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**Paper for the House Committee Meeting
of the Legislative Council
on 18 February 2000**

**Legal Service Division Report on
Broadcasting Bill**

Object(s) of the Bill

To implement the policy recommendations arising from the 1998 Review of Television Policy following the consultation on proposals set out in the consultation paper entitled “1998 Review of Television Policy” issued by the Information Technology and Broadcasting Bureau in September 1998 with a view to -

- (a) widening programme choice;
- (b) encouraging investment, innovation and technology transfer in the broadcasting industry;
- (c) ensuring fair and effective competition in the provision of broadcasting services;
- (d) ensuring that broadcasting services do not offend public taste and decency; and
- (e) promoting the development of Hong Kong as a regional broadcasting and communications hub.

LegCo Brief Reference

2. ITBB(CR) 9/19/1(00) Pt. 7 dated 28 January 2000 issued by the Information Technology and Broadcasting Bureau.

Date of First Reading

3. 16 February 2000.

Comments

4. At present, the regulatory regime for television broadcasting is set out in the Television Ordinance (Cap. 52), the Telecommunication Ordinance (Cap. 106) and the Broadcasting Authority Ordinance (Cap. 391). Those Ordinances have been constantly reviewed and amended in the past ten years to enable new services to be introduced and to keep pace with fast developing technologies. In the light of technological developments and changing market demands, the Government has formulated a new regulatory framework for television broadcasting to replace the present transmission-based licensing and regulatory regime. The Bill proposes to repeal the Television Ordinance (Cap. 52). Most of the proposals in this Bill are modelled on the proposals set out in the consultation paper entitled “The 1998 Review of Television Policy” published by the Information Technology and Broadcasting Bureau on 3 September 1998.

Regulatory and licensing framework

5. The Bill introduces a technology-neutral regulatory regime to facilitate the provision of new services made possible by convergence in telecommunications, broadcasting and information technology at both the technical and service levels. Under this new regime, four categories of television programme services, collectively defined as “broadcasting service” will be licensed under the Bill. The details of these four categories of services are as follows -

(a) Domestic free television programme service	<ul style="list-style-type: none">● Service primarily targeting Hong Kong;● Intended or available for reception by the public free of charge in Hong Kong; and● Intended or available for reception by an audience of more than 5,000 domestic premises or hotel rooms in Hong Kong.
(b) Domestic pay television programme service	<ul style="list-style-type: none">● Service primarily targeting Hong Kong;● Intended or available for reception by the public on payment of a subscription in Hong Kong; and● Intended or available for reception by an audience of more than 5,000 domestic premises or hotel rooms in Hong Kong.

<p>(c) Non-domestic television programme service</p>	<ul style="list-style-type: none">● Service not primarily targeting Hong Kong; and● Intended or available for reception by the public free of charge in Hong Kong or on payment of a subscription in Hong Kong; or● Neither intended nor available for reception by the public free of charge in Hong Kong or on payment of a subscription in Hong Kong.
<p>(d) Other licensable television programme service</p>	<ul style="list-style-type: none">● Intended or available for reception free of charge in Hong Kong or on payment of a subscription in Hong Kong; and● Intended or available for reception by an audience of not more than 5,000 domestic premises or hotel rooms in Hong Kong.

6. Under the Bill, certain services are not regarded as television programme services for the purposes of the Bill and will therefore be exempted from its application. These services include those which consist of television programmes that are made solely for the performance or display in a public place, telecommunications services like transactional services and video conferencing, services provided on the Internet, etc.

7. Clause 8 of the Bill specifies to whom a licence may be granted. In the case of a domestic free television programme ("Domestic Free") service licence or domestic pay television programme ("Domestic Pay") service licence, except with the approval of the Broadcasting Authority ("BA"), the majority of the directors of the company to which the licence is granted ("the company") and the majority of the principal officers of the company, including the principal officer in charge of the selection, production or scheduling of television programmes, must be for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years. "Principal officer" is defined to mean a person employed or engaged by the company who is responsible under the immediate authority of the directors of the company for the conduct of the business of the company or who performs managerial functions in respect of the company under the immediate authority of a director of the company or a person responsible for the conduct of the company's business.

8. The Bill also provides that in the case of Domestic Free and Domestic Pay service licences, disqualified persons may not exercise control of the licensees and vice versa without the approval of the Chief Executive in Council. Disqualified persons include licensees in the same or different category of licence, advertising agents, sound broadcasting licensees and newspaper proprietors, their controllers and associates.

Competition safeguards

9. At present, all broadcasting licences already contain a free competition clause which prohibits a licensee from entering into any agreement or arrangement which will restrict competition in relation to the establishment, provision or operation of any telecommunication or broadcasting service. To strengthen these competition safeguards and in line with the present practice adopted in the fixed telecommunications market, the Bill makes provisions against anti-competitive trade practices by a licensee and abuse of position by a dominant licensee. Similar safeguards are provided in the Telecommunication (Amendment) Bill 1999, which is being scrutinized by a Bills Committee.

10. Other proposals for promoting fair competition in the television market are summarised as follows:-

- (a) empowering the BA to require a television programme service licensee to supply information relating to its business; to determine dominance in the television market; to investigate and make determinations of anti-competitive practices; to require a licensee to cease and desist from an anti-competitive practice; and to impose financial penalties;
- (b) increasing the penalties for breach of regulatory provisions by television broadcasting licensees which the BA may impose, from \$50,000 to \$200,000 for the first occasion of breach; \$100,000 to \$400,000 for a second and \$250,000 to \$1,000,000 for a third and subsequent occasions; and
- (c) abolishing the charging of advertising and subscription royalties on broadcasting licensees to reduce licensees' operational costs and thereby enhance their competitiveness.

Licence fees

11. In order to streamline administrative procedure, the Bill provides that the annual licence fee for licences granted in respect of the four categories of services set out in paragraph 5 above will be specified in the licence conditions instead of by subsidiary legislation. According to the Administration, the licence fees will be calculated on a full cost recovery basis.

Other provisions

12. Other provisions of the Bill deal with the following matters -
- (a) the BA's power to approve and issue codes of practice for the purpose of providing practical guidance to licensees in respect of requirements under the Bill imposed on licensees or in respect of licence conditions;
 - (b) the BA's power to issue guidelines to help licensees or companies seeking to be licensees understand the considerations the BA intends to adopt in performing its functions under the Bill;
 - (c) appeal against decisions made by the BA to the Chief Executive in Council; and
 - (d) transitional and consequential amendments following the repeal of the Television Ordinance.
13. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.

Public Consultation

14. The proposals have been the subject of two rounds of consultation with the broadcasting industry and the community. The BA has been consulted and is supportive of the Bill.

Consultation with the LegCo Panel

15. The LegCo Panel on Information Technology and Broadcasting was briefed on the Bill at its meeting on 14 February 2000. At the meeting, some members of the Panel raised queries on the licensing framework and the effectiveness of the competition provisions, etc.

Conclusion

16. As this Bill introduces important changes to the control and regulation of broadcasting services in Hong Kong, Members are recommended to form a Bills Committee to study the Bill in detail.

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