

立法會
Legislative Council

LC Paper No. CB(1)1273/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/18

**Bills Committee on Broadcasting and Telecommunications Legislation
(Amendment) Bill 2019**

**Minutes of first meeting
held on Tuesday, 16 April 2019, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Dr Hon Elizabeth QUAT, BBS, JP (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, JP
Hon Holden CHOW Ho-ding
Hon HUI Chi-fung

Public Officers attending : Agenda item II
Commerce and Economic Development Bureau

Mr Edward TO, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Creative
Industries) (Special Duties)

Mr Tony YIP
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Creative Industries) (Special Duties)

Mr Alex LAU
Assistant Secretary for Commerce and Economic
Development (Communications and Creative
Industries) (Special Duties)

Department of Justice

Mr Vincent WAI
Government Counsel

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (1)6

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Mandy LI
Senior Council Secretary (1)6

Mr Patrick CHOI
Council Secretary (1)6

Miss Yolanda CHEUK
Legislative Assistant (1)6

Ms Yvonna HO
Clerical Assistant (1)6

Action

I. Election of Chairman

Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Bills Committee on Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 present at the meeting,

presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Ms Starry LEE Wai-king nominated Dr Elizabeth QUAT and the nomination was seconded by Mr Frankie YICK chi-ming. Dr Elizabeth QUAT accepted the nomination.

3. Mr WONG Ting-kwong invited other nominations for the chairmanship. As there was no other nomination, Mr WONG Ting-kwong declared that Dr Elizabeth QUAT was elected the Chairman of the Bills Committee. Dr Elizabeth QUAT then took over the chair.

Election of Deputy Chairman

4. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

(LC Paper No. CB(3)455/18-19	— The Bill
File Ref.: CCIB/SD 605-5/1 C11	— Legislative Council Brief
LC Paper No. LS60/18-19	— Legal Service Division Report
LC Paper No. CB(1)891/18-19(01)	— Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
LC Paper No. CB(1)891/18-19(02)	— Background brief prepared by the Legislative Council Secretariat
LC Paper No. CB(1)891/18-19(03)	— Assistant Legal Adviser's letter dated 9 April 2019 to the Administration
LC Paper No. CB(1)891/18-19(04)	— Administration's reply to Assistant Legal Adviser's letter dated 9 April 2019)

5. The Bills Committee deliberated (index of proceedings in the **Appendix**).

Follow-up actions to be taken by the Administration

6. The Administration was requested to respond to a list of follow-up actions arising from the discussion.

(Post-meeting note: A list of follow-up actions arising from the discussion, vide LC Paper No. CB(1)1009/18-19(01), was issued to the Administration on 18 April 2019. The Administration's response dated 2 May 2019, vide LC Paper No. CB(1)1009/18-19(02), has been circulated to members on 6 May 2019.)

III. Any other business

7. Members agreed to invite relevant organizations or corporations to express their views on the Bill in the next meeting. There being no other business, the meeting ended at 10:28 am.

Council Business Division 1
Legislative Council Secretariat
19 July 2019

**Bills Committee on Broadcasting and Telecommunications Legislation
(Amendment) Bill 2019**

**Proceedings of first meeting
held on Tuesday, 16 April 2019, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I — Election of Chairman			
000343 – 000540	Mr WONG Ting-kwong Ms Starry LEE Wai-king Dr Elizabeth QUAT Mr Frankie YICK Chi-ming	Election of Chairman	
Agenda item II — Meeting with the Administration			
000541 – 001943	Chairman Administration	Briefing by the Administration [File Ref.: CCIB/SD 605-5/1 C11]	
001944 – 002455	Chairman Assistant Legal Adviser 10 ("ALA 10") Administration	Upon ALA 10's request, the Administration provided information on the transitional arrangements for the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) when the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019 ("the Bill") would come into operation. ALA 10's request and the Administration's response were issued to members before the meeting, vide LC Paper Nos. CB(1)891/18-19(03) and CB(1)891/18-19(04) respectively.	
002456 – 002948	Chairman Mr Charles Peter MOK Administration	Noting that the Administration had shelved its earlier plan to merge Cap. 562 and Cap. 106, Mr Charles Peter MOK requested a comparison between the approach of merging Cap. 562 and Cap. 106 in one exercise and the current approach of staged amendments to the two ordinances, in terms of mergers and acquisitions arrangements and consumer protection, etc. The Administration responded that with the introduction of the fair trading sections of the Trade Descriptions Ordinance (Cap. 362) and the Competition Ordinance (Cap. 619) in recent years, the inconsistencies in terms of consumer protection and competition safeguards between Cap. 106 and Cap. 562, being one of the then major concerns,	

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		had already been addressed. It undertook to provide a detailed response after the meeting.	The Administration to follow up as per paragraph 6 of the minutes.
002949 – 003502	Chairman Mr CHAN Chi-chun Administration	<p>Mr CHAN Chi-chun opined that in order to provide a more balanced competitive environment between the traditional broadcasting industry and Internet media, the regulatory arrangements for the former should be significantly relaxed.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the provisions of certain restrictions on the traditional broadcasting industry had been progressively relaxed in a number of previous legislative amendment exercises; and (b) the Communications Authority ("CA") had kept the administrative measures and Codes of Practice for broadcasting licensees under review. For instance, CA had relaxed the regulation on indirect advertising last year. 	
003503 – 004209	Chairman Mr HUI Chi-fung Administration	<p>Mr HUI Chi-fung questioned whether the proposed relaxation of restriction against foreign control of domestic free television programme service ("free TV") licensee was consistent with the policy objective of ensuring that free TV broadcasters should cater for local interest, taste and culture, as there had been precedents where foreign investors had intervened the programme contents of free TV. Mr HUI also asked whether the proposed minor refinements were conducive to attracting more foreign investment in Hong Kong's free TV sector.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the various current requirements that local free TV licensees must be held by local individuals or companies remained unchanged; (b) the Bill only proposed to relax the threshold percentages of shareholdings by unqualified voting controllers subject to approval of CA; and (c) the revised threshold percentages were proposed after considering – 	

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		<p>(i) the requirement for disclosure of shareholding of 5% or above for listed companies under the Securities and Futures Ordinance (Cap. 571);</p> <p>(ii) the prevailing statutory definition of a person who “exercises control” (i.e. acquiring 15% or more of the voting control of a free TV licensee) under Cap. 562 and that more stringent requirements were imposed on such a person; and</p> <p>(iii) CA's observation that most of the foreign investors of Hong Kong's free TV market were not interested in exercising direct control of the companies and their shareholdings were usually in the range from 2% to 4%.</p> <p>Mr HUI Chi-fung asked whether there was evidence to support CA's observation that foreign investors were mainly interested in investment rather than in controlling local free TV companies. The Administration undertook to provide details after the meeting.</p>	<p>The Administration to follow up as per paragraph 6 of the minutes.</p>
<p>004210 – 004923</p>	<p>Chairman Mr Charles Peter MOK Administration</p>	<p>Mr Charles Peter MOK commented that the foreign investment on local free TV services seemed to be predominantly Mainland capital. Other overseas media companies had become increasingly concerned about the change in the protection of press and information freedom in Hong Kong, and some had already moved their bases from Hong Kong. While acknowledging the Administration's intention to attract more overseas investment in Hong Kong's free TV services, Mr MOK asked how the Administration would allay or respond to these overseas investors' worries.</p> <p>The Administration responded that as Hong Kong was a free market, foreign investments were welcome including those in the broadcasting industry. The Administration's objective was to remove obsolete regulations and restrictions with a view to facilitating the growth of the industry.</p>	

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		<p>Mr Charles Peter MOK referred to a recent case where an individual had tried to appeal to the public, through social media, to boycott companies which placed advertisements in a particular newspaper. He was concerned that the above conduct might exert undue pressure to local broadcasting companies if such conduct was allowed to happen to these companies.</p> <p>The Administration responded that it would not comment on any specific case. As far as Cap. 562 and Cap. 106 were concerned, the licensees had no reasons to reject anyone placing an advertisement provided that the advertisement had met the statutory requirements and in compliance with the relevant Codes of Practice.</p>	
004924 – 005515	Chairman Mr Charles Peter MOK Administration	<p>Mr Charles Peter MOK asked whether the Administration had considered shifting the authority of approving free TV or domestic pay TV programme service ("pay TV") licences from Chief Executive in Council ("CE in C") to CA.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the current decision-making hierarchy for CE in C to grant and renew free TV, pay TV and sound broadcasting licences, after considering CA's recommendations, was commensurate with the pervasiveness, popularity and influence of these broadcasting services; and (b) free TV, pay TV and sound broadcasting services, despite growing prominence of Internet media, were still amongst the most pervasive media outlets that had great influence on public morals and children. <p>Mr Charles Peter MOK commented that a regulatory body such as CA was probably in a better position than CE in C to gauge professionally the pervasiveness and influence of a broadcasting service. He asked for detailed justifications from the Administration for maintaining the requirement for CE in C to approve applications for free TV or pay TV licences.</p>	The Administration to follow up as per paragraph 6 of the minutes.

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005516 – 010208	Chairman Mr HUI Chi-fung Administration	<p>Mr HUI Chi-fung referred to the former free TV licensee Asia Television Limited ("ATV") and said that investors could influence the operation and production of the media company through their associated persons. He asked whether the proposed relaxation of the restrictions in cross-media ownership and foreign control of voting rights would make it even easier for investors to exercise control of the licensees; or to monopolize the media through owning different media companies by familial groups or conglomerates.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the majority of the restrictions on foreign control of a free TV licensee, such as residency requirement on a licensee, residency requirement on a licensee's directors and principal officers, and attenuation of voting rights exercised by non-Hong Kong resident shareholders at general meetings, would be unaffected by the Bill; (b) amidst the growing prominence of new and Internet media nowadays, the media market had become highly competitive and monopolization by any familial or business group of any segment of the sector that would undermine editorial plurality was highly improbable; and (c) the proposed relaxation in cross-media ownership restrictions would not undermine editorial plurality. 	
010209 – 010825	Chairman Mr CHAN Chi-chun Administration	<p>Mr CHAN Chi-chun pointed out that the current legislation did nothing to address the ownership of media companies by two same sex partners as compared with the restriction on spouse and other associated persons in the regulation of cross-media ownership.</p> <p>Mr CHAN Chi-chun further commented that the threshold percentages of total voting control of a free TV licensee by an unqualified voting controller that were subject to CA's prior approval would unlikely affect how a broadcaster catered for local interest, taste and culture in its productions. Mr CHAN asked whether there were other</p>	

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		<p>measures to achieve this policy objective. He also asked whether free TV licensees would be further deregulated towards a more balanced competitive environment for the broadcasting market.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) in promoting a more balanced competitive environment for the broadcasting market, the Administration played a facilitating role, and sought to reduce compliance cost by investors; (b) CA ensured that free TV licensees would take local taste into account through licence conditions such as requiring licensees to broadcast programmes wholly of Hong Kong origin, etc.; and (c) as detailed in Annex B of the Legislative Council Brief, a number of administrative measures were adopted by CA to facilitate operation of the broadcasting industry. More facilitating measures would be considered at the upcoming mid-term review of broadcasting licences. 	
010826 – 011440	Chairman Mr Charles Peter MOK Administration	<p>Mr Charles Peter MOK said that, in the case of ATV, the investor had exercised de facto control of the media company through certain local associates. He asked whether the proposed change to the scope of "disqualified persons" would aggravate the problem.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) in the case of ATV, CA had exercised the power under Cap. 562 and other relevant legislation to conduct investigation and impose sanctions against ATV. Taking into account the licensee's past performance, CA later recommended to CE in C that its licence should not be renewed upon expiry; (b) the Bill would not affect CA's existing power; and (c) the Administration did not envisage any urgent need for reviewing CA's power in this respect. 	

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011441 – 011915	Chairman Mr HUI Chi-fung Administration	<p>Mr HUI Chi-fung asked for the number of applications for domestic free or pay TV licence by disqualified persons that had been approved or rejected by CE in C under Cap. 562.</p> <p>The Administration undertook to provide the requested information after the meeting.</p>	The Administration to follow up as per paragraph 6 of the minutes.
011916 – 012438	Chairman Mr Charles Peter MOK Administration	<p>Mr Charles Peter MOK asked whether the Administration had any active policy measures to incentivize Over-The-Top ("OTT") service providers to set up operations in Hong Kong, as OTT business had been an emerging area that attracted enormous investment worldwide.</p> <p>The Administration responded that during the public consultation on review of TV and sound broadcasting regulatory framework, some stakeholders had expressed support for the Administration's decision that Internet TV and radio programme services should remain not subject to broadcasting licensing controls. Such services had gained much popularity and market share in recent years.</p> <p>Mr Charles Peter MOK considered that the Administration should take a more active step to encourage foreign investment on OTT development in Hong Kong.</p>	
012439 – 012806	Chairman Mr HUI Chi-fung Administration	<p>Mr HUI Chi-fung asked, with the passage of the Bill, whether a company and its subsidiaries might be allowed to own or control several broadcasting licences or media companies, and, if so, whether the Administration would introduce measures to prevent an individual or a holding company from monopolizing the media. Mr HUI commented that a parent company might still be able to control its subsidiary companies without having direct share-ownership.</p> <p>The Administration responded that –</p> <p>(a) licensees of free TV, pay TV and sound broadcasting services remained under the category of "disqualified persons" under the Bill; and</p>	

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		<p>(b) if a company or its subsidiary was already a licensee, or met the definition of "exercise control" or "associate" under Cap. 106 and Cap. 562, the company and its subsidiary would be subject to the restrictions on "disqualified persons" and could not hold or exercise control on another aforementioned licence unless with CE in C's approval. The Bill would not change these restrictions.</p> <p>In response to Mr HUI Chi-fung's query on whether the Administration had consulted the Hong Kong Competition Commission on the Bill, the Administration confirmed that the Competition Commission had been consulted and had made no comments on the Bill.</p>	
Agenda item III — Any other business			
012807 – 013110	Chairman Mr HUI Chi-fung Mr Charles Peter MOK Mr Jimmy NG Wing-ka	<p>The Chairman consulted members whether relevant organizations should be invited to give views on the subject.</p> <p>Having consolidated members' opinions, the Chairman concluded that since the discussion would be focused on the technical aspect of the statutory requirements and regulatory arrangements of broadcasting licences, only the relevant organizations or corporations should be invited. Members agreed.</p>	
013111 – 013134	Chairman	End of meeting	