

**立法會**  
***Legislative Council***

LC Paper No. CB(2)2234/99-00

Ref : CB2/BC/12/99

**Paper for the House Committee meeting  
on 9 June 2000**

**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 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 royalty, 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 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.

**Recommendation**

64. The Bills Committee supports the resumption of Second Reading debate on 21 June 2000.

**Advice sought**

65. Members are invited to support the recommendation of the Bills Committee in paragraph 64.

Legislative Council Secretariat

8 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

Appendix III to LC Paper No. CB(2)2234/99-00

**BROADCASTING BILL**

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Information  
Technology and Broadcasting

Clause

Amendment Proposed

- 1(2) - By deleting the clause and substituting -
  - "(2) Subject to subsection (3), this Ordinance shall come into operation on the day it is published in the Gazette.
  - (3) Sections 13, 14, 15 and 16 shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette."
  
- 2 (a) In subclause (1) -
  - (i) by deleting the definition of "domestic household" ( ) ;

(ii) in the definition of "other licensable television programme service" ( ), by deleting paragraph (b) and substituting -

"(b) either -

(i) subject to subsection (11A), by an audience of not more than 5000 specified premises; or

(ii) in hotel rooms;"

[(iii) in the definition of "Telecommunications Authority" ( ), by deleting "[ ]" and substituting "[ ]."]

(b) In subclause (9)(e), by deleting everything after "require" and substituting "a person to disclose or otherwise give any information or document which the person could not be compelled to disclose or otherwise give in evidence in civil proceedings before the Court of First Instance."

(c) In subclause (11) -

(i) in paragraph (a), by adding "under this Ordinance" after "decision";

(ii) by deleting paragraph (b) and  
substituting -

"(b) when forming an opinion or  
making a determination,  
direction or decision  
under this Ordinance,  
provide reasons in writing  
for it."

(d) By adding -

"(11A) The Broadcasting Authority may,  
by notice in writing served on the  
licensee, or the person seeking to be a  
licensee, concerned, waive the  
requirement specified in paragraph (b)(i)  
of the definition of "other licensable  
television programme service" if the  
Broadcasting Authority is satisfied that  
the other licensable television programme  
service concerned is only intended or  
available for reception by a single  
housing estate."

4

(a) By renumbering it as clause 4(1).

(b) By adding -

"(2) Without prejudice to the  
generality of subsection (1), the

Broadcasting Authority shall, as soon as is practicable, issue guidelines indicating the manner in which it proposes to -

- (a) perform its function under section 9(2), including the licensing criteria and other relevant matters it proposes to consider;
- (b) perform its function under section 10(2), including the licensing criteria and other relevant matters it proposes to consider;
- (c) perform its function in forming an opinion under section 13 or 14;
- (d) perform its function under section 17(2), including the criteria it proposes to consider.

(3) The Broadcasting Authority shall, before issuing guidelines under subsection (2)(c), carry out such consultation with such bodies representative of licensees who may be affected by the guidelines as is

reasonable in all the circumstances of the case."

6

- (a) In subclause (1), by adding "export," after "import,".
- (b) In subclause (3), by adding "exported," after "imported,".
- (c) In subclause (4), by adding "exports," after "imports,".

9

By adding -

"(3) Where an application is submitted to the Broadcasting Authority, it shall -

- (a) cause a notice to be published in the Gazette as soon as is practicable -

- (i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and

- (ii) stating that members

of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and

(b) consider the representations, if any, received by the date."

10(4), - (5), By deleting the clause and substituting -

(6) and (7)

"(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).

(5) A licensee may make representations to the Broadcasting Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the

Chief Executive in Council, the Broadcasting Authority shall fairly reflect the representations to the Chief Executive in Council.

(6) The Chief Executive in Council or the Broadcasting Authority, as the case may require, shall take into account the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4)."

11

(a) By adding -

"(3A) Where subsection (3) applies to a domestic free television programme service licence, or a domestic pay television programme service licence, which may be extended or renewed for a period of 6 years or more, the Broadcasting Authority shall conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority."

(b) In subclause (4), by adding "as soon as is practicable" after "them and".

(c) In subclause (5), by adding ", at a time reasonable in all the circumstances before the expiry of the licence" after "shall".

12

(a) In subclause (4), by deleting "where" and substituting "Subject to subsection (4A), where".

(b) By adding -

"(4A) The Broadcasting Authority shall, before making a determination under subsection (4) -

(a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in relation to whether or not the television programme service concerned -

(i) primarily targets Hong Kong; or

(ii) does not primarily target Hong Kong; and

(b) take into account the representations, if any, made.

(4B) In determining whether or not a television programme service primarily

targets Hong Kong, account shall be taken of, but not limited to, the following matters -

- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and size of the audiences targeted by the service; and
- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf."

13

- (a) In subclause (1), by adding ", distorting" after "preventing".
- (b) By deleting subclauses (5) and (6) and substituting -

"(5) Subsection (1) shall not apply

to -

- (a) any restriction imposed on the inclusion in a television programme service of a television programme produced wholly or substantially by the licensee of the service;
- or
- (b) any prescribed restriction.

(6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks."

14(4)

By adding ", distorting" after "preventing".

New

By adding -

**"14A. Provisions supplementary to sections 13 and 14**

(1) The conduct of an associate of a licensee, or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14.

(2) A person sustaining loss or damage from a breach of section 13(1) or 14(1), or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee who is in breach.

(3) No action may be brought under subsection (2) more than 3 years after -

(a) the commission of the breach concerned referred to in that subsection; or

(b) the imposition under section 27 of a penalty in relation to the breach,

whichever is the later.

(4) For the avoidance of doubt, it is hereby declared that a breach of section 13(1) or 14(1) occurs when the Broadcasting Authority forms the opinion referred to in section 13(1) or 14(4) respectively."

16(2) (c)

By deleting "practices" and substituting "principles".

18

By adding "educational" after "any".

20

(a) In subclause (2) -

(i) by deleting "A" and substituting

"Subject to subsection (2A), a";

(ii) by deleting "at all reasonable times when directed in writing to do so by the Broadcasting Authority" and substituting "on or before the 1st of April of each year".

(b) By adding -

"(2A) Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months."

23

By adding -

"(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit."

24

(a) In subclause (1), by deleting "this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance" and substituting "a prescribed Ordinance in order to ensure a licensee's compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is

applicable to it, or a provision of a Code of Practice which is applicable to it".

(b) In subclause (3)(a), by adding "as referred to in subsection (1)" after "Authority".

(c) By adding -

"(11) For the avoidance of doubt, it is hereby declared that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this section."

25

By deleting the clause and substituting -

**"25. Broadcasting Authority  
may obtain information**

(1) If the Broadcasting Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Broadcasting Authority's investigation of a breach or suspected breach of a requirement of this Ordinance, a licence condition, or a direction, order, or determination, under this Ordinance, the Broadcasting Authority may serve a notice in writing on the person -

(a) requesting the person to -

(i) give the information

or document in  
writing to the  
Broadcasting  
Authority; or

- (ii) produce the document  
to the Broadcasting  
Authority,

as the case requires, before a  
date ("the relevant date")  
specified in the notice, being  
a date reasonable in all the  
circumstances of the case;

- (b) stating that if the person is  
of the view that he cannot, or  
does not wish to, comply with  
the request, then he may make  
representations in writing to  
the Broadcasting Authority as  
to why he is of that view  
before the relevant date; and
- (c) accompanied by a copy of this  
section in the Chinese and  
English languages.

(2) Where the Broadcasting Authority  
receives representations referred to in  
subsection (1)(b) from a person, the  
Broadcasting Authority shall -

- (a) consider them; and
- (b) serve a notice in writing on the person stating that the Broadcasting Authority has considered the representations and that -

(i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection;

or

(ii) the notice under subsection (1) served on the person remains in force and the Broadcasting Authority will on a date specified in the notice under this subsection seek an order under subsection (3) unless the person has, before the date,

complied with the  
notice under  
subsection (1) served  
on the person.

(3) Where a notice under subsection (1)  
served on a person has not been withdrawn  
under subsection (2)(b)(i) and the person has  
not complied with the notice before the  
relevant date, or before the date specified in  
the notice under subsection (2) served on the  
person, as the case requires, then a  
magistrate may -

- (a) if satisfied by information on  
oath that there are reasonable  
grounds for believing that the  
person is, or is likely to be,  
in possession of the  
information or document to  
which the first-mentioned  
notice relates and that the  
information or document is  
relevant to the Broadcasting  
Authority's investigation of a  
breach or suspected breach of a  
requirement of this Ordinance,  
a licence condition, or a  
direction, order, or

determination, under this  
Ordinance; and

- (b) after considering the  
representations, if any,  
referred to in subsection (1)(b)  
received by the Broadcasting  
Authority in consequence of the  
service of the notice,

issue an order that the person shall, within  
the time specified in the order, give the  
information or document in writing to the  
Broadcasting Authority or produce the document  
to the Broadcasting Authority, as the case  
requires.

(4) Any information or document to be  
given or produced to the Broadcasting  
Authority by a person in compliance with a  
notice under subsection (1) or an order under  
subsection (3) shall be so given or produced  
by reference to the information or document at  
the time of service of that notice except that  
the information or document may take account  
of any processing -

- (a) made between that time and the  
time when the information or  
document is so given or  
produced; and

(b) that would have been made  
irrespective of the service of  
that notice.

(5) The Broadcasting Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (6) and if the Broadcasting Authority considers that it is in the public interest to disclose that information or document, as the case may be.

(6) The Broadcasting Authority shall give a person giving or producing any information or document under this section a reasonable opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Broadcasting Authority makes a final decision to disclose the information or document, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person

that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document contrary to that agreement.

(8) A person commits an offence if he, without reasonable excuse -

- (a) fails to comply with an order under subsection (3);
- (b) fails to comply with subsection (4); or
- (c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(9) In this section, "processing" ( ), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise."

26(3)

By deleting the clause and substituting -

"(3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of the information under subsection (2)(c) or (d) before the Broadcasting Authority makes a final decision to disclose the information."

27

By adding -

"(3A) Where the Broadcasting Authority considers that if it were to impose a financial penalty under subsection (3) it would not be adequate for a breach of section 13(1) and 14(1) -

(a) the Broadcasting Authority

may -

- (i) within 3 years of the commission of the breach; or
- (ii) if the breach comes to the notice of the Broadcasting Authority within 3 years of its commission, within 3 years of it so coming

to the notice of the  
Broadcasting  
Authority,

whichever is the later, make an  
application to the Court of  
First Instance; and

- (b) upon such application, the  
Court of First Instance may,  
without prejudice to any powers  
conferred on the Broadcasting  
Authority by any provision of  
this Ordinance or any  
regulation made thereunder or  
any licence condition, impose  
upon the licensee who has  
committed the breach a  
financial penalty of a sum not  
exceeding 10% of the turnover  
of the licensee in the relevant  
television programme service  
market in the period of the  
breach, or \$2,000,000,  
whichever is the higher, and  
also specify when any such  
financial penalty is due for  
payment.

(3B) The Broadcasting Authority shall not

impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty."

29(1) By adding "(including within such period and within such time of day)" after "manner".

30 (a) In subclause (2) -

(i) by deleting paragraph (a)(ii) and substituting -

"(ii) any financial penalty when it is due for payment -

(A) as specified by the Court of First Instance under section 27(3A)(b);

or

(B) under section 28(4); or";

(ii) in paragraph (b)(ii), by deleting ", or has been facilitated by a neglect of,".

(b) In subclause (3) -

- (i) in paragraph (a)(i), by deleting "  
and" and substituting ";
- (ii) in paragraph (b), by deleting  
"suspension." and substituting  
"suspension; and";
- (iii) by adding -

"(c) in the case of a domestic  
free television programme  
service or a domestic pay  
television programme  
service where subsection  
(2)(b) is applicable,  
conduct a public hearing  
in accordance with  
procedures for the hearing  
determined by the  
Broadcasting Authority."

31(4)

By deleting the clause and substituting -

"(4) After section 32 has been complied  
with but subject to subsection (4A), the Chief  
Executive in Council or the Broadcasting  
Authority, as the case may require, may, by  
notice in writing served on the licensee,  
revoke a licence -

- (a) for failure by the licensee to  
pay -

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 60 days beginning on the date the payment is due; or

(ii) any financial penalty within 60 days beginning on the date the payment is due -  
(A) as specified by the Court of First Instance under section 27(3A)(b); or  
(B) under section 28(4);

(b) if the licensee -

(i) goes into compulsory liquidation or into voluntary liquidation other than for the purposes of amalgamation or reconstruction; or

(ii) enters into a  
composition or  
arrangement with its  
creditors; or

(c) if, as may be applicable in the  
particular case, having regard  
to all the circumstances,  
including the number of  
occasions and the gravity in  
respect of which, after the  
issue of the licence -

(i) the licensee has  
contravened -

(A) a licence  
condition;

(B) a requirement  
under this  
Ordinance which  
is applicable to  
it;

(C) a direction,  
order, or  
determination,  
under this  
Ordinance which  
is applicable to  
it; or

(D) a provision of a Code of Practice which is applicable to it, and the licensee has failed to comply with a direction under section 23(1) relating to that contravention;

(ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of the licensee.

(4A) The Chief Executive in Council or the Broadcasting Authority shall not exercise a power under subsection (4) until after considering -

- (a) in the case of the Chief Executive in Council, the recommendations of the Broadcasting Authority; and
- (b) in the case of both the Chief Executive in Council and the Broadcasting Authority, such information, matter and advice as he or it thinks fit."

35

By adding -

"(5A) Where subsection (3) applies to an application under subsection (2), the Court of First Instance shall not make an interim order under subsection (4) or (5) unless it is satisfied that it is a case of urgency."

41

(a) In subclause (1) -

- (i) in paragraph (a), by adding  
", additional to those specified elsewhere in this Ordinance," after  
"requirements";
- (ii) in paragraph (b), by adding "on the grounds specified in the regulation" after "case";
- (iii) in paragraph (c), by adding  
", additional to those elsewhere

specified in this Ordinance," after  
"requirements".

(b) By deleting subclause (2) and substituting -

"(2) Subject to subsection (2A),  
regulations under subsection (1) shall be  
subject to the approval of the  
Legislative Council.

(2A) Subject to subsection (2B),  
subsection (2) shall not apply to  
regulations under subsection (1)(f) or  
regulations under subsection (1)(g) to  
the extent that they relate to subsection  
(1)(f).

(2B) Subsection (2A) shall not apply  
to regulations relating to section  
13(4)(b) or (5)(b)."

42(1) By adding "or 3" after "Schedule 1".

Schedule 1 (a) In the heading immediately before Part 1, by  
adding "DOMESTIC FREE OR PAY TELEVISION  
PROGRAMME SERVICE" after "HOLDING".

(b) In Part 2, in the heading, by adding "DOMESTIC  
FREE OR PAY TELEVISION PROGRAMME SERVICE"  
after "HOLDING".

(c) In section 3, by adding -

"(3) In considering the public

interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters -

- (a) the effect on competition in the relevant service market;
  - (b) the extent to which viewers will be offered more diversified television programme choices;
  - (c) the impact on the development of the broadcasting industry; and
  - (d) the overall benefits to the economy."
- (d) In section 7(a), by deleting "local newspaper within the meaning of the Registration of Local Newspapers Ordinance (Cap. 268)" and substituting "newspaper printed or produced in Hong Kong".
- (e) In section 15(6), by deleting paragraph (c).
- (f) In Part 3, in the heading, by adding "(NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCES)" after "CONTROLLERS".
- (g) In section 29 -

- (i) by deleting subsection (5) and substituting -

"(5) Subject to subsection (6), any information which is furnished by a person in confidence under this Part shall be treated as confidential.";

- (ii) by deleting subsection (6) (c).

- (h) In Part 4, in the heading, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "RESTRICTION ON".

- (i) By deleting section 33 and substituting -

**"33. Restrictions on licensees exercising control on disqualified person without Chief Executive in Council's approval**

- (1) A licensee shall not exercise control on a disqualified person -

- (a) unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise; and

- (b) except in accordance with

such conditions as are  
specified in the approval.

(2) In considering public interest  
for the purposes of subsection (2),  
account shall be taken of, but not  
limited to, the following matters -

- (a) the effect on competition  
in the relevant service  
market;
- (b) the extent to which  
viewers will be offered  
more diversified  
television programme  
choices;
- (c) the impact on the  
development of the  
broadcasting industry; and
- (d) the overall benefits to  
the economy."

- Schedule 4
- (a) In section 3(1)(a), (b) and (c), by adding "or  
the Broadcasting Authority" after "Government".
  - (b) By deleting section 10 and substituting -  
    - "10. **Minimum duration of  
television programme  
service**
    - The duration of each language  
television programme service provided

under a deemed licence, within the meaning of Schedule 8 to this Ordinance, falling within section 2(1) of that Schedule shall be not less than 5 hours for each day."

(c) In section 11(2), by adding ", or would have adversely affected," after "affect".

(d) By deleting section 13 and substituting -

**"13. Annual payment of fees**

Subject to section 5 of Schedule 8 to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed."

Schedule 5 In section 1, by adding ", 10" after "3".

Schedule 7 In section 1, by deleting ", without the prior approval in writing of the Chief Executive in Council,".

Schedule 8 (a) By deleting section 5 and substituting -

**"5. Payment of annual fees**

(1) In the case of a deemed licence falling within section 2(1), (2) or (3) -

(a) the Financial Secretary

may, by notice in writing served on the licensee, specify the fee to be paid to the Government by the licensee -

(i) for the year commencing on the relevant day; and

(ii) not later than 30 days after the relevant day; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the expiration of that year.

(2) In the case of a deemed licence falling within section 2(4) -

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence;

nce

1 -

or

- (ii) the surrender of  
the licence for  
another licence,

whichever is the earlier;

and

- (b) section 13 of Schedule 4  
to this Ordinance shall  
not apply to the licensee  
until the occurrence of  
the event mentioned in  
paragraph (a)(i) or (ii).

(3) In the case of a deemed licence  
falling within section 2(5) -

- (a) the licensee shall  
continue to comply with  
the provisions of the  
licence relating to a  
licence fee until -

- (i) the expiration  
of the licence;

or

- (ii) the surrender of  
the licence for  
another licence,

whichever is the earlier;

and

(b) section 13 of Schedule 4  
to this Ordinance shall  
not apply to the licensee  
until -

(i) the occurrence  
of the event  
mentioned in  
paragraph (a)(i)  
or (ii); and

(ii) the licence held  
by the licensee  
does not specify  
a licence fee to  
be paid by the  
licensee to the  
Government.

(4) A notice under subsection (1)(a)  
served on a licensee shall be deemed to  
be a condition specified in the deemed  
license held by the licensee requiring  
the licensee to pay to the Government the  
fee specified in the notice.

(5) Where -

(a) a licensee has before the  
relevant day paid an  
annual fee for a deemed  
licence falling within

section 2(1), (2) or (3);

(b) the period for which that fee has been paid would, but for the commencement of section 43(1) of this Ordinance, expire on or after the relevant day; and

(c) the licensee has paid the fee required by subsection (1)(a),

then the Financial Secretary shall remit to the licensee so much of the annual fee referred to in paragraph (c) as is equivalent to so much of the fee referred to in paragraph (a) which, on a pro rata basis, relates to so much of the period referred to in paragraph (b) which would, but for the commencement of section 43(1) of this Ordinance, run on and after the relevant day."

(b) In section 8 -

(a) by renumbering it as section 8(1);

(b) by adding -

"(2) It is hereby declared that a royalty within the

meaning of the repealed Ordinance payable by a licensee (or former licensee) within the meaning of that Ordinance is payable on a pro rata basis in respect of that portion of the licensee's (or former licensee's) accounting year which has effluxed before the relevant day, and subsection (1) shall apply accordingly."

(c) By adding -

"10. **Certain Codes of Practice applicable for interim period for licensees that are holders of deemed licence**

Where -

- (a) a Code of Practice ("old Code") within the meaning of section 2 of the repealed Ordinance was in force immediately before the relevant day; and
- (b) a licensee who is the holder of a deemed licence was required to comply with the old Code immediately before the

relevant day,

then -

- (i) the old Code shall, in relation to the licensee, be deemed to be a Code of Practice within the meaning of section 2 of this Ordinance until the date on which a Code of Practice approved under section 3 of this Ordinance, and expressed to be in substitution for the old Code, comes into effect; and
- (ii) subject to paragraph (iii), the licensee shall comply with the old Code until that date; and
- (iii) the old Code shall be read and have effect with such modifications as are necessary to take into account the provisions of this Ordinance,

and the provisions of this Ordinance

(including sections 22(2)(d), 23,

27(2)(d), 29(2)(d), 30(2)(b)(i)(D) and 31(4)(c)(i)(D) of this Ordinance) shall be construed accordingly."

Schedule 9 (a) By adding immediately before section 6 -

"5A. Schedule 1

Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended, in Part II, by repealing "HOTEL TELEVISION SERVICES LICENCE" and substituting "HOTEL TELEVISION (TRANSMISSION) LICENCE".

(b) In section 6 -

(i) by deleting "to the Telecommunications Regulations (Cap. 106 sub. leg.)";

(ii) by deleting paragraph (a) and substituting -

"(a) by repealing "HOTEL TELEVISION SERVICES LICENCE" and substituting "HOTEL TELEVISION (TRANSMISSION) LICENCE";";

(iii) in paragraph (b) -

(A) by adding "a service, licence or licensee under" after "form to";

- (B) by adding "a service, licence or licensee under" after "reference to".
- (c) In section 14, in the proposed section 9(1)(d), by adding "including, without limitation, restrictions on the time of day when programmes and advertisements may be provided, whether for the same or different licensees or broadcasts" after "broadcasts".
- (d) By deleting section 19 and substituting -
- "19. Authority may impose financial penalties**
- Section 24 is amended -
- (a) in subsection (3) -
- (i) in paragraph (a),  
by repealing  
"\$20,000" and  
substituting  
"\$80,000";
- (ii) in paragraph (b),  
by repealing  
"\$50,000" and  
substituting  
"\$200,000";
- (iii) in paragraph (c),  
by repealing  
"\$100,000" and

substituting

"\$400,000";

(b) by adding -

"(3A) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty."

(e) In section 20, in the proposed section 25A, by adding "(including within such period and within such time of day)" after "manner".