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2 November 2010

Ms Yue Tin-po
Clerk to Bills Committee on the Communications Authority Bill
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Yue,

Communications Authority Bill (the Bill)

Please find attached at **Annex** the Administration's response to the views expressed by different groups at the meeting of the Bills Committee on the Bill held on 7 October 2010.

Yours sincerely,


(Kevin LAI)

for Secretary for Commerce and Economic Development

cc

DoJ, Law Drafting Division

(Attn: Mr W C Suen and
Ms Carmen Chu)

DoJ, Commercial Unit

(Attn: Mr L Y Yung)

Director-General of Telecommunications

(Attn: Mr Chaucer Leung)

Commissioner for Television and
Entertainment Licensing

(Attn: Mr P L Po)

**The Administration's Response to the Views Expressed by Different Groups
at the meeting of the Bills Committee on Communications Authority (CA) Bill held on 7 October 2010**

This note sets out the Administration's response to the major issues raised by different groups at the meeting of the Bills Committee on the CA Bill held on 7 October 2010. A total of 11 deputations attended the meeting and 19 written submissions were received.

Issue raised	Raised by¹	The Administration's response
Establishment of the CA		
The CA should be timely established.	The majority of the deputations and submissions ²	We agree that the CA should be set up as soon as possible.
The Administration should consult the public again on merging the Telecommunications Authority (TA) and the Broadcasting Authority (BA).	OurTV.hk	Further to the three-month public consultation exercise conducted in 2006, the Administration briefed the Legislative Council (LegCo) Panel on Information Technology ("ITB Panel") again on the subject in January this year. We also conducted briefings for the telecommunications and broadcasting trades on the CA Bill in September this year. Based on the feedback we have collected from this round of consultation, there is strong support for establishing the CA.
The Administration should ensure a smooth transition in merging the TA and the BA.	<ul style="list-style-type: none"> ● HKIF ● Wharf T&T 	Agreed. The Administration will strive to ensure a smooth transition in the merging of the TA and the BA.

¹ This includes different groups attending the meeting and the parties which have made written submissions. Please refer to the end of this note for the abbreviations and acronyms used to indicate different groups and/or parties which have made submissions.

² Including Auspicious Colour Limited, CAHK, CASBAA, HKCCA, HKIF, iProA, PCCW, SmarTone, Wharf T&T and WTIA.

Issue raised	Raised by ¹	The Administration's response
Staged Approach in Reviewing the Existing Regulatory Regimes		
The existing regulatory regimes on telecommunications and broadcasting should be reviewed as soon as possible. Inconsistencies between the regimes such as cross-media ownership restrictions should be addressed.	<ul style="list-style-type: none"> ● CAHK ● CASBAA ● HKHRM ● iProA ● Mr Martin Oei ● PCCW ● Wharf T&T ● WTIA 	It is the Administration's commitment to review together with the CA the relevant legislation in respect of the two sectors, including the Telecommunications Ordinance (TO) (Cap. 106), Broadcasting Ordinance (BO) (Cap. 562), Broadcasting Authority Ordinance (Cap. 391), as soon as possible after the establishment of the CA. The issues to be reviewed will include cross-media ownership.
The review of the regulatory regimes on telecommunications and broadcasting should be conducted prior to or concurrently with establishing the CA.	<ul style="list-style-type: none"> ● iProA ● HKHRM ● PCCW 	We have considered but do not intend to pursue the option of reviewing the legislative frameworks in tandem with setting up the unified regulator. Combining the two would be a very complex and protracted exercise. It would delay the establishment of the CA. We believe that a staged approach would be more pragmatic and enable us to modernize the two regulatory regimes in a more efficient manner.
Mission of the CA		
The CA should work to protect freedom of information and expression and promote competition in and development of the communications market.	<ul style="list-style-type: none"> ● CASBAA ● HKCCA ● HKHRM ● HKIF ● SmarTone ● WTIA 	Upholding freedom of speech and promoting competition, innovation and investment in the communications market are established Government policy objectives. It is the CA's mission to achieve these objectives.

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The Bill should include provisions particularly to protect the freedom of speech.	HKHRM	This is the established mission of the CA. There is thus no need to include the provision in the Bill.
The CA should play a stronger role in policy formulation.	Mr Martin Oei	We have made it clear in the CA Bill (clause 4) that the CA has the function to tender advice to the Secretary for Commerce and Economic Development on any legislation, legislative proposals and regulatory policies in this respect.
Appointments to the CA		
Appointments to the CA should be transparent and merit-based. The CA should be free from political and commercial influence.	<ul style="list-style-type: none"> ● CAHK ● Professor Xu Yan ● CSL ● HKCCA ● HKIF ● iProA ● Mr Martin Oei ● WTIA 	<p>Our proposed appointment mechanism and the relevant provisions in the Bill are in line with established practices applicable to most of the advisory and statutory bodies in Hong Kong.</p> <p>The Chief Executive will exercise his powers in a reasonable manner to appoint suitable candidates to the CA. We expect all non-official appointees to offer independent, fair and professional service. As with BA and TA, the CA will institute a system for the declaration of interest and avoidance of conflicts of interest.</p>
To ensure that appointments to the CA are transparent, the criteria of appointing members should be set out in the Bill and/or in guidelines.	<ul style="list-style-type: none"> ● HKHRM ● OurTV.hk 	-ditto-

Issue raised	Raised by¹	The Administration's response
Members appointed to the CA should have good knowledge of and experience in the two sectors.	<ul style="list-style-type: none"> ● CSL ● HKCCA ● HKIF ● Metro ● SmarTone ● WTIA 	-ditto-
Nominations from the trade and/or endorsement by the LegCo should be accepted for appointments to the CA.	<ul style="list-style-type: none"> ● HKHRM ● Mr Martin Oei ● OurTV.hk 	Nominations from the trade are likely to give rise to concerns over conflicts of interest – real and perceived. The involvement of LegCo in individual appointments is not necessary.
Full-time members should be appointed to the CA in view of the important and heavy duties of the CA and the need to maintain the efficiency of the regulator.	<ul style="list-style-type: none"> ● CASBAA ● CSL ● PCCW ● WTIA 	There is already flexibility in the Bill to accommodate the appointment of full-time members to the CA.
Term limits should be set for CA Members.	PCCW	Under the CA Bill, members are appointed on a 3-year term. The Administration is committed to adhering to the six-year rule in appointing members to the CA, as is the case for appointments to the BA.
The Governance of the CA		
The CA should increase the transparency and accountability of its operation such as publishing annual plans and budget targets, opening up	<ul style="list-style-type: none"> ● CASBAA ● Mr Martin Oei ● PCCW 	We fully agree that the operation of CA should be transparent. The CA is set to follow the prevailing practice of the TA and the BA in accounting for its work, including the issue of statements to explain its decisions made, attending the

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<p>its meetings to the public or posting its agenda and minutes on its website.</p>		<p>meetings of the LegCo ITB Panel, and tabling annual report at the LegCo. We also anticipate that the CA will continue to engage the industry and members of the public via the existing consultative mechanism under the TA and the BA.</p> <p>Since the CA will handle a lot of commercially sensitive information, we maintain that it is inappropriate to mandate that CA has to open up its meeting to members of the public. The arrangement is in line with the practices of other overseas regulators in the UK, Australia and Canada.</p> <p>By virtue of clause 10 of the CA Bill, the CA may make standing orders to regulate the procedures to be followed at its meetings, which may allow public participation therein or the posting of agendas and minutes of meetings on its website. We anticipate the CA will consider favourably the opening up of the meetings of some of its committees to the public as appropriate, as is the case of the BA.</p>
<p>The CA Bill should include provisions to enhance transparency and good governance. There are suggestions to mandate that CA's accounts be audited by the Director of Audit and CA members should regularly report their interests.</p>	<p>Mr Martin Oei</p>	<p>The financial statements of the future Office of the Communications Authority which shall run as a trading fund would be audited by the Director of Audit. As for the disclosure of interests, clause 13 of the CA Bill has provided for the declaration of interests for members of the CA and is similar to provisions governing the existing BA and other statutory bodies in Hong Kong.</p>

Issue raised	Raised by ¹	The Administration's response
Executive Arm of the CA		
Some suggest that the executive arm of the CA should be an independent organisation rather than a Government department staffed by civil servants. However, there are trade members holding the opposite view.	<ul style="list-style-type: none"> ● CAHK ● Prof Xu Yan ● CASBAA ● HKIF 	We consider it unwieldy to go for the establishment of the unified regulator and the creation of a non-civil service executive organisation concurrently: to do so would distract the new regulator from its focus on the main policy, strategic and regulatory challenges. There is no overriding urgency or justification to set up a non civil-service organisation at the outset.
Provisions in the Bill		
To maintain efficiency and ensure that the CA would delegate powers properly, the delegation provision in the Bill (clause 17) should provide for clear guidelines and criteria for the delegation of CA's powers.	<ul style="list-style-type: none"> ● Hutchison ● Metro ● PCCW ● Wharf T&T 	We agree that the CA needs to properly delegate its powers to its committees and the Director-General of Communications to maintain the efficiency of its work. However, we do not intend to stipulate the relevant criteria in the Bill so as to allow flexibility for the CA to decide on which powers are to be delegated, having taken into account its operational needs and experience.
The confidentiality provision in the CA Bill (clause 21) should be strict enough to protect commercially sensitive information. Some suggest fine-tuning the drafting of the provision.	<ul style="list-style-type: none"> ● Hutchison ● Metro ● PCCW 	The existing clause 21 of the Bill already sets out what constitutes confidential information, who are to be bound by the provision and under what specific circumstances disclosure of such information would be allowed. This seeks to give certainty to those who have access to confidential information as to how the provision would be applied.

Issue raised	Raised by ¹	The Administration's response
Regulatory Issues		
The merger of the TA and BA should bring efficiency gains, and there should be room to lower licence fees after the merger.	<ul style="list-style-type: none"> ● PCCW ● SmarTone ● Wharf T&T 	It will be up to the CA to consider the level of licence fees to be charged, taking into account the actual financial situation of the new regulator and the cost-recovery principle, after the establishment of the CA.
The Administration should open up airwaves and provide access to community broadcasting.	<ul style="list-style-type: none"> ● CDI ● HKHRM ● LSD 	<p>Our broadcasting policy is to encourage plurality and diversity in broadcasting services through a market-led approach, and to develop and enhance broadcasting services with the use of advanced technology subject to the availability of frequency spectrum.</p> <p>With the advancement of technology, more and more broadcasting and communications opportunities have become available. In this regard, the Administration has allocated a Band III multiplex for providing digital audio broadcasting (DAB) services. The BA is currently processing three applications for sound broadcasting licence to provide DAB services.</p> <p>In line with our stance to foster freedom of expression and encourage a plurality of voices in the community, the Radio Television Hong Kong (RTHK) will launch new digital audio and television channels, with part of their air time to be devoted for community broadcasting. RTHK will provide</p>

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		technical support to facilitate programme production by community groups for broadcasting on RTHK's channels. In addition, we will provide financial support to the community groups by setting up a Community Broadcasting Involvement Fund.
The Administration should address unfair competition within the broadcasting industry.	CDI	Competition provisions are currently available in the TO and BO to ensure fair competition in the communications market. In July this year, the Administration introduced the Competition Bill into the LegCo. Given the policy objective of having a single piece of competition law which can effectively and consistently deal with anti-competitive conduct in all sectors of the Hong Kong economy, the Administration proposes to repeal the competition-related provisions under the BO and the TO and to apply the relevant provisions under the future competition law to the broadcasting and telecommunications sectors. This will address the prevailing concerns on the inconsistencies between the BO and the TO on competition matters.
The Administration should be committed to not regulating the Internet.	<ul style="list-style-type: none"> ● HKHRM ● HKIF ● OurTV.hk 	We are mindful of the community aspiration to safeguard freedom of expression and promote free flow of information. The Administration has no plan to regulate Internet broadcasting.

Note:

Abbreviations / acronyms of groups and/or parties which have made submissions (arranged in alphabetical order):

CAHK: Communications Association of Hong Kong

CASBAA: Cable and Satellite Broadcasting Association of Asia

CDI: Community Development Initiative

CSL: CSL Limited

HKCCA: Hong Kong Call Centre Association

HKHRM: Hong Kong Human Rights Monitor

HKIF: Hong Kong Internet Forum

Hutchison: Hutchison Telecom Hong Kong

iProA: Internet Professional Association

LSD: League of Social Democrats

Metro: Metro Broadcast Corporation Limited

PCCW: PCCW Limited

SmarTone: SmarTone Mobile Communications Limited

Wharf T&T: Wharf T&T Limited

WTIA: Hong Kong Wireless Technology Industry Association

Commerce and Economic Development Bureau

(Communications and Technology Branch)

November 2010