directions issued by the BA, in addition to the statutory provisions in the Bill and the licence conditions. As breaches of provisions in a Code of Practice may lead to financial penalty (clause 27) or even suspension or revocation of licence (clauses 30 and 31) in the extreme case, some members strongly feel that the Administration should provide the draft Code of Practice for scrutiny by the Bills Committee and that the industry should be consulted before promulgation.

29. Due to the tight legislative timetable of the Bill, the Administration has responded that it is not possible to complete the draft Code in time for scrutiny by the Bills Committee. However, the Administration has provided a framework of the content to be included in the proposed Generic Code of Practice, together with the existing Codes for different licences for members' reference. The Administration also assures members that there will not be major changes to the existing programming standards, except that the

restriction on advertising time will be relaxed (see paragraph 60 below). It also undertakes to consult the industry (in addition to the licensees as required under clause 3(8)) and the LegCo on the Code within a few months.

Mandatory locking device for paid television programme service (clause 19)

30. The Bills Committee notes that a licensee is required to provide a locking device for any Domestic Pay, Non-Domestic (where service is provided on payment of subscription fees) and Other Licensable services. Given the mandatory locking device requirement, the BA has agreed to relax the relevant programme standards and advertising standards in the Generic Code of Practice.

Competition provisions (clauses 13, 14, 15 and 16)

31. Some deputations and members of the Bills Committee are very concerned about the content and effectiveness of the competition safeguards in the Bill. It is generally agreed that there should be adequate safeguards to promote fair competition and to provide a level-playing field for both incumbent licensees and new comers. The Consumer Council and some other deputations have further suggested that there should be a general competition law to deal with abuse of dominance in related or co-dependent markets, and behaviour that may distort competition.

32. The Administration has responded that it is Government policy to adopt a sector-specific approach for promoting competition. The competition provisions in the Bill are therefore primarily targeted at the television programme service market but not other markets to which separate legislation or policy applies. Clause 13 of the Bill provides a general provision prohibiting a licensee from engaging in a conduct which "has the purpose or effect of preventing or substantially restricting competition in a television programme service market". A specific provision in clause 14 provides that "a licensee in a dominant position in a television programme service market" is prohibited from abusing its dominance. BA is responsible for the enforcement and investigation of complaints about contravention of the competition provisions. To facilitate the industry to comply with the competition provisions, BA will provide practical guidelines to licensees with reference to those issued by overseas jurisdictions such as the guidelines issued by Independent Television Commission (ITC) of the UK.

33. Some members strongly feel that LegCo and the industry should be consulted on the draft competition guidelines before promulgation. In view of members' concern, the Administration has agreed to introduce a CSA to the effect that BA shall consult all concerned licensees before issuing the competition guidelines. As the draft guidelines are not ready for discussion by the Bills Committee, the Administration has proposed that clauses 13, 14,

15 and 16 will not take effect until the consultation process is completed. The Secretary for Information Technology and Broadcasting will announce the commencement date of these clauses by notice in the Gazette. The Administration will move a CSA to this effect.

Exclusions (clause 13(5))

34. The Bills Committee has detailed discussion with the Administration on the proposed exclusion of television programmes produced by the licensee and the artiste contracts from the competition provisions.

35. The Administration has advised that only a narrow scope of exemption is proposed in clause 13(5) in recognition of the trade practice. Members note that the exemption for programmes only refers to programmes produced by a licensee and does not cover those acquired by a licensee. In response to members, the Administration has explained that exclusive contracts on a one-off basis and acquisition of programmes which are not broadcast are unlikely to be anti-competitive unless it can be demonstrated that the purpose of such acquisition is to prevent or to substantially restrict competition in a television programme service market. Nevertheless, the Administration has agreed to amend clause 13(5)(a) so that only those programmes "wholly or substantially" produced by a licensee should be exempted, as suggested by the Consumer Council. Members note that the industry has not raised objection to the proposed exclusion in clause 13(5)(a).

36. There has been much discussion on the proposed exemption of artiste contracts from the competition clauses. Concerns have been expressed by deputations including the International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI) that artistes and singers may be unreasonably restrained by their contract terms and this may have implications on competition in a relevant or co-dependent market. Some members also raise concern about the application of the competition provisions to exclusive artistes' contracts signed with an agency, especially if the agency is a licensee (or its associate) which has a dominant position in the market.

37. The Administration has stressed that the exemption of artiste contract is only to recognize the commonly accepted industry practice that television broadcasters often enter exclusive contracts with individual artistes and the restrictions are often justified in terms of the investment made in developing and promoting the artiste's work. The Administration has advised that competition law is usually not the appropriate vehicle to deal with unreasonable conditions in contracts as these are commercial agreements between the two parties. Moreover, individual contracts with artistes are unlikely to have an appreciable effect on competition in a relevant market.

38. In response to members, the Administration has clarified that the proposed exemption only relates to the artiste's talents or ability. Therefore a prohibition of an artiste from accepting an award by an independent body or being interviewed by other competing television stations should not be covered by the exemption, if the prohibition has the purpose or effect of preventing competition in the relevant market. Moreover, the proposed exemption only applies in relation to prohibition on anti-competitive conduct as provided for in clause 13. It does not give an exemption from the prohibition on abuse of dominance under clause 14. To deal with complaints on abuse of dominance, BA will form an opinion as to whether a dominant licensee has abused the dominant position by imposing harsh or unrelated conditions in the artistes' contracts. As regards exclusive contracts signed with an agency instead of a licensee, the Administration is of the opinion that any understanding or agreements between a licensee (or its associate) and an agent can be caught under clauses 13 and 14 as well.

39. Despite the Administration's explanation, some members remain of the view that it is difficult to define artistes' talents or ability, and exclusive contracts will have implications on the competition of the relevant market. To ensure a fair-playing field for all concerned, these members have urged the Administration to consider deleting the exemption of artiste contracts from clause 13(5)(b). The IFPI has also suggested deletion of clause 13(6) which empowers the BA to amend the scope of exemption by notice in the Gazette.

40. In view of members' concerns, the Administration has eventually agreed to delete artiste contracts from the exemption in clause 13(5)(b). However, the Administration considers it necessary to retain some flexibility in the Bill to enable the Chief Executive in Council to prescribe restrictions for the purpose of clause 13 when necessary. The Administration will introduce CSAs to this effect. Despite these amendments, a member maintains the view that no restriction on artiste contracts is necessary.

Prohibition on abuse of dominance (clause 14)

41. Clause 14(2) defines that a licensee is in a dominant position if it is able to act without significant competitive restraint from its competitors and customers. While clause 14(3) provides the principles for BA to determine whether a licensee is dominant, more details will be provided in the competition guidelines to be issued by BA. According to the Administration, the competition consultant has advised against defining dominance in legislation or publicly identifying a licensee as holding a dominant position until a competition analysis has been conducted. While competition analysis is new to Hong Kong, the BA will make reference to overseas experience and seek the consultant's advice in such analysis which will include defining the relevant market and assessing the market power.

Powers of the Broadcasting Authority (BA)

42. The Bills Committee notes that the BA will be given new powers to approve applications for licences for the Non-Domestic and Other Licensable services. As regards the Domestic Free and Domestic Pay licences, the BA will make recommendations to the Chief Executive in Council on the applications. The BA is also responsible for investigation of complaints and enforcement of the licensing requirements as provided in the Bill, the Codes of Practice, guidelines and directions issued by BA. Moreover, BA will be given specific powers to enforce the competition provisions. For this purpose, BA is empowered under the Bill to require a licensee to supply information relating to its business (clause 24), to obtain information from third parties through a magistrate (clause 25) and to investigate and determine anti-competitive conduct (clauses 13 and 14).

43. In view of the wide powers of BA, members are concerned that there should be greater transparency of its operation. During discussion with the BA Chairman, members note that it may not be appropriate to hold public meetings for the consideration of the grant of licences as sensitive commercial information is involved. However, some members are of the view that BA should conduct open hearings for suspension and revocation of licence as this will have serious impact on the licensee and the image of broadcasting industry in Hong Kong. While the power for suspension and revocation of licence has not been invoked before, the Administration has agreed to members' suggestion that BA shall hold public hearings for consideration of suspension and revocation of licences. Moreover, BA will also conduct hearings for extension and renewal of Domestic licences under clause 11 if the licences concerned may be extended or renewed for a period of six years or more. The Administration will move CSAs to clauses 11, 30 and 31 to this effect.

44. A member considers that the directions issued by the BA to licensees should also be disclosed to the public in the same way as the licence conditions and Codes of Practice which are also available to the public. The Administration has agreed to amend clause 23(1) to this effect.

45. In response to members' concern about the circumstances under which BA will invoke the power of investigations into a licensee's business, the Administration has agreed to amend clause 24(1) to specify the range of functions of BA. The Administration has also clarified that journalistic materials are subject to the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1). For the avoidance of doubt, the Administration has agreed to add a new subsection (11) to this effect.

46. The Bills Committee has also expressed concern about the independence of BA and whether adequate support will be provided to enable

BA to carry out its enhanced functions. As competition provisions are new to Hong Kong, some members are particularly concerned whether BA will have sufficient expertise and experience in investigating complaints and enforcing the competition provisions. The Administration has assured members that BA is an independent statutory body comprised of unofficial members with the relevant expertise. The Television and Entertainment Licensing Authority (TELA) will provide secretariat support to the BA which will also seek expert advice of the Office of the Telecommunications Authority and its competition consultant on competition issues. While the Department of Justice will provide legal advice on such cases, BA has the full authority to make its own decisions.

Appeal body

47. Some members have suggested setting up an appeal body, similar to that for the telecommunications industry, to deal with decisions relating to competition provisions and also to cover objections or complaints in relation to licensing matters. The Administration has responded that unlike the Telecommunications Authority, BA is an independent body comprising unofficial members. An appeal channel is already provided for as appeals can be made to the Chief Executive in Council (clauses 33 and 34), whose decision is judicially reviewable. Moreover, the Administration has already agreed to introduce CSAs to enable BA to hold public hearings for extension, renewal, suspension and revocation of licence. With these measures, the Administration is of the view that the appeal channels are adequate and a separate appeal body is not necessary. However, a member maintains the view that an independent appeal body should be established.

Power of Chief Executive in Council to make regulations

48. At the request of members, the Administration has agreed that the regulations to be made by the Chief Executive in Council under clause 41(1)(a)-(e) will be subject to the positive vetting procedure of LegCo. With regard to some members' concern about the requirements to be imposed by regulation in a particular case under clause 41(b), the Administration has accepted members' suggestion that such additional conditions should only be imposed on the grounds to be specified in the regulation.

Financial penalty

49. Members note that the industry does not raise objection to the proposed increase of financial penalty from the present levels of \$50,000, \$100,000 and \$250,000 to the proposed levels of \$200,000, \$400,000 and \$1,000,000 respectively for contraventions on the first, second and any subsequent occasions.

50. Some members have suggested differential financial penalty for breaches relating to programme content requirements and those relating to competition provisions. To provide sufficient deterrence against breaches of the licensing requirements and competition safeguards, some members consider that the penalty should be pegged with the economic gain or advertising revenue of the programme or anti-competitive act in question.

51. For breaches of programme content requirements, the Administration is of the view that different scales of financial penalty for a contravention of the same programme standard cannot be justified on equity grounds. Instead, the BA should have regard to the nature and severity of a contravention rather than the turnover of a licensee when determining the level of financial penalty. According to the Administration, overseas countries such as the United States, Canada and Australia also adopt scales of fixed financial penalty for licensees of the same class, irrespective of their turnovers.

52. With regard to anti-competitive behaviour, the Administration points out that Hong Kong adopts a sectoral approach to allow for specific measures to be taken to tackle competition issues in a particular industry. While the Telecommunication (Amendment) Bill 1999 has adopted an approach to peg the penalty level with the turnover of a licensee, the Administration reminds members that the economic value of the broadcasting industry is much smaller than that of the telecommunications sector. In this connection, the Bills Committee notes that the turnover of the largest operator of the broadcasting sector in 1998 was only \$3.3 billion, as compared to \$35 billion in the turnover of the largest operator in the telecommunications sector in the same year. Given the smaller scale of operation and lower economic value of the broadcasting industry, the Administration considers that the proposed maximum fine of \$1 million to be imposed by BA is appropriate. However, the Administration has accepted members' view that to provide sufficient deterrence against anti-competitive behaviour in clauses 13 and 14, BA may apply to the Court of First Instance to impose on a licensee a higher financial penalty not exceeding 10% of the turnover of the licensee in the relevant television programme service during the period concerned, or a financial penalty of \$2 million, whichever is the higher. A new subsection (3A) will be added to clause 27 to this effect.

Investigation of licensee's business

53. Under clause 24(3), a magistrate may, if satisfied with the information on oath laid by BA, issue a warrant for an authorized person to enter a licensee's premises and seize documents for investigation. Some members have reservations that the warrants are issued by magistrates ex parte, and they sought information on similar practices in other legislation. The Administration has confirmed that ex parte procedures in applying warrants are common for investigations of commercial and criminal operations.

54. To address members' concern about the procedures for obtaining information from persons other than a licensee and the confidentiality of the information provided, the Administration will move CSAs to clauses 25 and 26 to bring the provisions in line with those in the Telecommunication (Amendment) Bill. In brief, a non-licensee will be allowed to make representations on the requirement to provide information to BA and on the proposed disclosure of such information. In addition, a person who is required to supply information to BA will not be compelled to produce any documents which he could not be compelled to produce in civil proceedings before the Court of First Instance.

Prohibition of programme by court

55. Clause 35(1) of the Bill prohibits a television programme service licensee from including in its licensed service a television programme which is likely to incite hatred in Hong Kong against any group of persons by reference to colour, race, sex, religion, nationality or ethnic or national origin, result in a general breakdown of law and order, and gravely damage public health or morals. The Chief Secretary for Administration can apply for a prohibition order to be issued by the Court of First Instance under clause 35(4). One deputation has suggested that the scope of clause 35(1)(a) should be confined to incitement which will likely result in violence, while the scope of clause 35(1)(c) be confined to damages of public health or morals of children under the age of 18 years. The Administration has responded that the policy intent is to prohibit all forms of incitement of hatred among specified groups irrespective of whether violence is the likely result, and that the protection of public morals does not apply only to minors.

56. Some members have asked about the basis for determining what constitutes an incitement of hatred. Having obtained legal advice, the Administration has advised that it is based on the effect of the programme and the reason for the prohibition. Since the prohibition as proposed in the Bill does not lead to criminal sanction and the power to issue proscription order vests with the judiciary after a judicial process, the Administration is of the view that the prohibition is consistent with the right to freedom of expression and is proportionate and necessary for the respect of the rights of others and the protection of public order.

57. With regard to some members' concern about the application for an interim order ex parte and on affidavit, the Administration has agreed to specify in clause 35(4) that the Court of First Instance must satisfy itself that such application is justified on grounds of urgency before issuing the interim order.

Royalties and licence fees

58. With the liberalization of the regulation of the broadcasting industry, the charging of advertising and subscription royalties will be abolished upon the repeal of the Television Ordinance. To give effect to the policy decision that licensees should be required to pay the licence fees at full cost as a quid pro quo for the abolition of royalties, section 5 of Schedule 8 provides for a transitional arrangement whereby the Financial Secretary can specify the annual licence fee payable by notice in writing to the licensee.

59. The Bills Committee has expressed concern that the Administration has proposed to specify the licence fees in the licence conditions instead of by subsidiary legislation as in the Television Ordinance. To address members' concern, the Administration has agreed to specify the annual licence fees by regulation and an amendment will be moved to this effect. The transitional arrangements in section 5 of Schedule 8 will be amended accordingly to cover the period after the commencement of Bill and before the making of the regulation on licence fees.

Advertising time (Part 3 in Schedule 4)

60. There is a suggestion in the submissions to the Bills Committee that the current restriction on advertising time on Domestic Free licensees should not be relaxed. However, with the gradually liberalized television market, the Administration considers that licensees should be given more flexibility in the package, schedule and design of advertisements. To maintain a balance between relaxation of advertising restrictions and protection of viewers' interest, the Bill has proposed to retain the advertising time restriction during the prime time between 5 pm and 11 pm, while licensees can freely package the advertisements at other times subject to the aggregate advertising time not exceeding 18% of the total broadcasting time in that period.

Broadcast of cultural and educational programmes

61. Some members have suggested including in the licence requirements the promotion of cultural and arts programmes. The Administration has pointed out that programme requirements are now imposed on free-to-air television licensees as part of the licence conditions. Among these requirements, licensees are already required to broadcast documentary programmes and programmes for children, youth and senior citizens for specified periods of time. In addition, Domestic Free licensees are required to broadcast programmes supplied by the Government in accordance with section 3 of Schedule 4. The Administration considers the present requirements reasonable and does not propose to increase such requirements.

Other issues discussed

62. The Bills Committee has also discussed with the Administration issues concerning control of re-export of unauthorized decoders from Hong Kong, requirement for licensees to broadcast educational programmes for schools, and arrangement for apology and correction by a licensee as directed by BA. The Administration has agreed to introduce amendments to these provisions accordingly.

Committee Stage amendments (CSAs)

63. The Administration has proposed amendments to address the concerns of members and deputations. Some technical amendments and textual improvements are also proposed for clarity and for consistency with amendments made to Telecommunication (Amendment) Bill 1999. A full set of the Administration's proposed CSAs is in **Appendix III**. The Bills Committee has not proposed any CSAs.

Consultation with the House Committee

64. The Bills Committee has reported its deliberations to the House Committee on 9 June 2000.

Legislative Council Secretariat

12 June 2000

Bills Committee on Broadcasting Bill

Membership List

Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)

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

Total : 11 members

Date : 14 March 2000

Bills Committee on Broadcasting Bill

**List of organizations which have submitted views
to the Bills Committee**

1. Alcatel China Holding Pte Ltd
2. APT Satellite Holdings Limited
3. Asia Satellite Telecommunications Ltd
4. Asia Television Limited
5. Cable & Wireless HKT Limited and the Cable & Wireless HKT VOD Limited *
6. Consumer Council
7. Elmsdale Media Limited *
8. Galaxy Satellite Broadcasting Limited
9. Hong Kong Arts Development Council *
10. Hong Kong Cable Television Limited
11. Hong Kong Commercial Broadcasting Co Ltd *
12. Hong Kong Development and Strategic Research Centre
13. Hong Kong Journalist Association
14. Hong Kong Society of Accountant *
15. International Federation of the Phonographic Industry (Hong Kong Group) Limited
16. Kwun Tong Resident Union
17. Metro Broadcast Corporation Limited *
18. Pacific Satellite International Limited
19. Satellite Television Asian Region Limited *
20. Satellite Television Rentals Limited
21. Television Broadcasts Limited
22. Turner International Asia Pacific Limited *

* Written submissions only