

立法會
Legislative Council

LC Paper No. CB(4)85/12-13

Ref. : CB4/PL/ITB

Paper for the House Committee meeting on 2 November 2012

**Proposal of the Panel on Information Technology and Broadcasting
for a select committee to be appointed to inquire into issues relating
to the discontinuation of broadcasting service by Digital
Broadcasting Corporation Hong Kong Limited**

Purpose

This paper seeks the House Committee's support for the proposal of the Panel on Information Technology and Broadcasting ("the Panel") for a select committee to be appointed by the Legislative Council to inquire into issues relating to the discontinuation of broadcasting service by Digital Broadcasting Corporation Hong Kong Limited ("DBC").

Background

2. In March 2011, the Chief Executive in Council granted sound broadcasting licences to DBC, Metro Broadcast Corporation Limited and Phoenix U Radio Limited to provide digital audio broadcasting ("DAB") services. In the licence of DBC, the company is required to provide seven 24-hour programme channels (including a "Talk Radio" Channel, an Ethnic Minorities Channel and two Music Channels, and three other channels which can be a News and Market Update Channel, Leisure Life Channel, Community Channel or Music Channel) at its formal launch.

3. DBC soft-launched its services in August 2011. However, according to media reports that started to surface in late July 2012, the shareholders could not agree on a further injection of capital into the company, or a transfer of shares among themselves. Notwithstanding these disagreements, DBC notified the Communications Authority ("CA") in late August 2012 that it would formally launch all seven channels on

21 September 2012 as required under its licence. DBC paid to CA its annual licence fee of about \$3.8 million in early September 2012 and formally launched all seven channels on 21 September 2012.

4. On 10 October 2012, the Office of the Communications Authority ("OFCA") received a written notification from DBC on matters relating to its cessation of operation as from 8:00 pm that day. In the afternoon of 12 October 2012, OFCA received written notification from DBC that it would resume broadcasting on 15 October 2012, and the service of DBC resumed at 7:00 am on 15 October 2012. From 10 October 2012 onwards, OFCA issued a total of seven letters to DBC and its interim receiver, Deloitte Touche Tohmatsu, requesting the company to provide details on the incident of the cessation of operation and reminded the company of the need to comply with licence conditions and legal requirements under the Telecommunications Ordinance (Cap. 106). OFCA also invited DBC to make representations to CA to address the possible breach of licence conditions arising from the cessation of broadcasting service by DBC.

5. From around 11:00 pm on 21 October 2012, DBC's broadcasting service was limited to the playing of music. OFCA wrote to the interim receiver on 22 October 2012 to reiterate the requirements in the licence conditions regarding the channels to be provided by DBC, and to request for more details on DBC's broadcasting service so as to ascertain the company's compliance with its licence conditions. In reply, the interim receiver wrote to OFCA on 25 October 2012 applying for OFCA's consent to allow DBC to broadcast music and re-run programmes on all its channels for 60 days from 21 October 2012 so as to allow time for DBC to resolve its financial problems. According to OFCA, CA would consider the application in due course.

6. The Panel held a special meeting on 26 October 2012 to follow up on the issues relating to the discontinuation of broadcasting service by DBC. Representatives of the Commerce and Economic Development Bureau, OFCA and DBC (including Mr Albert CHENG, Founder, President and Editor-in-Chief, Mr Morris HO, Chief Executive Officer, and representatives of "爭取 DBC 復播運動行動委員會") attended the meeting. Mr WONG Cho-bau and Professor Arthur LI, the Chairman of the Board and the Management Committee Member of DBC respectively, were also invited by the Panel but did not attend the meeting, citing the reason that they were away from Hong Kong at the time.

Deliberations of the Panel

7. At the special meeting on 26 October 2012, the Panel noted that the Secretary for Commerce and Economic Development ("SCED") had met with the management of DBC on 26 September 2012 upon its request on issues relating to the operations of DBC, including the disagreement among its shareholders on further investments into DBC. SCED made it clear to the management of DBC that it was inappropriate for the Government to interfere with the internal operation of broadcasting companies, nor to play the role of commercial mediator to resolve disagreements among the shareholders of a private company. The broadcasting regulatory regime of Hong Kong had always respected the independent operation and editorial independence of the licensees. It was the duty of a licensee to manage its own internal affairs properly. Nonetheless, CA, as the statutory regulatory body had followed DBC's developments, monitored whether it had complied with its licence conditions and legal requirements under the Telecommunications Ordinance, and taken follow up actions in accordance with the law.

8. Judging from the alleged recordings of DBC meetings circulating on the Internet from 20 October 2012, some Panel members considered that there was prima facie evidence to suggest that the decision of some of the major shareholders against making further investments into DBC was a result of political interference from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region ("the Liaison Office"). These members were dissatisfied that the Administration had treated the matter simply as an internal affair of DBC, and used the disputes among the major shareholders of DBC as an excuse for declining to comment on the matter.

9. During the meeting, Mr Albert CHENG also remarked that he was subject to an injunction issued by the High Court on 27 September 2012 prohibiting him from disclosing details about the business affairs of DBC.

10. Some Panel members opined that the discontinuation of broadcasting service by DBC was a matter of wide public concern as freedom of expression was at stake. Not only were the staff of DBC deprived of their jobs, the audience at large was also deprived of a media choice. It was in the public's interest to find out the reason for the cessation of broadcasting service by DBC.

11. Some other Panel members considered the rumour of political interference as pure speculation as DBC had been allowed to soft launch

its service in August 2011 and had not been restricted from criticizing the Government. These members also expressed concern that the Council's inquiry into issues relating to the discontinuation of broadcasting service by DBC would prejudice any impending litigation among its major shareholders.

Proposal to appoint a select committee

12. Hon Albert CHAN Wai-yip moved a motion for the appointment of a select committee by the Council to inquire into issues relating to the discontinuation of broadcasting service by DBC. The wording of the motion is in the **Appendix**.

13. Panel members noted that if a Panel decided to recommend the appointment of a select committee to conduct an inquiry and for the select committee to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO") for the purpose of the inquiry, a paper should be presented to the House Committee.

14. Under Rule 78 of the Rules of Procedure, the Council may appoint one or more select committee to consider matters or bills which the Council may refer to the committee. The President shall decide the size of each select committee and shall appoint the chairman, deputy chairman and members thereof, taking into account the recommendations of the House Committee. Under Rule 80(b), a select committee, where so authorized by the Council, may summon, as required when exercising its powers and functions, persons to testify or give evidence. Under section 14(1) of the LCPPO, every person who is lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council or a committee shall be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as before a court of law.

15. The Panel put to vote Hon Albert CHAN Wai-yip's motion. Nine members voted for the motion and eight members against the motion. The motion was passed by the Panel.

16. The Panel agreed that its proposal for a select committee to be appointed by the Council should be put to the House Committee for consideration.

Advice sought

17. The House Committee is invited to support the recommendation of the Panel in paragraph 16.

18. In line with past practice, if the Panel's proposal of appointment of a select committee to inquire into issues relating to the discontinuation of broadcasting service by DBC is supported by the House Committee, a subcommittee of the House Committee may be appointed to draw up the proposed terms of reference and other related matters, such as timeframe, size of the committee, proposed membership, etc., for a further discussion by the House Committee. Subject to the endorsement of the House Committee, the motion to appoint a select committee will be moved by the chairman of the subcommittee at a Council meeting. If the motion is passed, the select committee will be appointed by the President, having regard to the recommendations of the House Committee.

Council Business Division 4
Legislative Council Secretariat
1 November 2012

(Translation)

Motion on "Issues relating to the discontinuation of broadcasting service by Digital Broadcasting Corporation Hong Kong Limited" proposed by Hon Albert CHAN Wai-yip and passed by the Panel on Information Technology and Broadcasting at its special meeting held on 26 October 2012

That this Panel requests that a select committee be set up by the Legislative Council to inquire into the issues relating to the discontinuation of broadcasting service by Digital Broadcasting Corporation Hong Kong Limited ("DBC"), and the committee is tasked to find out:

- (a) the reason for the cessation of capital injection into DBC by its directors;
- (b) whether the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region ("the Liaison Office") has exerted any political interference which may result in the discontinuation of broadcasting service by DBC;
- (c) the reason for the refusal of the directors of DBC to transfer their shares; and
- (d) whether the directors of DBC have ceased injecting capital into DBC because of the pressure from the Liaison Office or other political factors.