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Legislative Council

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

Background brief

Purpose

This paper summarizes previous discussions by Members on the review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106).

Background

2. To keep pace with the advancement in technology in the telecommunications and broadcasting sectors, the Administration has adopted a two-stage approach to restructure the regulatory institutional arrangements and review the overall regulatory regime and legislation in respect of telecommunications and broadcasting.

3. During the first stage of the review, the Administration introduced in 2010 the Communications Authority Bill to establish the Communications Authority ("CA") by merging the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA"). Following the passage of the Bill on 30 June 2011, CA was formally established on 1 April 2012 to enforce Cap. 562 and Cap. 106 as well as other relevant legislation. It is also responsible for administering all matters under the purview of the former BA and TA.

4. The Administration has completed the part of the review on the television ("TV") and sound broadcasting regulatory regimes respectively enshrined in Cap. 562 (TV broadcasting) and Part 3A of Cap. 106 (sound broadcasting) ("the Review"). Through the Review, the Administration seeks to relax obsolete statutory requirements and rationalize the regulatory regimes amidst blossoming of Internet-based media platforms. The goal

is to provide a balanced competitive environment for the broadcasting market, and to leave more room for innovation and investment.

Public consultation on the Review

5. On 20 February 2018, the Administration launched a three-month public consultation to gauge views from members of the public, the broadcasting industry and other stakeholders on the proposals of the Review. The Administration announced that the proposals would address the imbalance in the regulatory regimes for traditional broadcasting services and Internet media, attempt to remove obstacles for the traditional broadcasting sector and reduce the gap between the traditional broadcasting sectors and Internet media in terms of regulatory control.

Outcome of the Review

6. According to the Administration, the Review concludes that the existing broadcasting regulatory framework is proportionate and reasonable and should remain intact. The following four categories of TV services should continue to be licensed under Cap. 562:

- (a) domestic free TV programme service ("free TV");
- (b) domestic pay TV programme service ("pay TV");
- (c) non-domestic TV programme service ("non-domestic TV") (e.g. satellite TV); and
- (d) other licensable TV programme service (other licensable TV) (e.g. hotel TV).

Sound broadcasting services should continue to be licensed under Part 3A of Cap. 106.

7. As regards Internet-based television ("TV") and sound programme services, having regard to overseas experience, the Administration is of the view that they should remain not to be subject to the broadcasting licensing controls.

8. The Administration considers that, while the existing regulatory regime should remain intact, there is room for relaxing the level of regulation on individual aspects.

Key proposals

9. In the light of the outcome of the Review and the public consultation, the Administration introduced the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 ("the Bill") into the Legislative Council ("LegCo") on 27 March 2019. Details of the legislative proposals were presented in the LegCo Brief tabled at the Council meeting on 20 March 2019. The proposed amendments covers the following areas:

- (a) **Cross-media ownership restrictions and scope of "disqualified persons"** – restrictions are imposed to forestall concentration of media ownership and control, conflict of interest and editorial uniformity across different media platforms. Under Cap. 562 and Part 3A of Cap. 106, disqualified persons ("DPs") and certain categories of people connected to them, may not hold/exercise control of a free TV or pay TV licence/licensee, or a sound broadcasting licence/licensee, unless the Chief Executive in Council ("CE in C") so approves in the public interest. The Administration proposes to remove some of the obsolete categories from the definition of DPs, so that DPs would include mainly licensees of free TV, pay TV or sound broadcasting services;
- (b) **Foreign control restrictions** – the existing foreign control restrictions ensure that licensees are controlled by local individuals or companies who are responsive to and cater for the local audience's interests, tastes and culture. The Administration proposes that most of the existing foreign control restrictions should remain, with only minor refinements to the threshold percentages of foreign investments that are subject to the prior approval of CA¹;

¹ Under section 20(1) of Schedule 1 to Cap. 562, an unqualified voting controller shall not, without the prior approval in writing of CA, hold, acquire or exercise or cause to permit to be exercised, 2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in aggregate, of the total voting control of a licensee. The Administration proposes in the Bill refinements to these threshold percentages to, respectively, 5% or more but less than 10%, or 10% or more but not more than 15%, or more than 15%.

- (c) **Requirement of a licensee being a non-subsidiary company** – the existing requirement aims to ensure that the licensees would focus on their broadcasting businesses under minimal influence or interference by other related entities. The Administration proposes that the requirement be removed so that licensees will be given the flexibility in arranging their businesses and in exploring other related business opportunities; and
- (d) **Licensing authority** – the Administration proposes that CE in C should continue to be the licensing authority for local free/pay broadcasting services, and that CA should remain the licensing authority for non-domestic TV licences (covering TV service not primarily targeting Hong Kong, e.g. satellite TV) and other licensable TV licences (e.g. for providing hotel TV service).

Other administrative measures

10. The Administration has adopted a multipronged approach to facilitate the development of Hong Kong's broadcasting industry. Other than the proposed legislative amendments summarized above, non-legislative measures would also be taken forward, including the publication of the Code of Practice, to relax the regulation of indirect advertising in TV programme services and to lift the prohibition on the broadcast of advertisements for undertakers and associated services. These measures have been in force since July 2018.

Previous discussions

11. The Administration briefed the Panel on Information Technology and Broadcasting ("the Panel") on the directions of the Review at the meeting held on 12 June 2017, and informed Panel members of the outcome of the Review and the public consultation on the legislative amendment proposals on 12 March 2018. The major discussions and concerns raised by Panel members regarding the legislative proposals, and the Administration's responses are summarized in the ensuing paragraphs.

Cross-media ownership restrictions

12. Panel members enquired whether a licensee of domestic free TV services would be required to notify CA of any transfer of share ownership, and whether a person would be allowed to hold licenses of more than one

type of media service. The Administration advised that the issues were being examined. In particular, the Review would cover whether the extant provision under Cap. 562 regarding ownership requirements of free TV licensees were appropriate and should be retained. On the broader issue of cross-media ownership, the Panel noted that in some jurisdictions, a person or corporation might own more than one type of media so long as the coverage or market share of the media outlets did not exceed specified limits.

Foreign control restrictions

13. A few Panel members expressed concerns on the proposed refinements to the threshold percentages of total voting control of a free TV licensee exercisable by an unqualified voting controller subject to the prior approval of CA (paragraph 9(b) above). Members made the point that the proposal might allow non-local residents to become voting controllers who might not be responsive to, or cater for, the local audience's interests, tastes and culture. They asked whether the Administration could ensure that local TV services would be controlled by local people.

14. One Panel member in particular commented that the proposed arrangement would encourage more Mainland corporations to increase their ownership and control over Hong Kong's TV services and that might have implications on Hong Kong's freedom of information. Panel members cautioned that the Administration should not relax the threshold percentages of total voting control of a free TV licensee just to attract more foreign investment in Hong Kong, but should give due consideration to local sentiments in reaching a decision.

15. The Administration explained that the objective of (a) requiring the majority of directors and principal officers to be local residents; and (b) requiring shareholding by non-local residents exceeding specified threshold percentages to be approved by CA, was to ensure that programmes of free TV licensees could meet local taste. The proposed minor refinements pertained to the threshold percentages of foreign investments that were subject to CA's prior approval. Foreign investors intending to acquire more than 15% of the shareholding of free TV licensees would be subject to close scrutiny by CA as to their compliance with the definition of DP and the "fit and proper" person requirements under Cap. 562.

16. The Administration further explained that from CA's operational experience, foreign investors who participated in Hong Kong's free TV market did so largely for pure investment purposes rather than for exercising control of the licensees. The underlying policy objective of the

existing regulatory regime had always targeted against foreign voting control of Hong Kong's domestic broadcasting licensees, rather than foreign ownership per se. The proposed minor adjustments aimed at facilitating foreign investment into Hong Kong's free TV market; the overall framework of the existing foreign control restrictions on domestic broadcasters, which had been working well to ensure that the control of the relevant licensees was vested in the hands of local people, would remain intact.

17. Members discussed whether the Administration should attract foreign investment in domestic free TV services when the market was shrinking in favour of digital media. Some Panel members queried the justification for maintaining foreign control restrictions on traditional media when there were no similar regulatory regimes on digital media. They asked if the Administration would consider regulating digital and other media, taking into account the experience of overseas jurisdictions.

18. The Administration responded that there was still room for the traditional TV industry to develop. The proposed measures were introduced to energize the market and create a better business environment for existing and potential future operators. The current policy aimed at facilitating the operation and development of the traditional broadcasting sector, instead of imposing regulatory control on the Internet media. Advanced overseas jurisdictions did not institute a licensing regime on media such as Internet TV and Internet radio services. Regulation of Internet contents was difficult to enforce, and was not practicable.

Licensing authority

19. Some Panel members queried whether the two-tier process (i.e. consideration of an application by CA and approval of the application by CE in C subject to CA's recommendations) for licence applications for free TV was necessary. They commented that the current process of approving a free TV licence through CE in C was not transparent and this would affect investors' confidence in the free TV market in Hong Kong.

20. The Administration explained that the traditional media was still highly pervasive, and hence the licensing process involved the consideration of significant public interest at stake. In reviewing the licensing system, the Administration had to balance investors' interests on the one hand, and the policy objectives on the other. The existing licensing system had been working effectively in general. The Review had concluded that the existing two-tier system, with the statutory authority to approve free TV licence-grant vested in CE in C, was appropriate.

Other measures not included in the Bill

Over-the-top television services

21. Panel members asked if the Administration would study on the regulation of over-the-top ("OTT") television services. The Administration explained that regulation of OTT was not covered in the Review as it had no plan to regulate Internet broadcasting. If a broadcasting licensee used the Internet as a platform to extend its broadcasting services, such operation would not fall into the definition of cross-media ownership. The Administration had been conducting an internal exercise to examine the developments of OTT services and the relevant regulatory regimes in overseas jurisdictions, and found that OTT services were generally not regulated or regulated with a light-handed approach.

Merging Cap. 562 and Cap. 106

22. Panel members had asked if the Administration would follow up its earlier plan of merging Cap. 562 and Cap. 106 to remove inconsistencies in the operations and regulations of the broadcasting and telecommunication sectors under the two ordinances. The Administration stressed the need to expedite the implementation of the proposed legislative amendments outlined above, so that the broadcasting industry could benefit from the proposed measures as soon as possible. The Administration would also update the telecommunications regulatory regime to cope with the advancement of telecommunications technologies including the imminent arrival of the fifth generation mobile communications services in a separate legislative exercise. The question of whether Cap. 562 and Cap. 106 should merge could be addressed after all the above measures had been implemented, and in light of the prevailing market circumstances at that time.

Latest development

23. At the House Committee meeting on 29 March 2019, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

24. A list of the relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
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List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	12 June 2017	<p>Administration's paper on review of Broadcasting Ordinance (Cap.562) and Telecommunications Ordinance (Cap. 106) (LC Paper No. CB(4)1133/16-17(03))</p> <p>Paper on review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106) prepared by the Legislative Council Secretariat (Background brief) (LC Paper No. CB(4)1133/16-17(04))</p> <p>Minutes of meeting (LC Paper No. CB(4)1360/16-17)</p>
Commerce and Economic Development Bureau	20 February 2018	Press releases – Public consultation on phase one of review on Broadcasting Ordinance and Telecommunications Ordinance launched