

Television Broadcasts Limited

Response to the Commerce, Industry and Technology Bureau's Consultation on the Establishment of Communications Authority

**Television Broadcasts Limited
16 June 2006**

Television Broadcasts Limited (TVB) supports the Government's proposal to merge the Broadcasting Authority (BA) and Telecommunications Authority (TA) to form a unified regulator as the Communications Authority (CA).

RESPONSE TO SPECIFIC PROPOSALS

1. Implementation

1.1 *The Staged Approach*

We support the proposal on the establishment of the CA but we disagree with the proposal of reviewing the legislations to create a comprehensive Communications Ordinance ("CO") after the set up of the CA. Unified regulatory regime is long overdue and we urge the Administration to start the review process as soon as possible for the following reasons:

1.1.1 The rapid advancement of technology has rendered existing broadcasting law and regulations outdated which in turn has created an un-level playing field among different media operators. The current Broadcasting Ordinance (BO) which has been in effect since July 2000, is inadequate to meet the challenges in regulating the different programme services brought about by the fast rate of application and adoption of communications and information technology.

For example, a pay TV service delivered via the broadband network is not subject to the regulation of BO or the jurisdiction of BA while a Pay TV service delivered through satellite or cable is regulated by the BO and BA.

1.1.2 Terrestrial Free TV programme services are regulated in a microscopic fashion while programme services delivered via internet ("IPTV") are not governed by the BO nor under the jurisdiction of BA.

1.1.3 Domestic free programme service licensees, i.e. Terrestrial Free TV operators, rely on advertising revenue as financial support to its business while Pay TV operators can receive both monthly subscription and advertising income as revenue for their business. Furthermore, there are duration and percentage of advertising and language restrictions governing Free TV services and no such restrictions apply to Pay TV services, not to mention the IPTV which

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has a free hand in programme content and advertising choice. Such are some examples of the inequities which Terrestrial Free TV business are facing and the same have threatened the long term prospect of the Terrestrial Free TV business in the converging market.

For a true convergence in regulatory framework for the communications sector, such and other regulatory inequities must be addressed. The sooner the related legislations and regulations could be reviewed and changed to allow operators to realise the potentials promised by advancement in technology, the earlier the general public could enjoy the benefits.

- 1.1.4 On the technical side, the Communications and Technology Branch (CTB), Commerce, Industry and Technology Bureau (CITB) and Office of Telecommunications Authority (OFTA) have been consciously setting a timetable and reviewing existing policies, and to certain extent, legislations, as well as conducting consultations to facilitate the convergence of telecom industries. The recent consultation on "Review of the Regulatory Framework for Fixed Mobile Convergence in Hong Kong" was one such example. However, there is hardly any such effort to prepare for convergence on the programme services side, and in particular, regarding the broadcasting industry.
- 1.1.5 With the advent of Digital Terrestrial Television (DTT), the multi-channel Terrestrial Free TV landscape would be similar to that of the Pay TV market. Terrestrial Free TV operators are greatly disadvantaged under the current regulatory regime. A more level playing field with a less restrictive operating environment is necessary for Terrestrial Free TV to survive in the multi-channel Free DTT market environment. We recommend that domestic free programme services in the multi-channel environment should be regulated in the same way as domestic pay programme services are regulated.
- 1.1.6 The two existing terrestrial broadcasters TVB and ATV are investing millions in building territory-wide DTT networks and transmission infrastructure to prepare for the launch of DTT in Hong Kong. Our efforts in testing SFN technology will pave the way and make it easier for future players to enter the DTT market. We will be investing additional millions to provide attractive content to attract digital take-up in preparation for analogue switch-off.

We have committed ourselves to such investment and are making tremendous contribution in the development of DTT in Hong Kong without financial assistance from either the Government or the

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community. Also, we do not see any immediate nor medium-term return from such investments.

TVB firmly believes that Free TV together with good quality programmes and HDTV are the major drivers in promoting DTT take-up and moving towards analogue switch-off.

Furthermore, the advantages of DTT would enable multi-channel programming and interactive data services (with the two allotted SFNs there could be 8-16 SDTV channels or 2-4 HDTV, depending on whether MPEG-2 or MPEG-4 compression technology were to be deployed).

A less restricted operating environment is necessary for Terrestrial Free TV services to gain more revenue to support DTT development and interactive data services as well as multi-channel and HDTV programming for the benefit of the general public, the communications industry and Hong Kong's economy as a whole.

1.1.7 As the two existing Terrestrial Free TV operators are required to launch their digital services before the end of 2007, the deregulation and implementation of changes to the BO and related advertising and programme standards and codes of practice should preferably come into effect before the launch of DTT in Hong Kong to enable more creative and innovative terrestrial TV programme services to complement, or rather, to lead the development of DTT and drive towards analogue switch-off.

- A less regulated operating environment, especially on the advertising side, would enable Terrestrial Free TV to obtain the necessary revenue support to continue to provide quality programme services, which would be in the interest of the general public as well;
- A more level playing field within the Broadcasting industry and across industries in the Communications sector would ensure fairer competition among players, thus benefiting the sector and economy as a whole;
- A more level playing field would attract more investors and investment in providing more quality services which would in turn benefit the industries and economy as a whole;
- More innovative DTT programme services would help to speed-up analogue switch-off, thus regaining valuable spectrum earlier for the benefit of the whole community.

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- 1.1.8 The Administration is responsible for all policy matters and accordingly CITB should initiate the review of the existing broadcasting and telecommunications legislations forthwith. The CA, as an adviser to the government on communications matters can offer its advice on any policy change and contribute to the drafting of the Communications bill after its set-up.

Suggestion:

We urge the Administration to start the comprehensive review of the BO and TO immediately to create a new CO without waiting for the establishment of the CA. A realistic and practical deadline, such as 2008, should be set for the enactment of the CO which is long overdue as a result of rapid changes in communications technology in recent years.

We fully understand that enactment of the CO would take time. In the meantime as a necessary step the Administration together with the BA/the CA should, in consultation with Terrestrial TV broadcasters, identify and prioritise issues and to make relevant changes to existing regulations – including licensing conditions, programme and advertising standards and codes, guidelines and directives – along the professed guiding principle of the CA (Paragraph 43 of the Consultation Paper) of “regulatory tolerance should take precedence over regulatory intervention.” Such changes to existing restrictions are necessary to enable and facilitate creative and innovative programming and advertising content for the development of the DTT services which will be launched in 2007.

1.2 The Priority of Items for Review

1.2.1 Competition Provisions and Appeal Mechanism on Competition Matters

TVB supports the rationalisation and proposals to consolidate competition provisions and having a single appellate body on competition matters for the entire electronic communications sector.

Suggestion:

To meet the CA's ultimate objective: “to maintain a vibrant communications sector to enhance Hong Kong's competitive advantage as a communications hub in the region” (stated in Paragraph 37 of the Consultation Paper), we firmly believe that in the long run, Hong Kong should have a general competition law applicable to all businesses in place of the sector-specific law governing the communications sector.

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2. Public Mission, Core Values and Regulatory Approach of the CA

TVB is in full support of having a new and proactive statutory body as the CA. The proposed guiding principles and regulatory approach reflect the forward thinking of an enlightened Administration which fully understands the ill of over regulation and micro-management which would only stifle a business sector that could only thrive on the timely application of rapidly changing technology.

Suggestion:

The proposed guiding principle of "regulatory tolerance should take precedence over regulatory intervention as long as public interest is safeguarded" should apply not only to "innovative services enabled by emerging technologies" but to all existing services as well. In doing so the Administration and the CA will be able to remove the inequalities which now exist between the different media operators as mentioned in Section 1 above and to create a level playing field for all players.

3. Structure of the CA

3.1 *Proposed Structure of CA*

With the expertise-required and the amount of work involved to assist in the market development and regulation of the highly technical and specialised communications industries as well as balancing consumer interests and upholding freedom of speech, it is doubtful that a Committee structure with a non-official Chairman to head the CA would be able to function effectively and efficiently.

Suggestion:

As the CA's role and function would cover the duties of TA and BA, overseeing the existing and future communications business arising from the Broadcasting-Telecommunications convergence, time and efforts required from members of the CA would be much more than the demand on BA members, particularly in the role of the Chairman. We advocate that the CA should be headed by a full-time Chairman, or at least by a near-full-time Chairman, because of the commitment and time-required of him. We are also of the view that the other four non-official members should be provided with honorarium that would commensurate with their responsibility and the time commitment expected of them.

3.2 *Office of the Communications Authority (OFCA)*

TVB agrees with the proposal of merging OFTA and the Broadcasting Division of TELA to form OFCA to serve as the executive arm of CA.

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3.3 Separate Content Board

Suggestion:

A Content Board consisting of non-official members should be set up to deal with all content complaints and compliance matters. The role of the Content Board of CA would be similar to that of the existing BA Complaints Committee except that the Content Board of CA would have the independent authority to make decisions and ruling on complaints. All members of the Content Board, with the exception of its Chairman who may be a member of the CA, should be independent and different from those of the CA's. The Chairman of the Content Board will serve as a linkage between the Content Board and the CA.

3.4 Appeal Mechanism on Programme Services Matters

TVB has always been advocating that the roles of "legislation", "enforcement" and "adjudication" should be performed by different bodies. Under the current regulatory regime, the Codes of Practice Committee plays the role of legislator; the Complaints Committee serves as the enforcement agency and the BA functions as the adjudicator. Such structure has to be changed so that not only justice is done but justice is seen to be done in relation to complaint matters.

Under the Broadcasting Ordinance, the Chief-Executive-in-Council ("CE-in-Council") serves as an appellate body against any BA's ruling on complaint cases. Such an appeal system has put unnecessary burden on the CE-in-Council whose time could be more fruitfully employed on more important public and policy matters.

Suggestion:

If a Content Board were to be set up, content related complaints and compliance matters processed by OFCA would be sent to the Content Board for adjudication. If the complainant and/or the licensee were not happy with the Content Board's decision, the CA would serve as the appellate body.

4. Summary of Suggestions

4.1 We urge the Administration to start the comprehensive review of the BO and TO immediately to create a new CO without waiting for the establishment of the CA. The CA, as adviser to the Government on communications matters can in due course offer its advice on any policy change and contribute to the drafting of the CO. A realistic and practical deadline, such as 2008, should be set for the enactment of the

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CO which is long overdue as a result of rapid changes in communications technology in recent years.

We fully understand that enactment of the CO would take time. In the meantime as a necessary step, the Administration together with the BA/the CA should, in consultation with Terrestrial TV broadcasters, identify and prioritise issues and make relevant changes to existing regulations – including licensing conditions, programme and advertising standards and codes, guidelines and directives – along the professed guiding principle of the CA (Paragraph 43 of the Consultation Paper) of “regulatory tolerance should take precedence over regulatory intervention.” Changes to existing restrictions are necessary to enable and facilitate creative and innovative programming and advertising content for the healthy development of the industry and DTT in particular so that the terrestrial TV broadcasters may survive and sustain their business in the highly competitive environment.

- 4.2 The Administration should work together with the operators to allow for creative and innovative input in the development of DTT and the communications market as a whole and to meet the CA’s ultimate objective: “to maintain a vibrant communications sector to enhance Hong Kong’s competitive advantage as a communications hub in the region” (stated in Paragraph 37 of the Consultation Paper).

We firmly believe that in the long run, Hong Kong should have a general competition law applicable to all businesses in place of the sector-specific law governing the communications sector.

- 4.3 The proposed guiding principle of “regulatory tolerance should take precedence over regulatory intervention as long as public interest is safeguarded” should apply not only to “innovative services enabled by emerging technologies” but to existing services as well. In doing so the Administration and the CA will be able to remove the inequalities which now exist between the different media operators as mentioned in Section 1 above and to create a level playing field for all players.
- 4.4 As the CA’s role and function would cover the duties of TA and BA, overseeing existing and future communications business arising from the Broadcasting-Telecommunications convergence, time and efforts required from members of the CA would be much more than the demand on BA members, particularly in the role of the Chairman. We advocate that the CA should be headed by a full-time Chairman, or at least by a near-full-time Chairman, because of the commitment and time-required of him. We are also of the view that the other four

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- 4.5 A Content Board consisting of non-official members should be set up to deal with all content complaints and compliance matters. The role of the Content Board of CA would be similar to that of the existing BA Complaints Committee except that the Content Board of CA would have the independent authority to make decisions and rulings on complaints. All members of the Content Board, with the exception of the Chairman who may be a member of the CA, should be independent and different from those of the CA's. The Chairman of the Content Board would serve as a linkage between the Content Board and the CA.
- 4.6 If a Content Board were to be set up, content related complaints and compliance matters processed by OFCA would be sent to the Content Board for adjudication. If the complainant and/or the licensee were not happy with the Content Board's decision, the CA will serve as the appellate body. This will relieve the CE in Council of its burden as the appellate body of the BA/CA.