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Legislative Council

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Report of the Bills Committee on
Broadcasting and Telecommunications Legislation (Amendment) Bill 2019

Purpose

This paper reports on the deliberations of the Bills Committee on Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 ("the Bills Committee").

Background

2. The Broadcasting Ordinance (Cap. 562) and Part 3A of the Telecommunications Ordinance (Cap. 106) respectively provide for the regulatory frameworks for television ("TV") programme services and sound broadcasting services. Under the extant regulatory framework, the most pervasive broadcasting services, i.e. free TV, pay TV and sound broadcasting, are subject to a two-tier scrutiny system for licence application and renewal. Licence applications and renewal applications have to be made to the Communications Authority ("CA"), which will process the applications in accordance with the statutory requirements and established procedures, before making its recommendations to the Chief Executive in Council ("CE in C") as to whether a licence should be granted or renewed and if so, on what terms, after considering the CA's recommendations. The discretionary power as to whether or not to grant or renew a licence is vested in CE in C. For broadcasting services that only target viewing public outside Hong Kong, or a relatively small number of people in Hong Kong, the discretionary power as to whether to grant or renew a licence is vested in CA. Specifically, CA is the authority for the granting (and renewal) of licences for non-domestic TV (covering TV services not primarily targeting Hong Kong) and other licensable TV (covering TV services targeting a relatively small number of local audience or hotel rooms).

3. The Administration has completed a review on the TV and sound broadcasting regulatory frameworks ("the Review") in 2018. The Review concludes that the existing broadcasting regulatory framework is proportionate and

reasonable, and should remain intact. The Review also considers that sound broadcasting services should continue to be licensed under Part 3A of Cap. 106, while 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).

The Review also concludes that, in line with international practice and in view of the enforcement difficulties involved, Internet-based TV and radio programme services should remain not subject to licensing control.

4. In the light of the Review, the Administration proposes to introduce the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 ("the Bill") to amend Cap. 106 and Cap. 562 to remove obsolete statutory requirements and rationalize the regulatory frameworks amidst blossoming of Internet-based media platforms. The proposal seeks to address the imbalance between the existing regulatory control over traditional broadcasting services and Internet media and remove obstacles for the traditional broadcasting sector.

The Bill

5. The main provisions of the Bill are summarized below.

<u>Amendments to the Broadcasting Ordinance (Cap. 562)</u>

Relaxation of cross-media ownership restrictions

6. Schedule 1 to Cap. 562 provides for, among others, certain cross-media ownership restrictions. The restrictions are manifested through the stipulation of "disqualified persons" ("DPs"). A DP (including an "associate" of a DP; a person who "exercises control" over a DP; and an associate of a person who exercises control over a DP) may not hold/exercise control of a free TV or pay TV licence/licensee, unless CE in C in the public interest so approves.

7. Clause 5 of the Bill seeks to amend Schedule 1 to Cap. 562 mainly to:

(a) remove certain obsolete categories of DP in relation to a free TV or pay TV licence granted under Cap. 562, viz. a non-domestic TV licensee, an other licensable TV licensee, an advertising agency and the proprietor of a local newspaper. Other categories of DP, including free TV, pay TV and sound broadcasting licensees and their associates, would remain unchanged; and

(b) limit the definition of "relative" under the definition of "associate" to immediate family members only, viz. spouse; parent; child, adopted child and stepchild; and sibling.

Relaxation of foreign control restriction of domestic free television programme service licensee

8. Under section 20 of Schedule 1 to Cap. 562, an unqualified voting controller (i.e. a voting controller who is not ordinarily resident in Hong Kong) of a free TV licensee shall not, without the prior approval of CA, hold, acquire or exercise or cause or 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 the aggregate, of the total voting control of such licensee.

9. Clause 5 of the Bill seeks to propose minor refinements to the threshold percentages from the existing "2%, 6%, 10% and above" to "5%, 10%, 15% and above".

Removing the requirement of a domestic free television programme service licensee being a non-subsidiary company

10. Under section 8(3) of Cap. 562, a free TV licence shall not be granted to a company which is a subsidiary of a corporation. Clause 3 of the Bill seeks to amend section 8 of Cap. 562 to remove this restriction so that a subsidiary of a corporation will not be precluded from holding a free TV licence subject to other relevant conditions being satisfied.

<u>Amendments to the Telecommunications Ordinance (Cap. 106)</u>

11. In relation to a sound broadcasting licence, the Bill proposes relaxation measures as summarized below:

(a) Clause 11 proposes to remove certain obsolete categories of DP in relation to a sound broadcasting licence granted under Cap. 106, viz. an advertising agent, a person who in the course of business supplies material for broadcasting by a sound broadcasting licensee, and a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong.

(b) Clause 12 proposes to amend section 13F of Cap. 106 to remove the requirement that a sound broadcasting licence may only be granted to or held by a corporation that is not a subsidiary.

12. The Bill also proposes to amend section 36A of Cap. 106 to repeal an obsolete reference relating to the repealed Television Ordinance (Cap. 52).

Transitional and savings provisions

13. The Bill proposes to introduce a new Schedule 10 and a new Schedule 4 to Cap. 562 and Cap. 106 respectively to provide for transitional and savings provisions to cover matters done or started under the two Ordinances before the commencement of the Bill after it is published in the Gazette as an ordinance. These matters include on-going inquiry or investigation conducted by CA and pending applications for licences or renewal of licences.

Commencement

14. The Bill, if passed, will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

The Bills Committee

15. At the House Committee meeting held on 29 March 2019, Members agreed to form a Bills Committee to scrutinize the Bill. Hon Elizabeth QUAT was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**.

16. The Bills Committee has held two meetings with the Administration and invited views from relevant organizations. A list of the organizations which have provided views to the Bills Committee is in **Appendix II**. The Administration has provided a written response to the views and concerns expressed by the deputations at the second Bills Committee meeting held on 7 May 2019.[1]

[1] The Administration's response can be found at LC Paper No. CB(1)1107/18-19(02).

Deliberations of the Bills Committee

17. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Relaxing the regulation of the broadcasting sector

18. Members in general have considered that the regulatory arrangements for traditional broadcasting industry should be further relaxed in order to provide a more balanced competitive environment for the broadcasting market, particularly with the recent growth of Internet media. The Administration has responded that a multipronged approach had been adopted to facilitate the development of Hong Kong's broadcasting industry. Relaxation measures on several fronts had been put forward to address the imbalance in the regulatory frameworks for traditional broadcasting services and Internet media, including legislative proposals put forward in the Bill; non-legislative measures such as the revision of codes 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 in July 2018; and other administrative measures such as streamlining the reporting requirements of free TV licensees,[2] etc.

19. The Administration has also informed members that CA would conduct a holistic review of the licence requirements in the mid-term review of free TV licences ("mid-term review") which would commence progressively in 2021-2022, during which the comments and suggestions of the industry on various aspects would be sought.

20. The Bills Committee has noted the following views of individual deputations:

(a) the restrictions on the programme contents of TV licensees, which are not applicable to Internet media and over-the-top ("OTT") services should be relaxed;

(b) the restrictions on programmes classified into the "Mature" category and advertisements promoting certain products or

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[2] Details of the measures are presented in Annex B to the Legislative Council Brief on Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 (CCIB/SD 605-5/1 C11).

services[3] should be relaxed as these restrictions have reduced the sources of income for free TV licensees; and

(c) the requirement for free TV licensees to operate an English channel should be relaxed or modified, as the English-speaking population in Hong Kong is declining, and that English TV programmes are readily available from OTT services and the Internet media.

21. The Administration has responded that the requirement for a free TV licensee to provide an English channel is specified in the conditions of the licence. Given Hong Kong's position as an international city and that English is an official language, the Administration considers the requirement of providing English channels on free TV reasonable. The Administration has informed members that details of this particular regulatory requirement may be reviewed at the upcoming mid-term review, which is a more appropriate venue considering the potentially far-reaching implications on the general public and free TV audience.

Cross-media ownership restrictions

22. Under Cap. 562 and Part 3A of Cap. 106, a DP may not hold or exercise control of a free TV, pay TV or sound broadcasting licence or licensee, unless CE in C so approves in the public interest. The restrictions are imposed to forestall concentration of media ownership and control, conflict of interest and ensure editorial uniformity across different media platforms.

23. Some members have queried whether the Bill's proposed amendments, which would limit the coverage of "relative" to immediate family members only,[4] would make it easier for investors to monopolize the media through owning different media companies by familial groups or conglomerates. The Administration has responded that the media market has become highly competitive and multifarious and monopolization by any familial or business group of any segment of the sector that would undermine editorial plurality is

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3 Clinical laboratory testing services, cosmetic surgery and slimming or weight reducing measures involving the use of medical preparations and hair transplantation treatment are examples of products and services that are not considered acceptable to be advertised on television ("TV").

4 The Administration proposes to amend section 1(1) of Schedule 1 to Cap. 562, so that "relative" would be limited to (a) spouse; (b) parent; (c) child, adopted child and stepchild; and (d) sibling. In other words, (a) aunt and uncle; (b) cousin; (c) niece and nephew; (d) grandmother and grandfather; (e) sister-in-law and brother-in-law; (f) mother-in-law and father-in-law; and (g) daughter-in-law and son-in-law would be removed from the definition of "relative".

highly improbable. The Administration considers that the proposed relaxation in cross-media ownership restrictions would not undermine editorial plurality.

24. Mr CHAN Chi-chuen has pointed out that the definition of "relative" under Cap. 562 and Cap. 106 includes "spouse", but does not appear to cover a same-sex partner relationship. The Bill has not addressed the situation where same-sex partners own different media companies. By comparison, heterosexual spouses and their associated persons are not permitted to own separate media companies.

25. Some members have asked whether a company and its subsidiaries might be allowed to own or control several broadcasting licences or media companies after the passage of the Bill, and, if so, whether the Administration would introduce measures to prevent an individual or a holding company from monopolizing the media. The Administration has responded that licensees of free TV, pay TV and sound broadcasting services (i.e. the most pervasive media services) would remain DPs under the Bill and therefore would continue to be disqualified from owning or exercising control of one another. If a company or its subsidiary is already a free TV/pay TV/sound broadcasting licensee, or meets the definition of "exercise control" or "associate" under Cap. 106 and Cap. 562,[5] the company and its subsidiary would be subject to the restrictions on DPs and could not hold or exercise control of another aforementioned licensee unless with the prior approval of CE in C. The Bill would not change these restrictions.

Foreign control restrictions

26. At present, foreign control restrictions[6] are imposed to ensure that broadcasting licensees are controlled by people who are responsive to and cater for local audience's interest, taste and culture. The Bill introduces minor refinements

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[5] For Cap. 562, "associate" is defined in section 2(1), and the interpretation of "exercise control" is given in sections 1(5) and 1(6) of Schedule 1. For Cap. 106, "associate" is referenced in section 13A(1) under the definition of "disqualified person", and the interpretation of "exercise control" is given in section 13A(2).

[6] Under section 20(1) of Schedule 1 to Cap. 562, an unqualified voting controller shall not, without the prior approval in writing of the Communications Authority ("CA"), hold, acquire or exercise or cause or 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%. This approval mechanism enables the CA to conduct the assessment needed whenever there is interest from non-Hong Kong residents in investing in Hong Kong's broadcasting market up to certain levels of voting control in a free TV licensee.

to the threshold percentages of foreign investments in a free TV licensee that are subject to the prior approval of CA (paragraphs 8 and 9 above).

27. Some members have queried whether the relaxation would have any effect on how far a broadcaster caters for local interest, taste and culture in its productions. Members have asked whether there are other measures to achieve this policy objective. The Administration has responded that CA would ensure that a free TV licensee provides a diversified service to meet the needs of the local community in accordance with the licence conditions.

28. The Administration has advised that from CA's observation, most of the foreign investors of Hong Kong's free TV market were not interested in exercising direct control of the companies. The proposed relaxation would simplify the approval requirement and reduce the compliance burden on investors while maintaining suitable control by CA. It would have the effect of encouraging investment and facilitating injection of new capitals in the free TV market.

29. Members have queried whether the proposed minor refinements are conducive to attracting more foreign investment in Hong Kong's free TV sector, and whether there is evidence to support the suggestion that foreign investors are mainly interested in investment rather than in controlling local free TV licensees or getting involved in the day-to-day business of the free TV licensees. One member has quoted the case of Asia Television Limited ("ATV") where a non-Hong Kong resident investor had been acting in collaboration with associated persons to exercise de facto control of the company.

30. The Administration has responded that the current requirement that local free TV licensees must be controlled by local individuals or companies would remain unchanged. The Bill only proposes to relax the threshold percentages of shareholdings by unqualified voting controllers subject to the prior approval of CA. The Administration has further advised members that the revised threshold percentages have been proposed after considering :

(a) the requirement for disclosure of shareholding of 5% or above for listed companies under the Securities and Futures Ordinance (Cap. 571);

(b) 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 are imposed on such a person; and

(c) CA's operational experience that most of the foreign investors of Hong Kong's free TV market are not interested in exercising direct control of the companies and their shareholdings are usually in the range from 2% to 4%.

31. The Administration has informed the Bills Committee that since the enactment of Cap. 562 in 2000, CA has approved 16 applications relating to shareholding in free TV licensee by non-Hong Kong residents, among which 14 (i.e. 87.5%) did not involve changes in the control and management of the licensees and were, as confirmed by the investors by way of statutory declarations, for pure investment purposes.

32. In the case of ATV, the Administration has informed the Bills Committee that CA exercised the power under Cap. 562 and other relevant legislation to conduct investigation and impose sanctions against ATV. Having regard to the past performance of ATV, CA eventually recommended to CE in C that ATV's free TV licence should not be renewed upon expiry. The Bill would not introduce changes to CA's existing power and the Administration does not envisage any urgent need for reviewing CA's power in this respect.

33. Some members have pointed out that overseas media companies have become increasingly concerned about the change in the protection of press and information freedom in Hong Kong; some have already moved their bases away from Hong Kong. While acknowledging the Administration's intention to attract more overseas investment in Hong Kong's free TV services by relaxing the restrictions on foreign control of free TV licensees, members have asked how the Administration would allay overseas investors' worries. The Administration has responded that the very objective of the legislative amendment exercise is to remove obsolete regulations and restrictions so as to facilitate the growth of the industry in response to the changes and challenges brought about by the evolution of infotainment. The existing requirements that free TV licensees should be controlled by local people/companies would remain unchanged.

34. Some other members have commented that there are circumstances under which investors could have exercised influence on the operation of a licensee through associated persons. They have queried whether the proposed relaxation of the foreign control restrictions would make it even easier for investors to exercise control of the licensees. The Administration has reassured that 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, residency requirement on quorum at directors' meetings, and attenuation of voting rights exercised by non-Hong Kong resident shareholders at general meetings, would remain unchanged.

Merging of the Broadcasting Ordinance and Telecommunications Ordinance

35. The Bills Committee is aware that the regulations of TV and sound broadcasting services are under different laws (i.e. Cap. 562 and Part 3A of Cap. 106), although the regulatory frameworks of the two services are similar. Some members have asked whether the two regulatory frameworks should be aligned and be included under one ordinance. The Administration has responded that certain issues concerning the two Ordinances had been aligned when the fair trading sections of the Trade Descriptions Ordinance (Cap. 362) and the Competition Ordinance (Cap. 619) commenced in 2013 and 2015 respectively. Ever since then, cross-sectoral consumer protection and competition frameworks have been introduced to cover all sectors in Hong Kong including the broadcasting and telecommunications industries. CA has also been conferred concurrent jurisdiction to enforce Cap. 362 and Cap. 619 in relation to the telecommunications and broadcasting industries. The relevant competition and consumer protection provisions under Cap. 562 and Cap. 106 were repealed subject to the transitional arrangements.

36. The Administration has further explained that other non-legislative regulatory requirements for TV and sound broadcasting services such as codes of practices are drawn up by CA taking account of the respective needs and characteristics of the TV and sound broadcasting industries.

37. Members have suggested that issues related to outdated provisions in the codes of practice or the discrepancies in the regulation of TV and sound broadcasting services should be brought to the Panel on Information Technology and Broadcasting for follow-up in due course.

Other issues

Licensing authority

38. Under the current licensing system, free TV, pay TV and sound broadcasting are subject to a two-tier scrutiny system for licence application and renewal. Free TV, pay TV and sound broadcasting licence applications and renewal applications have to be made to CA, which would process the applications in accordance with the statutory requirements and established procedures, before making recommendations to CE in C as to whether a licence should be granted or renewed, and if so, on what terms. The authority as to whether or not such licences should be granted or renewed is vested in CE in C.

39. Some members have asked whether the Administration has considered shifting the authority of approving free TV, pay TV and sound broadcasting licences from CE in C to CA. Some members have commented that a regulatory

body such as CA would probably be in a better position than CE in C in gauging professionally the pervasiveness and influence of a broadcasting service.

40. The Administration has responded that the current licensing system is commensurate with the pervasiveness and influence of different types of broadcasting services, in that the more influential a service is, the greater is the need for wider public interest considerations, and hence the higher in the hierarchy should the licensing authority be. Free TV, pay TV and sound broadcasting services are still amongst the most pervasive media outlets that have a great influence on public morals and children, notwithstanding the growing prominence of Internet media. The Administration therefore considers that the status quo should remain.

Over-the-top services

41. Some members have asked whether the Administration has any measures to incentivize OTT service providers to set up operations in Hong Kong, as OTT business has been an emerging area that attracted enormous investment worldwide. The Administration has responded that during the public consultation on the Review, 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. Internet services operators would continue not to be subject to licensing requirements that are applicable to traditional broadcasters.

42. Members have asked how the Administration would respond to the sector's concern about copyright infringement in the Internet media and some OTT services. While section 6 of Cap. 562 provides for the regulation of unauthorized decoders, members consider the provision restrictive and obsolete. They have asked if the Administration would consider strengthening the protection of copyright by amending provisions under Cap. 562 or under the Copyright Ordinance (Cap. 528).

43. The Administration has emphasized that Hong Kong is fully committed to upholding a robust and effective system of intellectual property protection. In the meantime, on the enforcement front, the Customs and Excise Department will continue to take rigorous enforcement actions against online piracy. Section 6 of Cap. 562 concerns endeavours of importing, exporting, manufacturing, selling, offering for sale or letting for hire an unauthorized decoder. It also provides for civil remedy against unauthorized reception of pay TV programme services without payment of a subscription, and for both civil remedy and criminal sanction against the possession of unauthorized decoders for commercial purposes.

44. In response to a deputation's suggestion of allowing commercial TV licensees to take action against access to online sites and servers that are found to be infringing on their copyrights (i.e. site blocking), the Administration has informed members that such proposal is controversial as evident by the responses drawn when the idea was mentioned previously during the discussion on the Copyright (Amendment) Bill 2014.

Requirement to broadcast Radio Television Hong Kong's programmes

45. The Bills Committee has noted that broadcasters and some deputations consider the licensing requirement to broadcast Radio Television Hong Kong's ("RTHK") programmes unfair, as RTHK now has its own TV channels and has become a competitor to other TV licensees. The Administration has responded that RTHK, as a public service broadcaster, has only started to operate its own TV channels since 2014, and its TV broadcasting services are still in a developing stage. Free TV licensees should have the social responsibility to broadcast RTHK programmes and announcements in the public interest in appropriate designated time slots. In return, free TV licensees are already exempt from payment of spectrum utilization fees in recognition of their social responsibility. In fact, the broadcasting requirements had been evolving. For example, rescheduling flexibility had been introduced for relevant free TV licensees in broadcasting RTHK programmes in 2015. The Administration considers that the current arrangement for free TV licensees to broadcast RTHK's programmes should remain. That said, the Administration has agreed to convey the relevant views to CA for consideration in the upcoming mid-term review.

Licence fees for TV programme services

46. Some members have asked whether the Administration could lower the licence fees for TV programme services to enhance the competitiveness of local media amidst the fierce international competition for the global OTT business. The Administration has responded that the Office of the Communications Authority conducts licence fee reviews having regard to its financial performance and the financial arrangements as advised by the Financial Services and the Treasury Bureau. Licence fees are determined according to the full-cost recovery principle, and the Administration has no plan to deviate from the practice.

Proposed amendments to the Bill

47. The Bills Committee supports the Bill and neither the Bills Committee nor the Administration intends to propose amendments to the Bill.

Resumption of the Second Reading debate on the Bill

48. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting. The Bills Committee has noted that the Administration has given notice to resume the Second Reading debate on the Bill at the Council meeting of 8 July 2020.

Consultation with the House Committee

49. The Bills Committee reported its deliberations to the House Committee on 29 May 2020.

Council Business Division 1
Legislative Council Secretariat
30 June 2020

Appendix I

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

Membership List

Chairman	Hon Elizabeth QUAT, BBS, JP
Members	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, BBS, JP Hon Holden CHOW Ho-ding Hon HUI Chi-fung
	(Total：12 members)
Clerk	Mr Daniel SIN
Legal Adviser	Miss Evelyn LEE

Appendix II

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

List of organizations that have submitted views to the Bills Committee

	1	Fantastic Television Limited
	2	Hong Kong Cable Television Limited
	3	Hong Kong Television Entertainment Company Limited
	4	PCCW Media Limited
*	5	Television Broadcasts Limited

* submission of written views only