

立法會 *Legislative Council*

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(These minutes have been seen
by the Administration and
cleared by the Chairman)

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Panel on Information Technology and Broadcasting

**Minutes of special meeting
held on Friday, 27 June 2003, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Howard YOUNG, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon CHAN Kwok-keung
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Dr Hon LAW Chi-kwong, JP
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP
- Members absent** : Hon Eric LI Ka-cheung, JP
Dr Hon Philip WONG Yu-hong
Hon Timothy FOK Tsun-ting, SBS, JP
- Non-Panel Members attending** : Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon Michael MAK Kwok-fung
- Public officers attending** : Agenda Item I
Mr Henry TANG, GBS, JP
Secretary for Commerce, Industry and Technology

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Information Technology and
Broadcasting)

Ms Lorna WONG
Commissioner for Television and Entertainment
Licensing

Mr Danny LAU
Assistant Director of Telecommunications

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

Ms Sharon CHAN
Legislative Assistant 6

I Issues relating to sound broadcasting licence renewal

LC Paper No.CB(1)2096/02-03(01) -- Information paper on "Sound
Broadcasting Licence Renewal"
provided by the Administration

LC Paper No.CB(1)2096/02-03(02) -- Information paper on
"Complaint Handling Procedure
of the Broadcasting Authority"
provided by the Administration

LC Paper No.CB(1)2096/02-03(03) -- Part IIIA of
Telecommunications Ordinance
(Cap. 106)

LC Paper No.CB(1)2096/02-03(04) -- Broadcasting Authority
Ordinance (Cap 391)

LC Paper No.CB(1)2096/02-03(05) -- Letter from Hon Emily LAU dated 16 June 2003 addressed to the Chief Executive and copied to the Panel Chairman (Chinese version only)

The Chairman informed the Panel that letters had been sent to the Administration and to the Broadcasting Authority (BA) inviting the Secretary for Commerce, Industry and Technology (SCIT) and the Chairman of Broadcasting Authority respectively to attend this special meeting. The Chairman of BA was out of town and could not attend the meeting. Copies of the relevant invitation letters and the reply from BA had been issued to members for information (vide LC Paper No. CB(1)2096/02-03).

2. At the invitation of the Chairman, SCIT briefed members on issues relating to the sound broadcasting licence renewal exercise and the complaint handling procedures of the BA. He stressed that consideration of the licence renewal of Commercial Radio Hong Kong (CRHK) was independent of BA's recent warnings issued against each of the two editions of "Tea Cup in the Storm" on 24 and 25 April 2003. As the existing licences of CRHK and Metro Broadcast Corporation Limited (Metro) would expire on 25 August 2004, BA had submitted its recommendations to the CE in C in May 2003, i.e. not less than 15 months before the expiry date of the licences pursuant to section 13E(1) of the Telecommunications Ordinance (TO) (Cap. 106). In case CE in C refused to renew any of the licences, a 12-month advance notice should be given to the licensee under section 13E(3) of TO. He assured members that as an independent statutory body, BA would ensure appropriate programme, advertising and technical standards for television and sound broadcasting would be adopted in Hong Kong and would continue to deal with complaints in an impartial and objective manner independent of political considerations.

Renewal of licence and Broadcasting Authority's sanction

3. Ms Cyd HO did not subscribe to SCIT's claim that consideration of the licence renewal of CRHK was independent of BA's recent warnings issued to it. She pointed out that in making recommendation to CE in C, BA must have given due regard to the performance of CRHK during the licence period, including the record of any sanctions given. In deciding whether or not to renew the licence of CRHK, CE in C would take into account BA's recommendations. Hence, it was inevitable that the warnings given to each edition of "Tea Cup in the Storm" broadcast on 24 and 25 April 2003 would form part of the consideration. Ms HO also sought explanation as to why BA had issued warnings, which was a more serious form of sanction than the sanction of strong advice as proposed by the Broadcasting Authority Complaint Committee (BACC). Dr LAW Chi-kwong was also very concerned about the relationship between the warnings issued by BA to CRHK and BA's

recommendation on the renewal of licence of CRHK.

4. Ms Emily LAU thanked SCIT for attending the meeting and explaining the matter to members. Echoing Ms Cyd HO's view, Ms Emily LAU asked whether BA had submitted any supplementary information to CE in C after it had issued warnings to CRHK on 14 June 2003; and whether CE in C or any of the committees under the Executive Council (ExCo) had discussed issues relating to the renewal of the licence of CRHK.

5. In response, SCIT advised that when BA made its recommendation to CE in C on licence renewal, it had taken into consideration the public views collected and the overall performance of the licensee. On the timing, he pointed out that BA had submitted its recommendations regarding the renewal or otherwise of licences of CRHK and Metro to CE in C in May 2003, while the warnings to CRHK were issued on 14 June 2003. SCIT confirmed that BA had not submitted a further report to CE in C and that so far, the matter had not been discussed formally at any ExCo meeting. However, he was aware that some non-official members of ExCo met informally from time to time to exchange views on issues of concern.

6. SCIT stressed that in handling complaints against television or radio broadcast material, including the complaints against the two editions of the "Tea Cup in the Storm" broadcast on 24 and 25 April 2003, BA had all along followed the established procedures. In reply to Ms Cyd HO's query about the need for BA to conduct an inquiry before making recommendations to the CE in C, SCIT clarified that section 21(1) of the Broadcasting Authority Ordinance (BAO) (Cap. 391) was not relevant to the present issue as it related to the revocation of licences and not the renewal of licences for sound broadcasters. In this regard, Mr YEUNG Yiu-chung remarked that the outcome of the licence renewal exercise, which would be available soon, would be self-evident on whether consideration of the licence renewal of CRHK was independent of political considerations.

Transparency in the decision-making process

7. Ms Emily LAU reflected the concern of the public that the issuance of warnings to CRHK was paving the way to increased restriction on freedom of speech in the face of the imminent enactment of the National Security (Legislative Provisions) Bill. To dispel unnecessary speculation, she urged the Administration to disclose BA's report submitted to CE in C in May 2003. As the Administration had previously reported that the public had expressed satisfaction with the services of CRHK and Metro at a public hearing on 5 November 2002, Ms LAU considered that CE in C should also take into account the views of the public on the recent warnings given to CRHK if the warnings had formed part of the consideration. To enhance transparency of the matter, she urged the Administration to keep members and the public informed of the development of the licence renewal of CRHK and Metro and

explain to the Panel well before 25 August 2003 if it was decided that the licence of CRHK would not be renewed.

Admin 8. In response, SCIT said that BA's recommendation to CE in C could not be disclosed. However, he undertook to brief the Panel on further progress of the renewal of the licences of CRHK and Metro in due course.

9. In this regard, Mr Albert CHAN commented that as revealed in recent incidents, some directors of bureau were unaware of certain major changes to/decisions on policies under their purviews. Mr CHAN was gravely concerned that although SCIT might have the good intention to enhance transparency throughout policy formulation and implementation, he might be kept in the dark for certain major decisions, such as disapproval of the application for licence renewal of CRHK without his knowledge.

Considerations for licence renewal

10. Mr Albert CHAN further remarked that there might be a potential conflict of interest for CE in C to consider the renewal of licences for sound broadcasters which had produced programmes criticizing the performance of the Administration. He was therefore keen to ensure that plurality of views would not be undermined by political considerations.

11. In response, SCIT pointed out that in accordance with the licence conditions, a licensee should ensure that its programming was balanced in content and should provide an adequate and comprehensive service which was responsive to the diverse needs and aspirations of the community. As long as the licensees complied with the licence conditions, the codes of practice and other statutory requirements, SCIT did not see any cause for concern. He said that the Administration adopted an open attitude towards any critical comments raised during the programmes produced by the licensees.

12. Noting that one of the main considerations was whether the licensee was providing the required quantities of positive programmes to cater to the diverse needs of the community, Dr LAW Chi-kwong asked whether such needs included the political needs of the Administration. In response, SCIT said that the sound broadcasters were merely required to broadcast announcements of public interest (API) not exceeding one minute in each broadcasting hour according to the schedule of the Information Services Department. Dr LAW Chi-kwong stated his strong view that such APIs should be restricted to the dissemination of information on government services, instead of advocating government policies or political stance such as soliciting public support for the National Security (Legislative Provisions) Bill.

"Tea Cup in the Storm" broadcast on 24 and 25 April 2003

13. Mr Fred LI was of the view that the relatively critical style of the programme host of "Tea Cup in the Storm" was one of the factors accounting for the popularity of the programme. In this regard, he enquired whether complaints had been received against the programme since its launch, and if yes, the number.

14. The Commissioner for Television and Entertainment Licensing (C for TEL) advised that since the Administration revised the Radio Code of Practice on Programme Standards in June 2001, some 70 complaints against "Tea Cup in the Storm" had been received, prior to the two editions in question. The substance of the complaints included biased/inaccurate content, rude/abusive language and material unsuitable for children. After review, only one out of these 70 odd complaints was substantiated. A strong advice had been issued against the edition of the programme broadcast on 9 October 2001 in which the host had uttered a triad expression. She attributed the low number of substantiated cases to the relatively lenient programme standards for personal view programmes.

15. Mr Fred LI said that it might be possible that the complaints received against the phone-in programme of "Tea Cup in the Storm" were organized complaints. He enquired if BA and BACC had taken this into account when they considered the complaint cases. He also sought information on CRHK's right to appeal, if any, against BA's decision.

16. In response, SCIT advised that pursuant to section 26(1) of BAO, a licensee aggrieved by the decision of the BA might appeal to the CE in C within 30 days of the notification to him of the decision. So far, no appeal had been lodged by CRHK. C for TEL highlighted that BACC would consider each complaint and the representation from the concerned licensee carefully before making recommendations and proposing the sanction, if any, to the BA. However, BACC and BA were not in a position to ascertain whether the complaints were organized or not.

17. Having listened to the two editions of "Tea Cup in the Storm" broadcast on 24 and 25 April 2003, Mr Michael MAK considered that the performance of the programme host at both editions was not in contravention of the Radio Code of Practice on Programme Standards. He said that it was very subjective to judge whether the programme host was abusive, rude, and disrespectful to the representatives of the Housing Department (HD) and the Hospital Authority (HA). He supported the programme host in querying the representative of HA regarding personal protective gear available to pregnant frontline staff of HA during the outbreak of the Severe Acute Respiratory Syndrome. As regards the right to reply, Mr MAK opined that the representatives concerned might respond by returning calls to the programme host afterwards or on the next day. Unless such attempts failed, the allegation

that the representatives were not given a suitable opportunity to respond could not be substantiated. He also asked whether BA had interviewed the HA and HD representatives and if so, whether they had complained about being deprived of the opportunity for response.

18. In response, C for TEL clarified that paragraph 11(a) to (d) in the Administration's paper (LC Paper No CB(1)2096/02-03(01)) was the substance of the complaints against the programme broadcast on 24 and 25 April 2003. Having considered the complaints, the BA was of the view that the programme host had repeatedly interrupted the representatives' attempts to respond and deprived them of their right of reply. CRHK was thus given a warning for each edition of the programme for its failure to observe the relevant Radio Code of Practice relating to the right of reply.

Admin 19. As regards Mr Michael MAK's view that the representatives might respond by returning calls to the programme host afterwards or on the next day, C for TEL pointed out that as the audience of a certain edition of a programme might not necessarily listen to the same programme again the following day, complaints were investigated and considered based on individual programme editions. She also explained that under existing procedures, BA and BACC would not interview the representatives concerned because listening to the recording of each edition would suffice in assessing whether they had been accorded the opportunity to respond. At Ms Emily LAU's request, C for TEL undertook to provide further details on the substantiated complaints against broadcasters who were given advices, strong advices, warnings, serious warnings and financial penalties by BA during the past three years.

(Post-meeting note: The relevant information provided by the Administration was circulated to members on 10 July 2003 vide LC Paper No. CB(1)2197/02-03(01))

20. Noting that BA's decision to issue warnings to CRHK had given rise to some 3 000 objections, Mr Michael MAK queried the credibility of BA as an impartial statutory body. The Chairman also enquired if BA had invited representations from CRHK and the HA/HD representatives concerned for its consideration.

21. SCIT did not consider that the credibility of BA was questionable. He stressed that under BAO, BA was empowered to handle complaints and all along, it had dealt with complaints in an impartial manner in accordance with established requirements and procedures. He said that subsequent to its warnings given to CRHK, the BA had received views expressing support, as well as objection, to its decision. This situation reflected fully the pluralistic nature of the Hong Kong community. He also confirmed that CRHK had made representations to BACC and BA.

Licence period

22. The Chairman said that he was aware of informal reports that the 12-year licence of CRHK might be shortened upon renewal. In reply, SCIT confirmed that the current licence of CRHK was a three-year licence from 26 August 2001 to 25 August 2004. Prior to this, CRHK had been granted a licence in August 1989 for a term of 12 years expiring on 25 August 2001. On the background leading to the three-year licence, SCIT explained that in 1999, pending finalization of the policy on digital audio broadcasting, CRHK had submitted to BA on 27 August 1999 an application for renewal of its licence for three years ending 25 August 2004. This would enable CRHK to continue its existing analogue sound broadcasting service while it might consider its future plans on digital audio broadcasting in the event that the Government decided to take on board the policy. In reply to members, SCIT confirmed that the Administration's position on digital audio broadcasting in Hong Kong remained open. The period of the licences to be granted to CRHK and Metro upon the current renewal would be decided by CE in C having regard to all relevant factors.

Admin

23. In this connection, the Chairman urged the Administration to finalize its policy decision on digital audio broadcasting early and revert to the Panel. Mr Albert CHAN was keen to ensure that the review of licence period, if any, should not be based on factors other than technological considerations. In this connection, Ms Emily LAU requested the Secretariat to prepare some background information on the licence period for the existing sound broadcasting licence of CRHK and Metro for members' reference.

Clerk

(Post-meeting note: An information note on the arrangements for the existing sound broadcasting licence of CRHK and of Metro prepared by the Secretariat was issued to members on 10 July 2003 vide LC Paper No. CB(1)2193/02-03(01))

Composition of Broadcasting Authority and its committees

24. Noting that public officials were serving as members of BA, Mr Fred LI cast doubt on the impartiality of BA in handling complaints involving public officers such as the editions of "Tea Cup in the Storm" broadcast on 24 and 25 April 2003 in which public officers were criticized. Ms Emily LAU shared Mr LI's view and urged the Administration to review whether representatives of the Government should be appointed as members of BA in view of the possible conflict of interests. Given the large number of objections received by BA against the warnings given to CRHK, Mr Albert CHAN also urged the Administration to review whether the current composition of BA and BACC could adequately reflect the needs and aspirations of the community at large.

Admin

25. On concerns about membership and impartiality of BA, SCIT believed that public officers serving in BA as official members would abide by the rules and procedures regarding conflict of interests and handle all complaint cases in an unbiased manner. Nevertheless, he noted members' concern about the need to review the current composition of BA, in particular the appointment of official members. C for TEL supplemented that to widen the scope of its representation, BACC had co-opted five members from the community. As far as she understood, members of BACC had not declared any conflict of interest simply because they knew the persons involved in a complaint.

Editorial plurality

26. Ms Emily LAU recalled a past incident in which the Chief Editor of Metro had resigned for the reason that management had interfered with editorial freedom. She questioned whether the sound broadcasting licensee concerned had breached any statutory requirement for the purpose of ensuring editorial plurality. In this connection, Mr Albert CHAN recapped his concern raised at the Panel meeting on 9 December 2002 that a certain sound broadcasting station had been instructed by management not to broadcast views expressed by Ms Emily LAU and himself. Given that radio frequency spectrum was a public asset, Mr CHAN stressed that it must not be used to serve the interests of those who owned or controlled the station. He was gravely concerned that such practice would have a more detrimental effect on freedom of expression than programmes expressing critical personal views.

27. SCIT highlighted that the three existing sound broadcasters were subject to the same Radio Code of Practice. In fact, Metro had been given more sanctions than the other two sound broadcasters. He assured members that to ensure editorial plurality and programming diversity, sound broadcasting licensees enjoyed full autonomy in selecting their interviewees and in managing their programmes. Neither the Administration nor BA would seek to micro-manage how individual stations ran their affairs. He believed that Hong Kong was an open community which could accommodate diverse views. It would be up to the audience to choose their preferred radio programmes or lodge a complaint to BA in case of biased coverage or partiality of programmes.

Radio channels

28. Mr YEUNG Yiu-chung enquired on the feasibility of opening up more radio channels to cater for a wider range of needs. Members noted that in her letter dated 16 June 2003, Ms Emily LAU had raised a similar question on designating a radio channel for the use of the public.

29. In response, SCIT acknowledged that quite a number of non-government organizations had urged the Government to open up more radio channels to increase programme diversity. The Administration did receive

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Clerk

some proposals expressing interest in running an FM station. However, there was a limited number of FM channels of territory-wide coverage. The Administration was therefore unable to accommodate newcomers to provide FM broadcasting services at this stage due to spectrum constraints. However, with the advent of new technology such as digitization of broadcasting service, the Administration would seek to improve the efficient use of the existing spectrum. In this regard, Ms Emily LAU and the Chairman agreed that issues relating to the opening up of more radio channels should be included in the Panel's "List of outstanding items for discussion" and be explored further in due course.

II Any other business

30. There being no other business, the meeting ended at 10:20 am.

Council Business Division 1
Legislative Council Secretariat
3 September 2003