

**For discussion
on 19 March 2012**

Bills Committee on Competition Bill

Amendments arising from the establishment of the Communications Authority

Purpose

This paper briefs Members on the necessary amendments to the Competition Bill (the Bill) arising from the establishment of the Communications Authority.

Concurrent jurisdiction of competition authorities

2. Under the Bill, the Broadcasting Authority (BA) and the Telecommunications Authority (TA) will have concurrent jurisdiction with the Competition Commission (the Commission) in respect of the enforcement of competition rules in the broadcasting and telecommunications sectors. The relevant provisions of the Bill, in particular Part 11 (concurrent jurisdiction), Schedules 6 (memorandum of understanding), 8 (consequential and related amendments) and 9 (transitional and savings provisions) have provided for the arrangements for the effective operation of the concurrent jurisdiction regime.

3. The Communications Authority Ordinance (Cap. 616) (CAO) was passed on 30 June 2011 to set up a unified regulator, the Communications Authority (CA), for the broadcasting and telecommunications sectors to administer and enforce, amongst others, the existing Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106). Functions of the BA and the TA will be transferred to the CA. The CAO will come into operation on 1 April 2012. In view of the impending establishment of the CA, we need to introduce a number of amendments to the Bill to reflect the institutional and legal changes arising from the CAO.

Amendments

4. The proposed amendments to the Bill are set out in **Appendix**. The

majority of these are technical in nature, involving for example a change of title of the relevant ordinances or the authority in question. Some of the amendments seek to repeal those provisions which are no longer required following the enactment of the CAO.

Advice sought

5. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau
March 2012**

Proposed Amendments to the Competition Bill arising from the establishment of the Communications Authority

Item	Clause	Amendment	Justification
1.	2	<p>To change “<i>competition regulator</i>” to “<i>competition authority</i>”, and define the latter as “<i>the Commission or the Communications Authority</i>”</p> <p>Mark-up on clause 2:</p> <p><u>“<i>competition authority</i>” (競爭事務當局) means –</u></p> <p><u>(a) the Commission; or</u></p> <p><u>(b) the Communications Authority;</u></p> <p>“<i>competition regulator</i>” (競爭規管者) means any one of the following–</p> <p>(a) the Commission;</p> <p>(b) the Telecommunications Authority; or</p> <p>(c) the Broadcasting Authority;”</p>	<p>At the meeting of 31 May 2011 (Paper No. CB(1)2283/10-11(02)), we proposed amending the term “<i>competition regulator</i>” to “<i>competition authority</i>” in the Competition Bill (the Bill) to better reflect the role of the Competition Commission (Commission), the Broadcasting Authority (BA) and the Telecommunications Authority (TA) in relation to competition in the market. With the establishment of the Communications Authority (CA), the term “<i>competition authority</i>” would mean the Commission or the CA.</p>
2.	2	<p>To add the definition of “<i>Communications Authority</i>” and delete the definitions of “<i>Broadcasting Authority</i>” and “<i>Telecommunications Authority</i>”</p> <p>Mark-up on clause 2:</p> <p>“<i>Broadcasting Authority</i>” (廣管局) means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap. 391);</p> <p><u>“<i>Communications Authority</i>” (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616);”</u></p> <p>“<i>Telecommunications Authority</i>” (電管局局長) means the Telecommunications Authority appointed under section 5 of the Telecommunications Ordinance (Cap. 106);</p>	<p>This is to reflect the institutional changes following the establishment of the CA.</p>

Item	Clause	Amendment	Justification
3.	121	<p>To add the CA/ member of the CA/ member of a committee of the CA to the list of “<i>specified person</i>”; to delete paragraphs (f), (g) and (h) and change “<i>Telecommunications Authority</i>” to “<i>Communications Authority</i>” in paragraphs (d) and (e) under the interpretation of “<i>specified person</i>”.</p> <p>Mark-up on clause 121:</p> <p>“121. Interpretation <i>In this Part –</i> “employee” (僱員) means a person engaged for the provision of services, whether under a contract of employment or otherwise; “specified person” (指明人士) means –</p> <p>(a) the Commission;</p> <p>(b) any person who is or was a member, employee or agent of the Commission;</p> <p>(c) any person who is or was a member of a committee of the Commission, established under section 28 of Schedule 5;</p> <p><u>(ca) the Communications Authority;</u></p> <p><u>(cb) any person who is or was a member of the Communications Authority;</u></p> <p><u>(cc) any person who is or was a member of a committee of the Communications Authority, appointed under section 17 of the Communications Authority Ordinance (Cap. 616);</u></p> <p>(d) any person who is or was a public officer serving in the Office of the Telecommunications Authority;</p> <p>(e) any person who is or was an employee or agent of the Office of the Telecommunications Authority; or</p> <p>(f) any person who is or was a public officer serving in the Television and Entertainment Licensing Authority;</p> <p>(g) any person who is or was an employee or agent of the Television and Entertainment Licensing Authority;</p> <p>(h) any person who is or was a member of the Broadcasting Authority; or</p> <p>(i) any person appointed to assist any person referred to in paragraphs (a), (b), (c), <u>(ca), (cb), (cc), (d), and (e), (f), (g) and (h)</u> in the exercise of the powers of the Commission under Part 3.”</p>	<p>This is to reflect the institutional changes following the establishment of the CA. The “<i>specified persons</i>” would be required to preserve confidentiality of information under Part 8 of the Bill.</p>

Item	Clause	Amendment	Justification
4.	123	<p>To amend subclause (1) as “The Commission, the Telecommunications Authority and the Broadcasting Communications Authority”</p> <p>Mark-up on clause 123:</p> <p>“123. Duty to establish and maintain safeguards</p> <p>(1) The Commission, the Telecommunications Authority and the Broadcasting <u>Communications</u> Authority must establish and maintain adequate procedural safeguards to prevent the unauthorized disclosure of confidential information.”</p>	<p>This is to reflect the institutional changes following the establishment of the CA.</p>
5.	158	<p>To amend the section heading and the clause by replacing all references to “Telecommunications Authority” with “Communications Authority” therein.</p> <p>For subclause (1), to amend paragraph (a) to read as “licensees under the <u>Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562)</u>”, and paragraph (b) as “persons who, although not such licensees, are persons whose activities require them to be licensed under the <u>Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562)</u>”.</p> <p>Mark-up on clause 158:</p> <p>“158. Concurrent jurisdiction with Telecommunications-Communications Authority</p> <p>(1) The Telecommunications <u>Communications</u> Authority may perform the functions of the Commission under this Ordinance, in so far as they relate to the conduct of undertakings that are –</p> <p>(a) licensees under the Telecommunications Ordinance (Cap. 106) other than licensees under Part IIIA of that Ordinance or the Broadcasting Ordinance (Cap. 562);</p> <p>(b) persons who, although not such licensees, are persons whose activities require them to be licensed under the <u>Telecommunications Ordinance (Cap. 106) other than persons who are required to be licensed under Part IIIA of that Ordinance or the Broadcasting Ordinance (Cap. 562);</u> or</p> <p>(c) persons who have been exempted from the <u>Telecommunications Ordinance (Cap. 106) or from specified provisions of that Ordinance under section 39 of that Ordinance.</u></p> <p>(2) So far as is necessary for the purpose of subsection (1), references in this</p>	<p>This is to reflect the role of the CA as a unified regulator in the telecommunications and broadcasting sectors.</p>

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		<p><i>Ordinance to the Commission are to be read as including the Telecommunications-Communications Authority.</i></p>	
6.	159	<p>To delete the entire clause.</p> <p>Mark-up on clause 159:</p> <p>“159. Concurrent jurisdiction with Broadcasting Authority</p> <p>(1) The Broadcasting Authority may perform the functions of the Commission under this Ordinance, other than functions relating to mergers, in so far as they relate to the conduct of undertakings that are—</p> <p>(a) licensees under the Broadcasting Ordinance (Cap. 562);</p> <p>(b) persons who, although not such licensees, are persons whose activities require them to be licensed under the Broadcasting Ordinance (Cap. 562); or</p> <p>(c) licensees under the Telecommunications Ordinance (Cap. 106) for whom functions are conferred on the Broadcasting Authority under Part IIIA of that Ordinance.</p> <p>(2) So far as is necessary for the purpose of subsection (1), references in this Ordinance to the Commission are to be read as including the Broadcasting Authority.”</p>	<p>The concurrent jurisdiction will be shared by the Commission and the CA upon the establishment the CA. The CSAs to clause 158 already cover this.</p>
7.	161	<p>To delete “Telecommunications Authority” and “Broadcasting Authority” and to add “Communications Authority” in subclauses (1) and (3), and to add a new subclause to provide that the Commission and the CA shall consult LegCo before signing any memorandum of understanding or any amendment of it.</p> <p>Mark-up on clause 161:</p> <p>“161. Memorandum of Understanding</p> <p>(1) As soon as is reasonably practicable after the coming into operation of this section, the Commission, the Telecommunications Authority and the Broadcasting-Communications Authority must prepare and sign a Memorandum of Understanding, for the purpose of co-ordinating the performance of their functions under this Ordinance.</p> <p>(2) ...</p> <p>(3) The Commission, the Telecommunications Authority and the Broadcasting-Communications Authority may amend or replace any Memorandum of Understanding</p>	<p>This is to reflect the institutional changes following the establishment of the CA. The requirement of the Commission and the CA to consult LegCo is proposed to enhance accountability of the two competition authorities to LegCo (see Paper No. CB(1)2283/10-11(02)).</p>

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		<p><i>prepared and signed under this section.</i></p> <p><i>(3A) Before signing any Memorandum of Understanding, or any amendment of it, under this section, the Commission and the Communications Authority must consult the Legislative Council.”</i></p>	
8.	176	<p>To change “Broadcasting Authority Ordinance” to “Broadcasting (Miscellaneous Provisions) Ordinance”.</p> <p>Mark-up on clause 176:</p> <p>“176. Transitional and savings provisions in relation to amendments made by this Ordinance</p> <p>(1) Schedule 9 contains transitional and savings provisions in relation to amendments made by this Ordinance to the Telecommunications Ordinance (Cap. 106), the Broadcasting Authority (Miscellaneous Provisions) Ordinance (Cap. 391) and the Broadcasting Ordinance (Cap. 562).</p> <p>(2) The Chief Executive may make regulations containing transitional provisions and savings that are necessary or convenient for the transition to the provisions of this Ordinance from the provisions of the Telecommunications Ordinance (Cap. 106), the Broadcasting Authority (Miscellaneous Provisions) Ordinance (Cap. 391) or the Broadcasting Ordinance (Cap. 562) as amended by this Ordinance.</p> <p>(3) Without limiting subsection (2), regulations made under this section may, in particular, provide for –</p> <p>(a) the application of provisions of this Ordinance to telecommunications services or broadcasting services; or</p> <p>(b) the continued application of provisions of the Telecommunications Ordinance (Cap. 106), the Broadcasting Authority (Miscellaneous Provisions) Ordinance (Cap. 391) or the Broadcasting Ordinance (Cap. 562) in force immediately before the commencement of any provision of this Ordinance to telecommunications services or broadcasting services.</p> <p>(4) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the Gazette but not earlier than the date on which this Ordinance is published in the Gazette.</p> <p>(5) To the extent that any regulations made under this section come into operation on a date earlier than the date on which they are published in the Gazette, those regulations</p>	This is to reflect the change to the title of the Broadcasting Authority Ordinance.

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		<p><i>are to be construed so as not to –</i></p> <p><i>(a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or</i></p> <p><i>(b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.</i></p> <p><i>(6) If there is any inconsistency between any regulations made under this section and the provisions of Schedule 9, Schedule 9 prevails to the extent of the inconsistency.”</i></p>	
9.	Sch. 8. section 7	<p>To delete the entire section.</p> <p>Mark-up on section 7 of Schedule 8:</p> <p>“Part 4</p> <p>Amendments to Telecommunications Ordinance</p> <p>7. Delegation of powers</p> <p>(1) — Section 6 is amended by renumbering it as section 6(1).</p> <p>(2) — Section 6(1) is amended, in the proviso, by repealing paragraph (a).</p> <p>(3) — Section 6(1) is amended, in the proviso, in paragraph (b), by repealing “this section” and substituting “this subsection”.</p> <p>(4) — Section 6 is amended by adding —</p> <p>“(2) — The Authority may, in writing, delegate to any public officer, either generally or for any particular occasion and either by name or by reference to a public office, any of the functions of the Commission under the Competition Ordinance (— of 2010) that the Authority may, under Part 11 of that Ordinance, perform concurrently with the Commission.</p> <p>(3) — In this section —</p> <p>“Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance (— of 2010).”</p>	<p>This provision is no longer necessary as the CA would carry out the competition-related functions conferred upon it under the Bill and would have the power to delegate its functions under the CA Ordinance.</p>
10.	Sch.8, section 22	<p>To delete the entire section (Part 5).</p>	<p>The form of licences under the Telecommunications Regulations has already been repealed by the</p>

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		<p>Mark-up on section 22 of Schedule 8:</p> <p>“Part 5 Amendments to Telecommunications Regulations</p> <p>22. — Form of Licences</p> <p>Schedule 3 to the Telecommunications Regulations (Cap. 106 sub. leg. A) is amended, in the form for the Fixed Telecommunications Network Services Licence—</p> <p>(a) — in General Condition 4(2), by repealing “described in General Condition 16(2)” and substituting “of section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;</p> <p>(b) — in General Condition 18(1), by repealing “including but not limited to his functions under General Conditions 15, 16 and 20(4)”;</p> <p>(c) — by repealing General Condition 20(4) and (6);</p> <p>(d) — by repealing the subheading “Tariffs revisions” before General Condition 21;</p> <p>(e) — by repealing General Condition 21;</p> <p>(f) — by repealing the subheading “Tariffs for new services” before General Condition 22;</p> <p>(g) — by repealing General Condition 22;</p> <p>(h) — by repealing the subheading “Trials” before General Condition 23;</p> <p>(i) — by repealing General Condition 23;</p> <p>(j) — in General Condition 41(1)(a), by repealing “described in General Condition 16(2)” and substituting “of section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;</p> <p>(k) — in General Condition 44, by repealing “General Condition 16(2)” and substituting “section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;</p> <p>(l) — in General Condition 44, by repealing “either one or any combination of General Conditions 17, 20, 21, 22 and 23” and substituting “General Condition 17”.</p>	<p>CA Ordinance.</p>
<p>11.</p>	<p>Sch.8, Part 7 & section 24</p>	<p>To change the heading to “<i>Amendments to Broadcasting (Miscellaneous Provisions) Ordinance</i>”, and to delete section 24(1) and amend section 24(2) as “<i>Section 2 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) is amended by adding – “</i></p>	<p>This is to reflect the change to the title of the Broadcasting Authority Ordinance. The need to amend the definition of “廣播” in section 2 of the Broadcasting Authority</p>

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		<p>Mark-up on part 7 of Schedule 8:</p> <p>“Part 7 Amendments to Broadcasting Authority (Miscellaneous Provisions) Ordinance</p> <p>24. Interpretation</p> <p>(1) Section 2 of the Broadcasting Authority Ordinance (Cap. 391) is amended, in the Chinese text, in the definition of “廣播”, in paragraph (b), by repealing the full stop and substitution a semicolon.</p> <p>(2) Section 2 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) is amended by adding -</p> <p>““Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance (of 20120);”</p>	<p>Ordinance has been overtaken by the enactment of the CA Ordinance.</p>
12.	Sch.8, section 34	<p>To change “Broadcasting Authority” to “Authority” in subsection (2).</p> <p>Mark-up on section 34 of Schedule 8:</p> <p>“34. Confidential matter to be safeguarded</p> <p>(1) Section 27(1) is amended by repealing “subsection (2)” and substituting “subsections (1A) and (2)”.</p> <p>(2) Section 27 is amended by adding –</p> <p>“(1A) Subsection (1) does not apply to any information that is furnished, or any data, book, document or record that is produced, to the Broadcasting Authority under the Competition Ordinance (of 2010).”</p>	<p>This is to reflect the institutional changes following the establishment of the CA.</p>
13.	Sch. 8 (new)	<p>To make consequential amendments to section 4 of the Communications Authority Ordinance by adding -</p> <p>“(1A) The Authority has all the functions conferred on it by or under Part 11 of the Competition Ordinance (of 2010).”</p> <p>New section in Schedule 8:</p>	<p>This amendment is to enable the CA to perform functions conferred on it under the Bill.</p>

Item	Clause	Amendment	Justification
		<p><u>“Part 10</u> <u>Amendments to Communications Authority Ordinance</u></p> <p><u>39. Functions of Authority</u> <u>Section 4 of the Communications Authority Ordinance (Cap. 616) is amended by adding –</u> <u>“(1A) The Authority has all the functions conferred on it by or under Part 11 of the</u> <u>Competition Ordinance (_____ of 2010).”</u>”</p>	
14.	Sch.9, section 1	<p>To change “Broadcasting Authority Ordinance” to “Broadcasting (Miscellaneous Provisions) Ordinance”.</p> <p><u>Mark-up on section 1 of Schedule 9:</u></p> <p><u>“1. Interpretation</u> <u>In this Schedule –</u> <u>“commencement date” (生效日期) means the date on which Part 11 comes into operation;</u> <u>“pre-amended Broadcasting Authority (Miscellaneous Provisions) Ordinance” (原有《廣播</u> <u>事務管理局 (雜項條文) 條例》) means the Broadcasting Authority (Miscellaneous</u> <u>Provisions) Ordinance (Cap. 391) in force...”</u></p>	This is to reflect the change to the title of the Broadcasting Authority Ordinance.
15.	Sch. 9, section 2	<p>To change “Broadcasting Authority Ordinance” to “Broadcasting (Miscellaneous Provisions) Ordinance”.</p> <p><u>Mark-up on section 2 of Schedule 9:</u></p> <p><u>“2. General provisions</u> <u>Subject to sections 3 and 4 of this Schedule, anything that was done under the</u> <u>pre-amended Telecommunications Ordinance, the pre-amended Broadcasting Authority</u> <u>(Miscellaneous Provisions) Ordinance or the pre-amended Broadcasting Ordinance and</u> <u>was in effect immediately before the commencement date is, in so far as it may be done</u> <u>under this Ordinance, to continue to have effect as if it were done under this Ordinance.”</u></p>	This is to reflect the change to the title of the Broadcasting Authority Ordinance.

Item	Clause	Amendment	Justification
16.	Sch.9, section 3	<p>To change “Telecommunications Authority” to “Communications Authority” in paragraphs (a) and (b) of subsection (8), and to delete subsection (9) relating to the consequential amendments to the Telecommunications Ordinance.</p> <p>Mark-up on section 3 of Schedule 9:</p> <p>“3. Transitional provisions relating to pre-amended Telecommunications Ordinance</p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p>(4) ...</p> <p>(5) ...</p> <p>(6) ...</p> <p>(7) ...</p> <p>(8) <i>The Commission may not take any action under this Ordinance in respect of a proposed change referred to in section 7P(6) of the pre-amended Telecommunications Ordinance if –</i></p> <p>(a) <i>the Telecommunications Communications Authority has given consent to the proposed change under section 7P(7)(a) or (b)(ii) or (iii) of that Ordinance, and the proposed change has not taken effect; or</i></p> <p>(b) <i>the proposed change takes effect on or after the commencement date –</i></p> <p>(i) <i>pursuant to the consent given by the Telecommunications Communications Authority under section 7P(7)(a) or (b)(iii) of that Ordinance; or</i></p> <p>(ii) <i>pursuant to the consent given, and in compliance with the direction issued, by the Telecommunications Communications Authority under section 7P(7)(b)(ii) of that Ordinance.</i></p> <p>(9) The amendments effected by section 22 of Schedule 8 to the General Conditions in the form for the Fixed Telecommunications Network Services Licence in Schedule 3 to the Telecommunications Ordinance (Cap. 106) are deemed to have been made to the General Conditions in any fixed telecommunications network services licence that has been issued under the pre-amended Telecommunications Ordinance.”</p>	<p>This is to reflect the institutional changes following the establishment of the CA. Section 3(9) should also be deleted as the form mentioned therein in Schedule 3 to the Telecommunications Ordinance (Cap. 106) has also been repealed by the CA Ordinance.</p>

Item	Clause	Amendment	Justification
17.	Sch. 9, section 4	<p>To change “<i>Broadcasting Authority Ordinance</i>” to “<i>Broadcasting (Miscellaneous Provisions) Ordinance</i>” in the section heading and paragraph (1)(a) of subsection 1.</p> <p><u>Mark-up on section 4 of Schedule 9:</u></p> <p><i>“4. Transitional provisions relating to pre-amended Broadcasting Authority (Miscellaneous Provisions) Ordinance and pre-amended Broadcasting Ordinance</i></p> <p>(1) <i>In this section –</i></p> <p><i>“licensee” (持牌人) has the meaning given by section 2(1) of the pre-amended Broadcasting Ordinance;</i></p> <p><i>“pre-amended Ordinance” (《原有條例》) means –</i></p> <p>(a) <i>the pre-amended Broadcasting Authority (Miscellaneous Provisions) Ordinance;</i> or</p> <p>(b) <i>the pre-amended Broadcasting Ordinance.”</i></p>	This is to reflect the change to the title of the Broadcasting Authority Ordinance.