

立法會 *Legislative Council*

LC Paper No. CB(1)301/10-11

(These minutes have been seen by
the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

Minutes of the second meeting held on Thursday, 7 October 2010, at 2:30 pm in the Chamber of the Legislative Council Building

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Samson TAM Wai-ho, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Member absent : Hon WONG Ting-kwong, BBS, JP

**Public officers
attending** : Agenda Item II

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mr SUEN Wai-chung
Senior Assistant Law Draftsman (Professional
Development)
Department of Justice

Mr PO Pui-leong
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Mr Chaucer LEUNG
Head, Regulatory 1 and Head of Special Duty
Office of the Telecommunications Authority

**Attendance by :
invitation**

Agenda Item II

Our TV.hk

Mr Michael MO K T
Content Coordinator

Community Development Initiative

Mr Peter LAM
Project Manager

Internet Professional Association

Dr Winnie TANG
President

Hong Kong Human Rights Monitor

Mr KWOK Hiu-chung
Officer

Communications Association of Hong Kong

Dr Hubert CHAN
Chairman

Hong Kong Internet Forum

Mr Joseph LEUNG Wai-fung
Executive Committee Member

Cable & Satellite Broadcasting Association of Asia

Mr John MEDEIROS
Deputy Chief Executive Officer

Hong Kong Call Centre Association

Mr John CHIU
Chairman

Hong Kong Wireless Technology Industry Association

Mr Ken FONG
Chairman

Individual

Dr XU Yan
Associate Professor
Business School, Hong Kong University of Science and
Technology

Mr Martin OEI
Political Commentator

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)2925/09-10 -- Minutes of meeting held on 22 July 2010)

The minutes of the meeting held on 22 July 2010 were confirmed.

II. Meeting with deputations and the Administration

Meeting with the Administration and deputations/individuals

1. OurTV.hk
(LC Paper No. CB(1)2981/09-10(01) – submission)
2. Community Development Initiative
(LC Paper No. CB(1)2981/09-10(02) – submission)
3. Internet Professional Association
(LC Paper No. CB(1)2981/09-10(03) – submission)
4. Hong Kong Human Rights Monitor
(LC Paper No. CB(1)2995/09-10(01) – submission)
(tabled at the meeting and subsequently issued via email on 8 October 2010)
5. Communications Association of Hong Kong
(LC Paper No. CB(1)2995/09-10(02) – joint submission from Dr XU Yan, Associate Professor, Business School, Hong Kong University of Science and Technology)
(tabled at the meeting and subsequently issued via email on 8 October 2010)
6. Dr XU Yan, Associate Professor, Business School, Hong Kong University of Science and Technology
(LC Paper No. CB(1)2995/09-10(02) – joint submission from Communications Association of Hong Kong)
(tabled at the meeting and subsequently issued via email on 8 October 2010)
7. Mr Martin OEI, Political Commentator
(LC Paper No. CB(1)2981/09-10(04) – submission)
8. Hong Kong Internet Forum
(LC Paper No. CB(1)2995/09-10(03) – submission)
(tabled at the meeting and subsequently issued via email on 8 October 2010)
9. Cable & Satellite Broadcasting Association of Asia
(LC Paper No. CB(1)2946/09-10(01) – submission)
10. Hong Kong Call Centre Association
(LC Paper No. CB(1)3032/09-10(01) – submission)
(subsequently issued via email on 12 October 2010)

11. Hong Kong Wireless Technology Industry Association
(LC Paper No. CB(1)2995/09-10(04) – submission)
(tabled at the meeting and subsequently issued via email on 8 October 2010)

Submissions from deputations not attending the meeting

1. League of Social Democrats
(LC Paper No. CB(1)2923/09-10(01) – submission)
2. Hutchison Telecommunications (Hong Kong) Limited
(LC Paper No. CB(1)2923/09-10(02) – submission)
3. PCCW Limited
(LC Paper No. CB(1)2923/09-10(03) – submission)
4. Metro Broadcast Corporation Limited
(LC Paper No. CB(1)2923/09-10(04) – submission)
5. CSL Limited
(LC Paper No. CB(1)2923/09-10(05) – submission)
6. Wharf T&T Limited
(LC Paper No. CB(1)2923/09-10(06) – submission)
7. SmarTone Mobile Communications Limited
(LC Paper No. CB(1)2946/09-10(02) – submission)
8. Auspicious Colour Limited
(LC Paper No. CB(1)2946/09-10(03) – submission)

Meeting with the Administration

(LC Paper No. CB(1)2923/09-10(07) -- List of follow-up actions arising from the discussion at the meeting on 22 July 2010

LC Paper No. CB(1)2923/09-10(08) -- Administration's response to issues raised at the meeting on 22 July 2010

Other relevant papers

LC Paper No. CB(3)815 /09-10 -- The Bill

File Ref: CTB(CR)9/19/13 (10) -- Legislative Council Brief on
Communications Authority Bill
issued by the Commerce and
Economic Development Bureau

LC Paper No. LS80/09-10 -- Legal Service Division Report)

2. At the invitation of the Chairman, 11 deputations as listed in the appendix presented their views.

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

4. The Administration was requested to provide a written response to the deputations' submissions.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)303/10-11(01) on 3 November 2010.)

Meeting arrangements

5. Members endorsed the proposed schedule of meetings from November 2010 to March 2011 tabled at the meeting.

6. The Chairman reminded members that the third meeting would be held on Thursday, 4 November at 10:45 am.

III. Any other business

7. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 1
Legislative Council Secretariat
3 November 2010

**Proceedings of the second meeting of
Bills Committee on Communications Authority Bill
on Thursday, 7 October 2010, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000138 – 000448	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 22 July 2010 (LC Paper No. CB(1)2925/09-10)	
000449 – 000900	OurTV.hk	Presentation of views (LC Paper No. CB(1)2981/09-10(01))	
000901 – 001216	Internet Professional Association (IPA)	Presentation of views (LC Paper No. CB(1)2981/09-10(03))	
001217 – 001728	Hong Kong Human Rights Monitor (HKHRM)	Presentation of views (LC Paper No. CB(1)2995/09-10(01))	
001729 – 002011	Communications Association of Hong Kong (CAHK)	Presentation of views (LC Paper No. CB(1)2995/09-10(02))	
002012 – 002330	Dr XU Yan	Presentation of views (LC Paper No. CB(1)2995/09-10(02))	
002331 – 002843	Mr Martin OEI	Presentation of views (LC Paper No. CB(1)2981/09-10(04))	
002844 – 003039	Hong Kong Internet Forum	Presentation of views (LC Paper No. CB(1)2995/09-10(03))	
003040 – 003628	Cable & Satellite Broadcasting Association of Asia	Presentation of views (LC Paper No. CB(1)2946/09-10(01))	
003629 – 004035	Hong Kong Call Centre Association	Presentation of views (LC Paper No. CB(1)3032/09-10(01))	

Time marker	Speaker	Subject(s)	Action required
004036 – 004319	Hong Kong Wireless Technology Industry Association	Presentation of views (LC Paper No. CB(1)2995/09-10(04))	
004320 – 004739	Community Development Initiative	Presentation of views (LC Paper No. CB(1)2981/09-10(02))	
004740 – 005300	Chairman Administration	The Administration responded that: (a) there was widespread industry and public support for the speedy set up of the CA through the structural merger of the Broadcasting Authority (BA) and the Telecommunications Authority (TA); (b) the prevailing appointment mechanism (i.e. CE to make appointments) for advisory boards/committees and statutory bodies had been well-established and functioning smoothly. The Administration would adopt the same mechanism for appointing Communications Authority (CA) members whereby appointments would be made in a fair, open and transparent manner to ensure impartiality and guard against conflict of interests. Only suitable candidates with the requisite expertise and experience would be appointed; (c) it was advisable to set up the CA as soon as possible instead of embarking on a comprehensive review of the ordinances with a view to consolidating them into a single piece of legislation with extensive rationalization, updating and amendment. One of the priority tasks of the new CA was to review and rationalize the Broadcasting Ordinance (BO) (Cap. 562) and the Telecommunications Ordinance (TO) (Cap. 106) to ensure the consistent and effective regulation of the broadcasting and telecommunications sectors. This would enable the new CA to deal with market convergence that was already taking place and to provide input in the review of the provisions of the BO and the TO; and (d) the concerns from deputations on the delegation mechanism and the confidentiality provision would be addressed.	

Time marker	Speaker	Subject(s)	Action required
005301 – 005820	Chairman Mrs Regina IP Administration	Referring to some deputations' view on the need for full-time CA members with the requisite professional expertise and experience to deal with the complex industry-specific issues, and some deputations' concern about potential conflict of interests of members (especially those who were related to the electronic communications sector), Mrs Regina IP said that the appointment mechanism and the membership of the CA should be carefully examined to ensure transparency, impartiality and safeguard public interests. Given the expanded remit and the wide powers of the new CA, she called for a check and balance and monitoring mechanism to ensure that the CA would be independent and be free from any political and commercial influence. The Administration responded that in line with the prevailing mechanism of making appointments to statutory bodies, the Administration would identify suitable candidates with relevant expertise in appointing members to the CA. In response to Mrs Regina IP's enquiry, the Administration advised that the executive arm of the CA, the Office of the Communications Authority (OFCA), would be a government department operating as a trading fund (OFCA Trading Fund) on cost recovery principle financed by the industry, similar to the existing Office of the Telecommunications Authority Trading Fund. The Director-General of Communications, the head of OFCA, would be a public officer ranked at Directorate 6 appointed to the CA as an ex-officio member by virtue of post.	
005821 – 010411	Chairman Mr WONG Yuk-man Administration	Mr WONG Yuk-man criticized the staged approach (first legislate to amalgamate the BA and the TA to form the CA, which would then, in consultation with the Administration, review the relevant legislation) proposed by the Administration as illogical. To meet with the challenges brought about by rapid technological convergence, he was of the view that a comprehensive review of the relevant ordinances and regulations governing the broadcasting and telecommunications sectors which were outdated should be conducted in parallel with the setting up of the new CA.	
010412 – 011019	Chairman Ms Emily LAU HKHRM Mr Martin OEI Administration	Ms Emily LAU invited deputations' views on the role of the Legislative Council (LegCo) in endorsing the appointment of CA members, and what should be stipulated in the Bill to protect consumer interests, safeguard freedom of expression and enhance transparency.	

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		Mr KWOK Hiu-chung of HKHRM suggested that similar to the Communications Act 2003 which governed the operation of the Office of Communications (Ofcom) in the United Kingdom (UK), provisions should be included in the Bill to guarantee an appropriate level of freedom of expression and to further the interests of consumers. He opined that public participation in the nomination and appointment of members to advisory and statutory boards/committees should be allowed to enhance transparency, impartiality and public accountability. Mr Martin OEI pointed out that Ofcom in the UK had clear appointment criteria as well as strict and specific rules governing the declaration of interests. According to Mr OEI, the agenda and minutes of every meeting of Ofcom and its committees were open to the public. He urged the Administration to make reference to the transparent operation of Ofcom. The Administration responded that in the drafting of the Bill, reference had been made to the appointment mechanism of similar regulatory bodies in overseas jurisdictions having regard to Hong Kong's situation. On the transparency of the CA, there were express provisions in the Bill governing the disclosure of interests (clause 13), and disclosure of confidential information (clause 21) by members of the CA to ensure its good governance.	
011020 – 011825	Chairman Mr CHAN Kam-lam IPA Mr Martin OEI Dr XU Yan	Mr CHAN Kam-lam commented that Mr Martin OEI's suggestion (that the appointments to the CA should be endorsed by the Chief Executive and more than 50% of the LegCo Members returned by geographical constituency and that certain political figures should not be appointed to the CA) was inconsistent and contradictory. In response to Mr CHAN Kam-lam's enquiry, Dr Winnie TANG of IPA said that the preparatory work for the review of the relevant telecommunications and broadcasting ordinances should be carried out at the same time when introducing new law to form the new CA. Cross-media restriction should also be reviewed having regard to the popularity and the prevalence of cross-media services on the Internet and the need to promote the development of a digital economy. Mr Martin OEI said that the Office of Communications Act 2002 had set a clear road-map for setting up the Ofcom in 2003.	

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		Dr XU Yan referred to Hong Kong's long-standing commitment to upholding the rule of law and was confident that the Communications Authority Ordinance, when enacted, would help ensure the independence of the CA.	
011826 – 012641	Chairman Dr Margaret NG Administration Mr Martin OEI CAHK	Dr Margaret NG invited the Administration and the deputations' views on the role of the new CA in making policies for the electronic communications industry, and the importance of an independent CA. The Administration responded that apart from administering and enforcing the existing BO, TO and relevant ordinances as the industry regulatory body, the CA was tasked under clause 4(3) of the Bill to tender advice to the Secretary for Commerce and Economic Development on any legislation, legislative proposals and regulatory policies relating to telecommunications, broadcasting, anti-spamming or activities connected with the telecommunications or broadcasting sectors. Mr Martin OEI suggested making reference to section 3 of the Communications Act 2003 which strengthened the role of Ofcom in policy setting. He opined that the independence of the CA was of vital importance to ensure that it would be free from any political or commercial influence. Dr Hubert CHAN of CAHK said that the industry was very concerned about the sharp rise in the number of complaints about telecommunications service and had taken the initiative to develop voluntary code of practice for industry compliance to safeguard consumer interests.	
012642 – 013435	Chairman Mr Ronny TONG Mr Martin OEI Administration	Mr Ronny TONG invited deputations' views on whether cross-media restrictions, the TO, BO and relevant ordinances should be reviewed and rationalized prior to the establishment of the CA. Citing section 391 of the Communications Act 2003 which required Ofcom to review media ownership as an example, Mr Martin OEI suggested that similar provisions should be included in the Bill specifying the function/task of the future CA in reviewing media ownership and the relevant ordinances. Provision in the legislation would provide statutory backing, and the CA would be subject to judicial review for failure to perform the duties stipulated. The Administration reiterated that the proposed staged approach would expedite the establishment of the CA to	

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		enforce the relevant legislation and meet with the challenges of technological convergence immediately. The Government had made a clear policy commitment for the new CA to conduct a review of the relevant ordinances and rationalize the two separate competition regimes under the TO and BO, including the complicated issue of cross-media ownership which would require further consultation with the industry and the public.	
013436 – 014007	Chairman Ms Emily LAU Administration	Ms Emily LAU urged the Administration to consider enhancing the transparency of the appointment mechanism, setting out clearly the appointment criteria and allowing public participation in the nomination/appointment of members. She suggested that provisions should be stipulated in the Bill to: (a) enhance the transparency of the appointment mechanism; (b) enhance the CA's accountability to the public; (c) enhance the transparency in the CA's operation and the conduct of its business such as opening its meetings to the public and posting minutes of meetings on its website; and (d) include the mission statement of upholding the freedom of speech. The Administration noted the suggestions and responded that: (a) given the vast amount of commercially sensitive information it would handle, the future CA should have the flexibility to decide whether and when meetings would be open to the public; (b) it was established Government policy objective to uphold the freedom of speech guaranteed under the Basic Law which statutory bodies in Hong Kong, including the CA, would follow; and (c) The CA's regulatory objectives and functions might need to be adjusted from time to time having regard to its own state of development and the fast changing telecommunications and broadcasting landscape. The CA Bill should provide for flexibility for the CA to adapt to these changes.	

Time marker	Speaker	Subject(s)	Action required
014008 – 014125	Chairman Administration	Meeting arrangements	

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