



Ensuring Competition  
in the  
Dynamic Television Broadcasting Market

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## **Executive Summary**

Competition is needed in broadcasting as in other sectors. It will increase choice for consumers and improve Hong Kong's competitiveness. An environment in which competition can flourish will bring overall economic and community benefits.

### ***Objective***

This study aims to analyse competition within this industry, to see how fair conditions are for competitors in the broadcasting market, identify barriers to competition and ways in which competition can be enhanced for the benefit of the industry while protecting consumer interests.

As the choice available to Hong Kong's consumers through their TV sets now and in future are ultimately affected by broadcasting policy and the regulatory framework, these have become an inevitable part of our study.

### ***An environment of rapid change***

A series of technological breakthroughs has brought dramatic changes to the broadcasting industry in recent years. In particular, the number of channels available has multiplied with the transmission of signals by satellite and cable.

With digitalisation and compression techniques, even more channels can become available. We believe the pace of change is likely to continue at its current rapid rate and that Hong Kong needs to be ready for the future. This will call for forward looking regulation and a streamlined administrative regime.

### ***Forward-looking regulation***

At present, regulation is couched in terms of the three existing broadcasting technologies, namely, terrestrial, cable and satellite, and the way in which services are paid for. It will be increasingly difficult for such technologically or payment mode specific regulation to keep abreast of technological developments. There is an increasing global trend towards the merging of television, telecommunications and communication technologies.

Hong Kong needs to ensure that the regulatory framework will meet the challenge presented by the ever more complex and innovative broadcasting environment and provide a level playing field for market players.

We recognise that some safeguards are necessary to prevent market dominance, protect local and minority interests and maintain reasonable broadcasting standards.

We specifically recommend that:

- the regulatory framework should be based on a clear conceptual division between the carrier and programme or service providers. The two activities should be separately regulated and should provide the flexibility to accommodate changes without requiring major amendments each time a new form of technology or service comes on stream (Chapter 4, rec. 4);

- carrier licences should prescribe transmission standards, which should be technologically neutral (Chapter 4, rec. 4);

- programme/service licences should ensure compliance with programme and advertising standards and give permission to operate a subscription service, where applicable (Chapter 4, rec. 4);

programme/service providers must also satisfy the prevailing requirements for their own activities, e.g. stock brokerage services could only be offered in conjunction with an authorised dealer (Chapter 4, rec. 4);

- Government should encourage the industry to ensure new technologies are widely available and consumer-friendly so that:

different services interface in the home and technologies interconnect as much as possible without disproportionate cost and inconvenience to the consumer, e.g. through a single set top box (Chapter 2, rec. 1);

property owners and managers are encouraged to comply with the provisions of the Telecommunication Ordinance by allowing

unobstructive access to the service of the Fixed Network Operators (Chapter 2, rec. 1) ; and

property developers are encouraged to observe Office of the Telecommunications Authority's "Building Access Guidelines" in ensuring access to telecommunication and broadcasting networks in new building new properties (Chapter 2, rec. 1);

that "gatekeepers"<sup>1</sup> allow controlled access to different transmission signals at locations fair to network owners and programme service providers (Chapter 2, rec. 1).

### ***Promoting more and fair competition***

At present, Hong Kong sees competition between the two terrestrial broadcasters, each operating one Cantonese and one English channel, one satellite and one subscription broadcaster and a public broadcaster, in addition to video rental shops and the cinema. It is our view that competition and consumer choice could be enhanced by:

- providing greater transparency in the decision making and licensing process i.e. licence conditions are publicly available unless there are explicit justifications for non-disclosure (Chapter 3, rec. 4);
- introducing suitable safeguards to prevent market dominance by multimedia companies (Chapter 5); specifically,

the Council welcomes the Government's intention to extend cross media ownership restrictions to newspapers (Chapter 5, rec. 3);

- relaxation of controls on foreign ownership of broadcasting companies, and encouraging investment through:

abolition of controls on foreign ownership of satellite broadcasters, for practical reasons (Chapter 5, rec. 4); and

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<sup>1</sup>gatekeepers control devices which can receive and decode different encrypted signals, cable, satellite and terrestrial. A gatekeeper can choose which signals to decode, and hence what is available via their particular decoder.

relaxation of the 10% threshold above which Governor-in-Council's approval is required for increases in foreign ownership of voting shares in local broadcasters, with the overall 49% limit on foreign ownership of these voting rights remaining in force (Chapter 5, rec. 4).

- Recognising convergence of technology and facilitating consumer choice,

by removing the legal incapacity for telecom operators who wish to enter the broadcasting market (Chapter 5, rec. 2). This will mean that Hong Kong Telecommunications Ltd (HKT) may operate a Video-On-Demand Service with a non-exclusive carrier licence carrying with the obligation to act as a common carrier and may apply for a subscription TV licence.

However, concerns about market dominance should be addressed when assessing the licence application, taking into account the effect on market competition at the time (Chapter 5, rec. 2).

- giving licensees a clear indication of the circumstances in which the Government will consider renewing their licences or opening the market to new entrants which means :

the Government should conclude, with no unnecessary delay, its market assessment on the granting of further subscription TV licences, bearing in mind market forces and the competitive environment (Chapter 4, rec. 2);

- giving statutory force to and improving the provisions against anti-competitive behaviour (Chapter 4, rec. 3);

making them comprehensive enough to serve the purpose for which they are intended for, and

ensuring the penalties imposed are sufficient to act as an effective deterrent;

- rationalising the system of royalty payments and licence fees of the various broadcasters under a uniform standard which is perceived as

being equitable to all licensees as well as transparent to observers (Chapter 4, rec. 5).

### *A streamlined regime*

We believe that a more robust, coherent and professional lead is needed to steer through the regulatory and legislative changes that are necessary in this dynamic environment, and in the light of the convergence which is taking place.

We recommend:

- integration of responsibility for broadcasting/telecommunications policy under a new Secretary for Broadcasting, Telecom and Communication Technology (Chapter 3, rec. 1);
- an enlarged Broadcasting Authority (BA) to allow input from a wide cross-section of the community (Chapter 3, rec. 3);
- provision of staff with relevant professional and technical expertise for BA and the policy secretary for the new Secretary (Chapter 3, rec 2).

### *Giving consumers a choice*

With more competition, there might be even greater pressure on commercial operators mainly to provide programmes with mass appeal and neglect minority interests. We want to ensure broadcasters cater for all tastes and provide a sufficient variety of programmes for viewers' choice. We recommend:

- that Radio Television Hong Kong (RTHK) be given access to Cable TV as well as terrestrial television air time, and continue to operate radio services (Chapter 6, rec. 1);
- that non-commercial, community relevant TV programmes produced by recognised public and community organisations, for example, Independent Commission Against Corruption, Civic Education and Environmental Publicity Campaign Committees, be made available to the public (Chapter 6, rec. 3).



Also:

- that RTHK's Memorandum of Understanding with the BA is given statutory force bringing them into line with other broadcasters (Chapter 6, recom. 2).

### *Conclusion*

Broadcasting and communications technology is changing so fast that it is sometimes difficult for regulations to keep abreast of developments in the field. With the convergence of different carrier modes and types of service and the rapid development of regional broadcasting markets, the opportunities and challenges facing the industry now are greater than they have ever been. Handled correctly, these developments offer unprecedented benefits for both consumers and Hong Kong business. But we must take care to remove any potential barriers to the introduction of new technology and market growth if Hong Kong is to realise these benefits.

## CHAPTER 1

### Introduction

1. Broadcasting is a key service in modern society. Television and radio programmes entertain, inform and educate viewers of all ages and backgrounds. Because of its near universal coverage and affordability, and the amount of time spent watching television or listening to the radio, it has considerable influence over the behaviour and attitudes of the public.

2. The broadcasting industry has undergone immense changes in recent years as a result of technological advancements. In particular, the number of channels available has multiplied with the transmission of signals by satellite and cable. The pace of technological change and the increase in the number of services and products available is likely to continue in the near future with the merging of broadcasting, telecommunications and communication technologies.

3. With these changes, the concept of 'scarcity' of available broadcast channels - previously the most important constraint on the industry's development and the guiding principle behind some licensing conditions - has lost some of its relevance. Rightly handled, this offers the prospect of a much more open and larger market for broadcasters and programme service providers and a period of unprecedented consumer choice. Enhanced competition would also reduce costs to consumers by ensuring services are delivered more efficiently and improve Hong Kong's competitiveness in other markets.

4. The role of Government and regulatory authority in this process is to provide a legislative and regulatory framework in which competition can flourish, to protect consumer interests; and to ensure the diversity, choice and quality required to meet the needs of all sections of the community.

#### Objective of the Study

5. In view of such crucial developments, the Consumer Council decided to undertake a review of the competitive environment for broadcasting under its programme of Competition Policy Studies. This is particularly timely as the Government has pronounced its aspiration to become a regional broadcasting hub, which will have a significant impact on competition in this industry.

6. The review focuses on TV broadcasting where the market has witnessed rapid development. Due to resource constraints, radio broadcasting has not been included in this study.

7. The objectives of this study are: to see how fair conditions are for competitors in the broadcasting market; to identify barriers to competition, and ways in which competition can be enhanced while protecting consumer interests. In particular, we look at how the competitive environment will be affected by the development of new technology, the regulatory and licensing framework as it affects the competitive environment and ultimately the choice available to consumers through their TV sets. Hence we have given considerable thought as to how to organize that framework to facilitate competition.

8. The Council notes that there will continue to be a need for an appropriate level of regulatory oversight of programming content to ensure certain quality standards and the different needs of the community, including minority interests, are met, but we do not study this in detail.

### **Contents**

9. Following the Introduction, Chapter Two of the report provides an overview of the broadcasting industry in Hong Kong and examines the implications of technological changes for consumers.

10. Chapter Three reviews the regulatory and policy making structure. Special attention is paid to the roles and responsibilities of the Broadcasting Authority (BA) and its executive arm, the Television and Entertainment Licensing Authority (TELA) and the Office of the Telecommunication Authority (OFTA) as well as the roles of the Secretary of Recreation and Culture (SRC) and the Secretary of Economic Services (SES).

11. Chapter Four looks at licensing policy with respect to market access for new entrants and fair competition between licensees in terrestrial, cable and subscription TV markets. The chapter also considers safeguards against anti-competitive behaviour. Finally, it looks at the impact of new technology and proposes the basis for a new, forward looking regulatory regime. Chapter Five examines controls on cross media and foreign ownership in the light of recent technological and market developments, and the need to encourage investment while preventing market dominance.

12. Chapter Six looks at the role of the public broadcaster and community access programmes and their contributions towards enhancing consumer choice.

### **Contribution to Policy Making**

13. The Council understands that the Administration has been working on an omnibus Broadcasting Bill to consolidate a number of free standing ordinances and it is anticipated that the Bill will be introduced to the

Legislative Council in the 1995/96 session. We hope that the Administration will take into account the results of our study in taking this Bill forward and in shaping future broadcasting policy.

14. We realise, however, that some of our recommendations are far-reaching and it may be a long time before they eventually bear fruit.

### **Consultation**

15. The study was carried out by Council staff under the guidance of a Steering Group comprising:

#### **Co-Chairs**

Ms. Anna WU Hung-yuk

Dr. Anthony NG Sung-man

#### **Members**

Mr. William F.A. CHAO

Mr. Kevin LAU Chun-to

Dr. SZE Man-hung, Stephen

Mr. Clement TAO Kwok-lau, JP

Dr. C. K. LO (up to May 94)

Ms. Anne HURLEY (up to August 94)

Ms. Susan SCHOENFELD (up to March 95)

16. The Council also consulted :

- the Broadcasting Authority
- the Economic Services Branch
- the Recreation and Culture Branch
- the Office of the Telecommunication Authority
- Radio Television Hong Kong
- the Television and Entertainment Licensing Authority
- Asia Television Limited
- Hong Kong Telecommunications Ltd.

- Satellite Television Asian Region Ltd.
- Television Broadcasts Limited
- Wharf Cable Limited
- Dr. Kenneth LEUNG Wai-yin

17. The Council is grateful to these bodies and to all those who have provided advice and assistance in the preparation of this report.

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## CHAPTER 2

### Market Structure and Competition

#### Introduction

1. The television broadcasting industry in Hong Kong is currently served by four commercial operators and one public broadcaster:

- (a) Two terrestrial (free-to-air) broadcasters: Television Broadcasts Limited (TVB) and Asia Television Limited (ATV). Each operates one Cantonese and one English Channel. The two Cantonese channels combined serve up to 94% of the viewing public in 1995<sup>1</sup>. Access to the terrestrial broadcasting market has previously been restricted as a result of the scarcity of electromagnetic spectrum, which in turn limits the number of available broadcasting channels.

The Government attempted to introduce competition into the industry by granting an operating licence to Commercial Television in the mid '70's. The broadcaster closed down in 1978.<sup>2</sup>

While the two Cantonese channels remain the primary choice of most viewers, satellite and cable operators as well as video rental and the cinema provide alternatives. Viewing figures for terrestrial TV have decreased in recent years.

- (b) One satellite broadcaster: StarTV operates four channels. Its services are provided to consumers free as long as they have access to satellite reception. StarTV is currently restricted from operating subscription TV for the local audience, but restrictions on its ability to offer Cantonese programming were lifted in October 1994. Despite the lifting of these restrictions, StarTV has not so far chosen to offer Cantonese programming. It is anticipated that with improved technology, StarTV will be able to offer more channels in the near future. How far Hong Kong's consumers would benefit from such a potential

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<sup>1</sup> "TV Audience Measurement Report 1995", SRG Research Services HK Ltd.

<sup>2</sup> The company's failure has been attributed to a number of causes, e.g. financial and operational problems. One view, advanced by the industry, was excessive Government requirements for educational programming.

development depends on factors like the type of wiring in their homes and the operator's commercial decisions.

- (c) One subscription (cable) broadcaster: Wharf Cable provides fifteen basic channels to subscribers who pay a monthly fee. Additional charges are required for the premium Home Box Office movie channel and a number of pay-per-view channels. The company is also in the process of introducing new packages of services.
- (d) One public broadcaster: Radio Television Hong Kong (RTHK), a government department, produces educational, informational and cultural programmes aired through ATV and TVB. Access to the terrestrial channels is prescribed in the terrestrial broadcasters' licensing conditions. Wharf Cable also has three channels reserved for Government usage.

### **Changing Technology**

2. In addition to satellite TV and cable TV, a recent development is Video-on-Demand (VOD), currently being market tested by Hong Kong Telecommunications Ltd. VOD is the transmission of TV signals to consumers over telephone lines. It will affect the broadcasting industry and its viewers by providing an additional choice of programming. It will also allow viewers to select programmes whenever they want. The regulatory implications of VOD are discussed in Chapter Four.

3. Internet was originally introduced to allow the transmission of information over phone lines. Initially, only text, in the form of electronic mail (e-mail), could be transmitted. With continuous improvements in technology, pictures can be stored and transmitted at a fast enough speed to allow the delivery of programmes. The technology is still under development, but is expected to lead to the delivery of services designed for entertainment. We did not look specifically at how Internet or other new information delivery systems might impact on the broadcasting market, and express no views on whether or not to control services available on the Internet. This and other issues relating to Internet also have other dimensions to them, for example transmission across national boundaries, which lie outside the scope of or are too detailed for this study. However, we hope that our comments and recommendations on the licensing framework in Chapter 4 will assist with consideration of Internet services.

### **Implications of Technological Changes for Consumers**

4. The introduction of new technologies clearly has the potential to bring considerable benefits to consumers in terms of enhanced consumer choice. At the equipment level, the key considerations for the consumer in securing those

benefits are: ease of use, compatibility with other technology, good performance quality and affordability.

5. One scenario most unwelcome to consumers is the requirement to install different equipment e.g. wiring, decoding boxes and remote controllers with each new service and new technology. This can be both costly and inconvenient and consumers also run the risk that their equipment may become obsolete within a short period of time.

6. A long-term answer from the consumer's perspective is to ensure maximum interface between technologies. The Consumer Council recognises that it may neither be possible nor desirable to suggest a common standard for all transmitters and equipment. As interface is of major importance to consumers, regulatory oversight ought to ensure consumer access and interconnection between technologies of different market players. This is already the case with cable TV; the Government has given cable TV unrestricted access to all tenement buildings. In the case of new buildings, OFTA has provided a set of "Building Access Guidelines" for property owners, developers and managers to "enable the network operators to install their cables and ancillary equipment to reach their customers in the property." In the guideline, "cabling facilities" are defined as "facilities for the routing, housing, and mounting of cables and ancillary equipment to provide the connections between the public telecommunications and broadcasting networks and the individual premises of the occupiers within the property."<sup>3</sup>

7. Even so, there have still been difficulties in introducing cable TV into buildings. One problem involves technology interface with the in-building wiring installed by Satellite Master Antenna Systems (SMATV) operators. This is a perfect example of how lack of advanced planning and regulatory oversight to ensure technological interface, can affect consumer interests. The cable operator also encountered difficulties in satisfying demands for access fees from some building managements. This points to a need to raise public awareness of the importance of providing non-obstructive public access for the installation of telecom and broadcasting facilities in order to receive the benefits of the new competitive environment.

8. Digital broadcasting and compression techniques now under development elsewhere will expand the number of channels networks can carry and improve the picture quality immensely. The Government should also ensure that consumers do not lose out in the move to this new technology.

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<sup>3</sup> source: Guidelines for Property Owners, Developers and Managers for the Provision of Facilities within Property Developments for Access to Public Telecommunications and Broadcasting Services, OFTA, May 1995.



## Recommendations

### Recommendation 1:

#### Consumer Convenience and Interconnection between Technologies

9. The Consumer Council believes there is an important role for Government in reducing the obstacles to consumer enjoyment of the benefits of new technology identified above. The Government should:

- (a) encourage industry to facilitate interconnection between technologies in a way which is economical and convenient for consumers, e.g. through a single set top box and remote controller;
- (b) encourage property owners and managers to comply with the provisions of the Telecommunication Ordinance by allowing unobstructive access to the service of the Fixed Network Operators; and
- (c) encourage property developers to observe OFTA's "Building Access Guidelines" in ensuring access to telecommunication and broadcasting networks in building new properties;
- (d) that "gatekeepers"<sup>4</sup> allow controlled access to different transmission signals at locations fair to network owners and programme service providers.

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<sup>4</sup>gatekeepers control devices which can receive and decode different encrypted signals, cable, satellite and terrestrial. A gatekeeper can choose which signals to decode, and hence what is available via their particular decoder.

## CHAPTER 3

### Regulatory Framework

#### Introduction

1. This chapter reviews the regulatory structure for broadcasting. The regulatory structure sets the rules for competition. It is therefore of key interest to our study. We confine ourselves to those parts of the regulatory and policy structure which affect competition and consumer interest and do not touch on other regulatory issues.
2. The discussion in this chapter centres on the policy making process and the historical division between broadcasting and telecommunications regulation. We consider the case for bringing it together in the light of the global trend towards convergence in these areas.
3. Our objective is to rationalize the structural framework so that it has the flexibility in its infrastructure and is equipped with the professional expertise needed to support the broadcasting industry.

#### Overview of the Legislative Framework

4. The legislative provisions affecting TV broadcasting operations comprise the Broadcasting Authority Ordinance (BAO), the Television Ordinance (TVO) and the Telecommunication Ordinance (TO).
5. The BAO defines the roles and responsibilities of the BA, the regulatory agency for broadcasting in Hong Kong. The TVO provides for the licensing of companies to broadcast terrestrial commercial television and subscription television. The satellite broadcasting license is granted under sections 7 and 34 of the TO<sup>1</sup>. Table 1 explains.

**Table 1 - Legislative Framework for Broadcasting Licensing**

Ordinance	Administrative Authority	Type of TV Broadcasting
BAO, TVO	Broadcasting Authority	<ul style="list-style-type: none"> <li>• Terrestrial TV</li> <li>• Subscription TV</li> </ul>
BAO, TO	Broadcasting Authority, OFTA	<ul style="list-style-type: none"> <li>• Satellite TV</li> </ul>

<sup>1</sup> Cap. 106 "Satellite Television Uplink and Downlink License"; also see BAO (Cap. 391) S. 2 (Interpretation) "license" (c)

6. Any new, or amendments to, broadcasting legislation are formulated by the Recreation and Culture Branch for approval by the Legislative Council.

#### **Overview of the Administrative Framework**

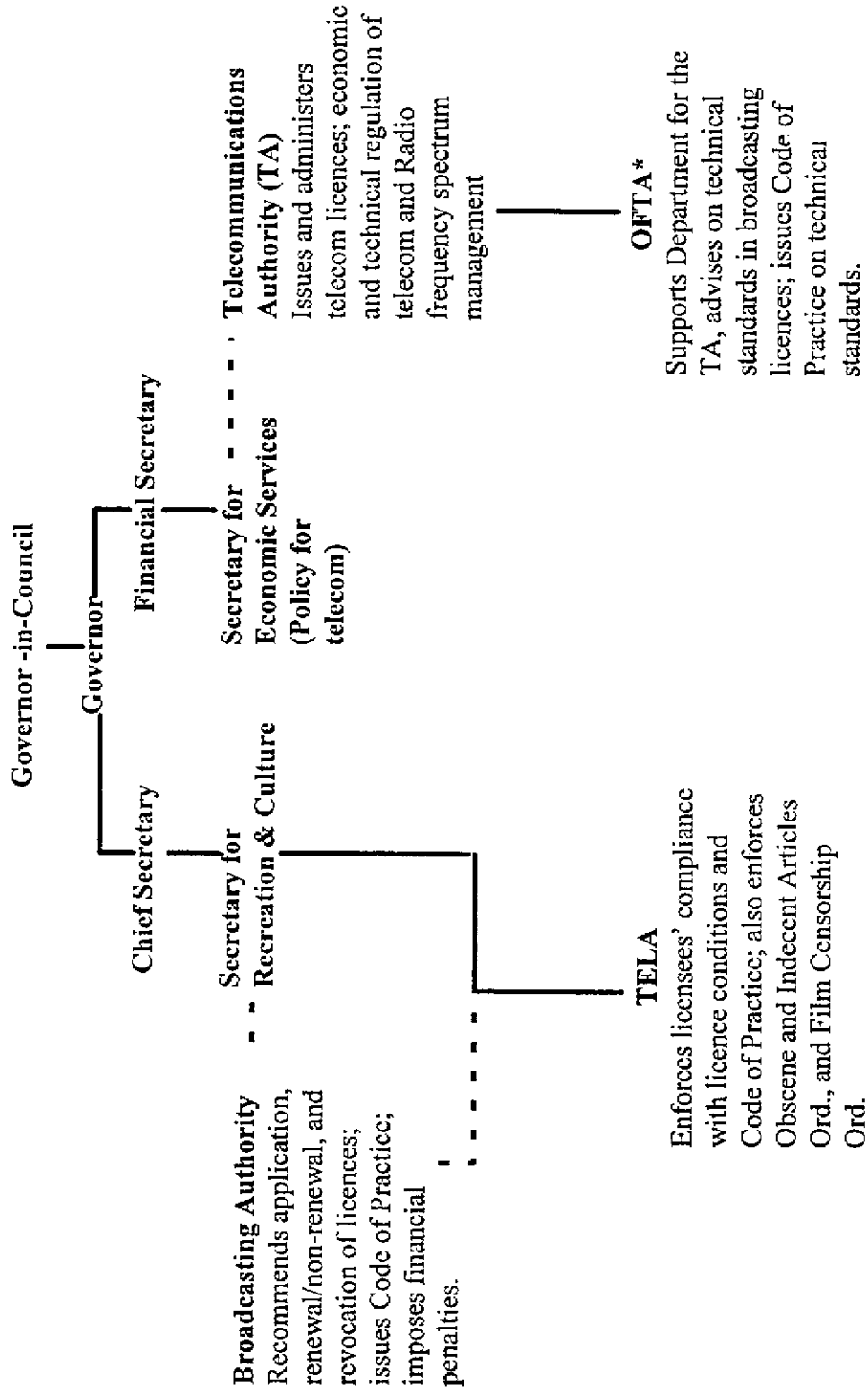
7. Figure 1 shows the administrative structure for broadcasting licensing and control. The Governor-in-Council (GIC) has the ultimate authority to approve licences for all television broadcasters, i.e. terrestrial, cable, and satellite. The GIC is advised by the Secretary for Recreation and Cultural (SRC) who is responsible for the development of television broadcasting policies. The role of the BA in the process is to advise on all types of licensing applications, with Television and Entertainment Licensing Authority (TELA) as its executive arm. In the meantime, the Secretary for Economic Services (SES) is responsible for the policy relating to electromagnetic spectrum management. The OFTA advises the BA on technical standards for broadcasting licences. In sum, the GIC makes licensing decisions based on policy proposals by the Secretaries and BA's recommendations. BA is responsible for implementing the GIC's decisions.

#### **Broadcasting Authority**

8. BA is a statutory body established under the Broadcasting Authority Ordinance in September 1987. All broadcasting licenses held in Hong Kong are subject to regulation and control by the BA. The primary function of the BA is to secure proper standards in both programme content and technical performance of television and sound broadcasts. Other functions of the BA include:

- (a) the submission of recommendations to the GIC, via the SRC, on the application, renewal or non-renewal of licences, and revocation of licences;
- (b) the issue of Code of Practice relating to technical standards, programme content and advertising standards;
- (c) the imposition of financial penalties, suspension of licences; and
- (d) the approval of other matters such as length of advertising breaks.

Figure 1 - Current Regulatory Framework



\* also provides technical advice to BA and SRC

9. Members of the BA are appointed by the Governor. Nine members, including the Chairman, are non-official members drawn from the community. The remaining three are public officers, namely the Secretary for Recreation and Culture, Director-General of OFTA and the Deputy Secretary for Home Affairs.

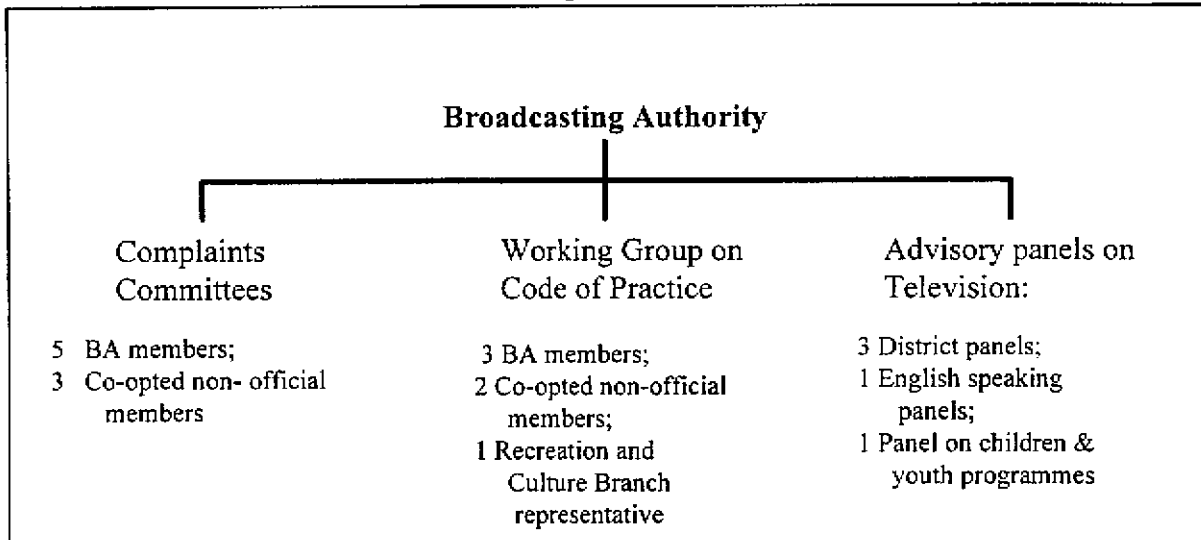
10. Prior to the establishment of the BA, the Commissioner for Television and Entertainment Licensing (CTEL) was responsible for the day-to-day monitoring of both television and sound broadcast with advice from the Television Advisory Board. Previously, CTEL was required to secure proper standards of broadcasting with regard to programme content and technical quality; ensure licensees' compliance with licence conditions; enforce the Codes of Practice governing programmes and advertising; censor improper material; and when necessary, discipline licensees.

11. In 1985, the Broadcasting Review Board concluded that CTEL had been performing too many conflicting roles, i.e. to consult, advise, persuade, make rules, prohibit and discipline broadcasters. The Board recommended the establishment of a Broadcasting Authority comprising three public officials and six to nine non-official members drawn from the community to oversee the arrangements for television and sound broadcasting services in Hong Kong. It was also suggested that the BA should allow greater public participation in broadcasting regulatory activity.

12. The Television Ordinance also empowers the BA to set up a Complaints Committee and advisory panels. The Complaints Committee handles complaints relating to the contravention of ordinances, the terms and conditions of license, or a Code of Practice. The panels enable the BA to keep itself informed of the community's perception of the performance of broadcasters. BA has established three regional advisory panels (Hong Kong, Kowloon and the New Territories), an English television advisory panel, and a television advisory panel on children and youth programmes. In addition, the BA has taken part in administering a Television Viewing Group Scheme. Nineteen district television viewing groups with a total membership of about 600 have been formed in Hong Kong, Kowloon and the New Territories. Members from the groups are invited to serve on the regional advisory panels.

13. The structure of the BA is summarised in Figure 2 below:

Figure 2



14. One of the original intentions of setting up the BA was to delegate certain administrative functions to a statutory body with a greater degree of public participation in broadcasting regulatory activity. GIC retains powers on certain broadcasting issues. Figure 3 shows some of the powers of the GIC and the BA to :

Figure 3

<b>GIC</b>	<b>BA</b>
Grant or revoke licences	Make recommendations to the GIC on applications for and renewal of licences
Direct the BA to conduct an inquiry with a view to possible revocation of a broadcasting licence	Conduct public enquiries with a view to recommending to GIC possible revocation of broadcasting licences
Determine terms and conditions, and period of validity of broadcasting licences	Suspend a broadcasting licence
Approve increase in control exercised by disqualified persons in a licensee, or introduction of disqualified persons to exercise control of a licensee	Consider unqualified voting controller to acquire interest in a commercial or subscription television licensee in excess of 2%, 4%, 6%, 8% or 10% of total voting control of the licensee; and
Grant a broadcasting licence to a corporation that is a disqualified person	
	Consider applications for outward investment by licensees
Make regulations on programme and advertising standards	Prepare and revise code of practice setting standards for television and radio broadcasts

GIC	BA
Determine appeal by a licensee aggrieved by BA's decisions or Codes of Practice.	Monitor television and radio broadcasts in Hong Kong in order to ensure compliance by the licensees with the regulatory system governing such broadcasts and to keep abreast of developments in the industry;
	Deal with complaints about broadcasts and impose sanctions on the broadcasters, if necessary;

15. The Government regularly involves the BA in giving advice on policy issues. Since its inception in September 1987, the BA has been involved in advising on important policy issues including the following:

- (a) participated in the granting of licences to ATV and TVB, reviewed their investment programmes and business activities for renewing their licences for 12 years with effect from 1 December 1988;
- (b) granted a 12-year licence to the Hong Kong Commercial Radio Broadcasting Co. Ltd. beginning on 26 August 1989;
- (c) assessed proposals and recommended a suitable system of cable television for Hong Kong including the legislative, technical and regulatory framework for its implementation;
- (d) granted a 12-year sound broadcasting licence to Metropolitan Broadcasting with effect from 1 June 1991;
- (e) drew up a regulatory framework for Satellite TV and granted a non-exclusive satellite TV uplink and downlink license to Hutchvision HK Ltd. to operate a regional Pan-Asian satellite TV service with effect from 1993;
- (f) participated in the government's review of the interface between existing TV broadcasters and future subscription TV services and whether the satellite-based Cantonese broadcasting should be permitted in Hong Kong (approved in 1994); and
- (g) became involved in the government's comprehensive TV broadcasting review exercise.

16. In drafting the forthcoming omnibus Broadcasting Bill, it may be appropriate for the Administration to consider delegating some of the Governor-in-Council (GIC)'s executive responsibilities to the BA, for example, renewal of licences, to alleviate the heavy burden on the GIC. Licensees who are aggrieved by the BA's decisions on complaints or standards on Code of Practice would have to seek a judicial review. It should be noted that neither BA nor GIC decisions are reviewed by the Administrative Appeal Board.

17. The proposed change provides a clearer distinction between major policy making and executive decision making functions of the GIC and the BA and offloads some of the burden from the GIC onto the BA.

### **Television and Entertainment Licensing Authority**

18. The executive arm of the BA is the Television and Entertainment Licensing Authority (TELA) which is headed by the Commissioner of Television and Entertainment Licensing (CTEL). The advantage of TELA's relationship with the BA is that, because it enforces the Control of Obscene and Indecent Articles Ordinance and the Film Censorship Ordinance, it is familiar with the community's standards on decency and propriety and is particularly well placed to advise the BA on appropriate standards of broadcasting programmes independently. TELA is also responsible for ensuring that the licensees comply with the provisions in the ordinances, their licence conditions and Code of Practice. TELA produces a monthly report to the BA concerning the exercise of the powers delegated to it. The report includes the handling of complaints, the monitoring of programme applications from licensees, the analysis of changing programme trends and strategies, and enforcement of the Code of Practice.

19. In addition to being the BA's executive arm, TELA is the licensing authority for game centres, dance halls etc. and registrar of Newspapers. Therefore TELA is at the same time a government department answerable to the Secretary for Recreation and Culture (SRC). The dual reporting lines may create tensions in cases where the views of the BA and the SRC are different.

### **Office of the Telecommunications Authority**

20. OFTA is a government department under the Secretary for Economic Service (SES). Its Director-General is also an ex-officio member of BA. It operates on a trading fund scheme and is created to manage the transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by visual means or by wire or radio waves or any other electromagnetic systems. OFTA offers technical advice on broadcasting in relation to the management of spectrum.



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### The Administrative Structure and Recent Developments in Broadcasting Licensing

21. The above framework appears to be very complicated. The Government oversees the broadcasting industry under “a system of co-ordinated regulation”<sup>2</sup>. The signal transmission side is overseen by OFTA, whereas the content side of broadcasting falls under the ambit of the Broadcasting Authority in accordance with the Television Ordinance and Broadcasting Authority Ordinance.

22. The current structure operates smoothly insofar as ordinary functions are concerned. However, experience suggests that the decision-making process cannot keep up with the rapid development of technology and fast changing needs of the market. An example was Star TV’s application for a satellite TV Licence. Since the then Television Ordinance did not have any provision for BA to deal with satellite broadcasting, the licence had to be issued under the Telecommunication Ordinance. The resulting discrepancy between the structure of Star’s TV licence and the licences of local broadcasting licensees has caused considerable concern. This is partly because the regulatory framework is technology specific and hence in constant need of updating. This is discussed in detail in Chapter Four. What is clear, however is that new technology and the convergence of telecommunication, broadcasting and information technology is putting the Administration under strain.

#### Policy Makers and Advisers

23. Looking ahead, the challenge for Government will be to have the breadth of vision to enable the industry to develop rapidly and in an orderly way; to establish clear rules and procedures; and to adopt a legislative framework which is sufficiently flexible to accommodate future changes without difficulty or delay. This in turn calls for knowledge and expertise in the policy making team.

24. The Consumer Council notes the different approaches to policy making within the telecommunications and broadcasting fields. OFTA develops expertise through taking on day-to-day matters in-house but appoints external consultants to advise on major technical matters such as numbering plans or reorganisation of the spectrum. The scope of this type of very technical study can be clearly delineated and the projects lend themselves to being managed in this way.

25. Broadcasting issues encompass a wide spectrum from programme content issues to the general development of the industry. It is not confined to one discipline. The Administrative Officers entrusted with policy development have wide experience within the civil service system. They tend to have generalist backgrounds and are in theory, posted for 2 to 3 years before moving on in furtherance of their careers. However, the departmental staff of TELA

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<sup>2</sup> Quoted from Mr. Alex ARENA, OFTA.

(with the exception of CTEL, his deputy and the non-departmental staff) stay with the Department and accumulate expertise on content regulation.

26. As far as broadcasting policy is concerned, external consultants are appointed to work on major new issues. The issues tend to be broad and concerned with market assessment issues, such as, for example, whether the introduction of Cable TV would affect the viability of terrestrial broadcasters, implications of the ban on tobacco advertising on terrestrial broadcasters. The value of consultants in studying these complicated issues and providing recommendations for BA and SRC's consideration is evident. However, by taking such major studies outside the Administration, the organisation loses the opportunity to develop and retain the professional knowledge and experience within their workforce, and such experiences are vital in creating a dynamic and forward-looking regulatory environment. In addition, despite increased responsibilities in policy formulation and in monitoring the programme content of terrestrial TV, Satellite and Cable TV and radio, the size and ranking of staff have remained unchanged for many years.

27. The above observation is not in any way critical of the ability or diligence of BA's officers. It is instead an acknowledgment of the difficulty of accumulating expertise across a body with such broad ranging responsibilities, and, taking the opportunity to suggest ways in which this difficulty might be overcome. This will be addressed in the recommendations.

### **The Policy Making Process**

28. The policy making process is a key factor influencing business decisions on investment in the broadcasting industry and in creating public confidence in the Government's broadcasting policy. We have identified two major issues for discussion:-

- (a) a complicated management structure;
- (b) a need for greater transparency in decision-making.

### ***Management Structure***

29. The separation of regulation for broadcasting content and broadcasting signals in the decision-making process is unclear to most people outside Government. SRC is regarded as the principal official for broadcasting policy despite the fact that broadcasting and transmission of broadcasting signals are under the SRC and SES respectively. A point of interest: the English post title of SRC, Secretary for Recreation and Culture, does not reflect the postholder's full range of responsibilities. The title of Chinese post however, is more explicit in that it is translated as Secretary for Culture, Recreation and Broadcasting.

30. The existence of different layers and line relationships of policy responsibility for Broadcasting and Telecommunication adds to the complexity of the situation (Figure 1). BA works with the SRC, who is answerable to the Chief Secretary; whereas OFTA works to the Secretary of Economics, who is accountable to the Financial Secretary. Although they all converge at the Governor's desk, the management structure is not conducive to holistic planning at the policy formulation level in order to meet the challenges that lie ahead.

*Transparency in Decision Making*

31. There are at least two aspects to transparency in decision making. First, transparency in the licensing process and second, transparency in the decisions of the Broadcasting Authority.

*Current Licensing Process and the Need for Transparency*

32. Commercially sensitive information is treated with the highest degree of confidentiality. Previously, broad guidelines regarding ownership qualifications and operating conditions have been provided by the Government in the Television Ordinance, but the terms of the licences have neither been accessible to the general public nor to other licensees. The rationale for this was that disclosure of certain conditions constituting commercially sensitive information would be harmful to the respective companies. The validity of such an argument was questionable given that the exact terms of a licence are disclosed in highly competitive markets such as the U.S.

33. The Government has recently placed an obligation in the ATV and TVB licences following their mid-term reviews requiring each company to make their licence available for viewing upon request by any individual. We believe this is the right way forward and warmly welcome the decision..

34. Limited access to, and understanding of, the licensing process has, in the past, been cited as the reason why some satellite operators have turned to other places to establish their Asian broadcasting operations.

35. Making more information on the licensing process and approval criteria available would alleviate the uncertainty faced by potential entrants. With channel capacity increasing as a result of technological advancements, there are opportunities for other companies to enter the market. An open, simple and efficient licensing process would encourage entrance into the market, producing a positive effect on competition.

36. Improved transparency in the legislative environment would also benefit current broadcasters and consumers. Broadcasters would be able to confirm, or otherwise, the absence of unfair or discriminatory practices. They could then focus their resources on maintaining competitiveness by providing better programming and technology which would, in turn, benefit viewers.

37. A transparent licensing process would allow consumers to understand, participate and contribute to the development of the principles underlying the Government's licensing policy. The Government could make information on the decision-making process, such as the criteria used and procedure involved available whilst still treating commercially sensitive information in confidence. The presumption should be in favour of disclosure, with the onus on the Government to justify non-disclosure, rather than the other way round.

*Decisions of the Broadcasting Authority*

38. The complaints handling mechanism is widely publicised through radio and TV Announcement of Public Interest on the complaints hotline. The BA rulings on complaint cases and sanctions for breaches of codes of practice are publicised. Its public consultation tools mainly consist of public opinion surveys soliciting views on, for example, acceptable levels of violence and sex on TV, and the extensive network of viewing groups to provide feedback on TV programming and other matters.

39. BA is perhaps one of the first bodies to conduct public hearing sessions to gauge public opinions over renewals of licence of the terrestrial broadcasters and radio stations and this is to be commended. However, as far as major issues of public interest are concerned, e.g. the introduction of subscription TV, VOD etc, members of the public and industry are neither informed nor given the opportunity, through responding to consultation papers, to contribute to proposals which are under consideration. For example, when the BA was asked to give advice on the issue of licences for satellite and subscription broadcasting, the government commissioned consultants to study these issues and summarise the findings for BA's consideration. Issues considered included the impact on the audience share, revenue and cost on the terrestrial broadcaster. BA's recommendations, the consultant's report and its conclusions were not available to the broadcaster or members of the public.

40. Issuing public consultation papers would allow interested parties and members of the public to contribute to the benefit of the community. This approach is common practice elsewhere in the Government, e.g. consultation paper on transport policy issued by Transport Branch, Regulation of Estate Agents by Housing Branch and OFTA's consultation on Numbering Plans.

41. In addition, the Consumer Council sees definite advantages in disclosing BA's decisions as well as its recommendations on policy matters apart from the publicity for BA's decisions vis a vis violation of codes by licensees. Such an approach would produce an open dialogue serving to enhance the transparency and improve understanding of the decisions taken on behalf of the public. Greater openness would benefit both the industry and the viewing public.

## Recommendations

### Recommendation 1:

#### A Secretary for broadcasting, telecommunications and communication technologies

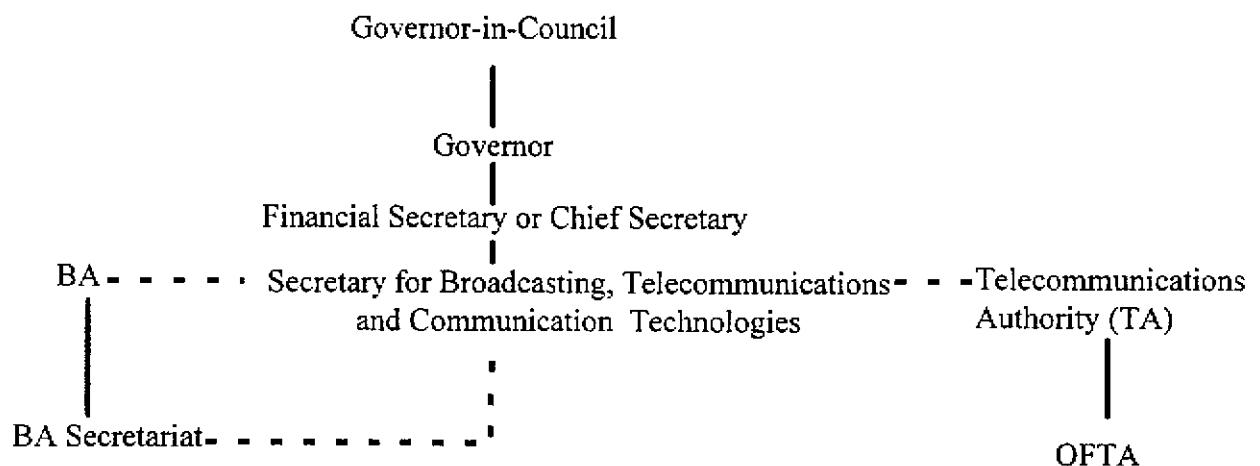
42. Given the merging of broadcasting, telecommunications and information technologies, the Consumer Council is of the view that the Government should review the overall policy and regulatory framework for broadcasting and telecommunications by bringing both BA and OFTA together under one policy secretary.

43. The Consumer Council recommends the setting up of a Secretary for Broadcasting, Telecommunications and Communication Technologies who will have overall policy responsibility for broadcasting, telecommunications and communication technology. This will give the necessary focus on the broad range of high-tech, fast moving and converging areas.

44. This proposal rationalises and combines the regulation of both content and means of delivery of broadcasting and telecommunication signals. We also believe it will add momentum to and facilitate the development and access to the information superhighway in Hong Kong.

45. The recommended new framework is illustrated below:

**Figure 4**  
**Proposed Regulatory Framework for**  
**Broadcasting, Telecommunications and Communication Technologies**



### Recommendation 2:

#### Technical support for BA and the New Secretary

46. Rapid technological change in broadcasting warrants long-term professional back-up from knowledgeable experts to work on broadcasting policy

matters and implement decisions. This is particularly important if the Government is seeking to develop Hong Kong into the broadcasting hub of Asia.

47. The Consumer Council recommends that the BA and the new policy secretary should be given adequate professional and technical expertise to enable them to cope with the heavy workload generated by policy formulation and new licensing applications. The Council does not have preconceived ideas on how this should be organized and believes that Government will be in a better position to decide this. In addition to recruiting full time experts as BA Secretariat, considerations can be given to appointing a full-time expert as Vice-Chairman of the BA or BA's Head of Secretariat, where appropriate.

**Recommendation 3:**

**Strengthening BA Membership and Public Participation**

48. To cater for the new challenges ahead, BA membership should be strengthened in number and in public representation. The current membership of BA is too small, hence not only restraining BA's level of public participation, it also taxes heavily on the time and efforts of serving members.

49. The Council recommends that BA's membership be enlarged to say, fifteen to eighteen members. The present non-officials comprise professionals, academic, social service, finance and business sectors. The enlarged membership will allow input from a diverse background including, for example, from the accountancy and legal professions, education, media workers, telecommunications professionals, culture and the arts, as well as viewers in order for BA to benefit from the views of a wide cross-section of the community.

**Recommendation 4:**

**Transparency in Decision Making**

50. The Consumer Council is of the view that the Government should aim at greater transparency in its decision making process, including GIC's decisions. This will be essential in encouraging entrance and promoting competition. It would also benefit existing broadcasters and viewers.

51. The Council proposes that the Government makes public all relevant information on the decision-making process and the basis for the decisions taken such as the assessment criteria and conditions for each broadcasting licence. The presumption should be in favour of disclosure. The Government should provide a reasonably detailed justification for non-disclosure, in line with the Code on Access to Information.

52. In making the BA's decision-making process more transparent and accessible, BA should, in addition to announcing its rulings on public complaints, publicize its deliberations to members of the public at regular intervals and allow

industry participants and the public to have access to information on major issues of public interest. The Council recommends that BA consider issuing public consultation papers and conducting more public hearing sessions than it does at present.

**Recommendation 5:  
BA Secretariat**

53. With increasing responsibilities over a major service for the community, it is important to ensure that the BA secretariat is able to meet any increase in demand for resources or support services to members of the public and broadcasters. The BA Secretariat should be given support in its staffing not only in terms of numbers, in order to cope with its increased workload, but also have more staff at a senior level than it is now provided with so that BA is served by a strong team with technical experts.

54. Further, a case has been made for the head of the BA Secretariat to devote all his attention to broadcasting. As indicated above, the Council believes that such organizational matters should best be left with the government, e.g. the subsequent re-alignment of duties once the existing Television and Entertainment Licensing Authority is relinquished of its duties of film censorship and other licensing responsibilities.

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## CHAPTER 4

### Licensing Policy and Competition

#### Introduction

1. This chapter focuses on the licensing aspects relating to the promotion of competition and the elimination of anti-competitive elements through the “competition clauses” incorporated in recently renewed licences. It puts forward the Council’s views on a regulatory regime for the future, a subject which has attracted much public attention following the introduction of new initiatives such as VOD. It also discusses the changing broadcasting environment, which entails consideration of the basis for royalty payments and licence fees.

#### Promoting Fair Competition in the Domestic Market

2. In discussing the impact which the licensing system has on competition in the domestic market, emphasis will be placed upon examining the award of licences for existing licensees and possibly new entrants and the provisions of the “free-competition clauses” in safeguarding against behaviour detrimental to fair competition.

#### *Award of Licences for Terrestrial Broadcasting Channels*

3. The licences for all four terrestrial TV channels have been granted to two operators, ATV and TVB. They are the only channels for which no extra equipment (except for antenna in some places) or payment is required for reception. They therefore have, and will continue to have, much greater market penetration than cable and satellite broadcasting licensees, for some time to come.

4. Meanwhile, there may be room for another one or more terrestrial channels on the spectrum in future<sup>1</sup>. This would represent an opportunity to increase competition in this sector. Needless to say, if the Government were to admit new entrants into the market, any new commercial licences should be granted through an open bidding process.

5. The bidding should be for the use of the spectrum, rather than for a specified service as in the current case i.e. the terrestrial broadcaster bidded for

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<sup>1</sup> In March 1995, OFTA published a report on “Introduction of Economic Mechanism of Spectrum Management” for radio frequencies. The report revealed that some spectrums have not been put to optimal use. The same could be true of the spectrum used for TV signals. If this were the case, then, with a more vigorous realignment programme, it might be possible for Government to grant a new terrestrial TV licence.



one Chinese and one English service. This may appear to be a fine distinction but it can make a tremendous difference. Bidding for the use of a spectrum will encourage innovation and efficient use of the spectrum. The licensee will be encouraged to try out compression or any other new technologies that may come on stream.

6. Irrespective of spare capacity, the Government could also increase competition by allowing other players to bid for existing spectrum whenever an operator's licence expires. Open bidding is desirable in theory. However, there are a number of entry barriers, for example, the physical constraints, i.e. ownership of relay sites by existing operators, disruption of services and inadequate production capability of independent production companies.

7. When ATV and TVB's licences expire in 2000, the broadcasting market may be very different from what it is now. The matter of open bidding or otherwise should be considered carefully in respect of the competition and choice available (terrestrial, cable, satellite, VOD and etc.) in the market at the time, weighing also the advantage to be gained over the disruption it might arouse. We recognize there will be differences of opinion in choosing one of the three options, i.e., to allow existing licensees to continue, to also consider new bids that come forward with preference for the existing licensees if they can match the bid conditions and finally, to open up the bidding.

8. In order to enable potential new and existing players to prepare for its eventual decision, the Government needs to allow sufficient time for deliberations and make an early announcement.

#### *Subscription TV Licences*

9. The Government has given Wharf Cable exclusive rights to operate subscription TV for a period of 3 years until 1996. Once such exclusivity lapses, the Government may receive applications from other operators to provide subscription services. The Government has commissioned consultants to conduct a market assessment for issuing further subscription TV licences.

#### **Control on Anti-competitive Behaviour in Licence Conditions**

10. Broadcasting licences prescribe the conditions for compliance and spell out the licensee's obligation to the Government and viewers. However, it was not until the end of 1990 that the Government inserted a "free competition" clause into the licence granted to Hutchvision (Hong Kong) Ltd. The Government has since inserted similar "free competition" clauses into licences granted to the cable as well as terrestrial operators.

11. The free competition clauses evidence the resolve of the Government to provide measures to discourage any anti-competitive practices. The Consumer Council welcomes such a positive move by the Government which

seeks to fill the gap left by the absence of competition law in the legal framework. Such measures are essential to ensure that a small number of market players do not become dominant to the extent that they abuse their market power for instance through restrictive practices, to ensure that there are no barriers to new entrants and to maintain a level playing field in the market.

12. ATV lodged a complaint against TVB in May 1995 that TVB were engaging in anti-competitive behaviour regarding their advertising. TVB allegedly slashed their advertising rates by 38% for a limited period in their "One Station Buy Campaign" but made this discount conditional on companies not advertising on ATV's Chinese Channel during that period. TVB countered this by stating that ATV also made similar offers to advertisers.

13. Abuse of market power by a dominant player may not only adversely affect other market players but also consumers who are the viewing public, as the advertising dollars would be locked in the attractive offers thus affecting the revenue of the other stations. This is a typical case for investigation by a regulatory body had anti-competitive provisions been in place. However, the case was impossible to pursue due to the lack of such provisions at the time.

14. We have considered the free competition provisions in the ATV/TVB licences, the Hutchvision licence and the Wharf Cable licence. Whilst such provisions represent a tremendous step towards achieving the Government's objective of free market economy, we believe there is still scope for improvement to these provisions. We set out as follows our analysis on the provisions.

### *The Provisions*

15. The provisions are embodied in the licence granted to each licensee and are binding as between the licensee and the Government only. Furthermore, these licences (with the exception of the licences to terrestrial operators, copies of which are only recently available to the public on request) are not generally available to the public. Accordingly, a third party may not be aware of such provisions, and even if there is awareness, the third party can take no action other than complain to the Broadcasting Authority of any alleged breach.

16. The provisions are not uniform : there are differences in substance between the licences. Take for example the Wharf Cable licence, the licensee can only carry out the prohibited acts if (a) the Governor in Council approves or (b) the listed exceptions apply. The other licences do not refer to the Governor in Council's approval. Instead, the licences provide that there is no contravention of the prohibition if the licensee satisfies the Broadcasting Authority that the restraint in question is and remains fair and reasonable in

reference to the interests of the Hong Kong public. Even on this requirement, the Hutchvision licence only requires the licensee to “reasonably” satisfy the Broadcasting Authority whereas there is no such qualification in the ATV/TVB licences. These differences may well be attributed to the different times at which the licences were granted and the result of individual negotiation.

17. The aim of the provisions appears to prohibit restrictions or restraints of competition in relation to the establishment, provision or operation of any service or network for telecommunication or broadcasting in Hong Kong. Nevertheless, the scope of the prohibition, as drafted, appears to be restrictive. The prohibition in each licence lists out 5 categories of prohibited acts only. These are (a) entering into any agreement or arrangement, (b) offering any inducement to any person, (c) enforcing by way of legal proceedings, arbitration, forfeiture of liquidated damages, adjustment or rebate of charges or otherwise any term or condition, (d) soliciting or permitting another to do so or (e) taking or receiving the benefit of any such term or condition. The consequence is that if an act does not fall within any of these categories then the prohibition will not apply. Further, an act will be prohibited only if it “will, or is calculated to” restrict or restrain competition. It is difficult to prove the requisite intent.

18. The exceptions to the general prohibition appear to be unduly wide. For example, a licensee may put a restriction or restraint upon “any person from using or exploiting his artistic talent or ability”. We note that this exception is subject to the proviso that such restriction must not be void or unenforceable under Hong Kong law. Nevertheless, there is case law to the effect that a restraint of trade which operates during the continuance of a contract will normally be upheld if it operates to protect the legitimate interests of the employer and is not unduly one-sided. Accordingly, it is arguable that a contract artist subject to a restraint of trade in terms of the exception may not perform at a charitable or other non-commercial event if the event, albeit not sponsored by a competing licensee, is to be broadcast by such licensee. By the same token, a competing licensee may not be able to broadcast a programme performed (or such parts of it as contain performances) by such a contract artist, even if such programme is in furtherance of a charitable or non-commercial cause. It cannot be in the public interest that the exception has such effect. The exception permitting the licensee to restrict any person from disclosing or using any information in which the licensee has a proprietary right is also too wide. At common law, protection is granted only in respect of confidential information. We consider therefore that this exception should only apply to confidential information relevant to the licensee’s competitiveness. The same can be said of the exception permitting the licensee to apply a restriction against competition on an employee or former employee who has or had access to information in which the licensee has a proprietary right. The breadth of these exceptions appear to water down substantially any intended effect of the anti-competitive provisions.

*Measures for Improvement*

19. The licence conditions (including the free competition provisions) should be given statutory force. They should be contained in the legislation to achieve transparency and uniformity.

20. We understand that the Government has adopted the sector-by-sector approach on the competition policy, and that the broadcasting industry has its own nature and state of competition as well as established market practices. The 5 categories of prohibited acts as now listed in the prohibition cannot be exhaustive. The approach may not achieve the intended catch-all effect. We have in this connection considered the wording used in the Fixed Telecommunications Network Services licence ("FTNS licence") on the topic. We believe that, given the common policy to discourage or prohibit anti-competitive practices, it is useful to study such wording. We consider it preferable to adopt the FTNS licence approach of prohibiting the licensee from engaging "in any conduct which in the opinion of [the Broadcasting Authority] has the effect or purpose of" preventing, restricting or restraining competition in the broadcasting industry. The 5 prohibited acts currently listed can then be included as examples of such conduct. A catch-all effect can thereby be better achieved.

21. We recognise the need to carve out exceptions to the general prohibition to meet the industry needs. We only ask that the exceptions be limited.

22. We note that presently the financial penalties and other sanctions apply across the board to different types of contraventions. We ask that the Broadcasting Authority consider whether there should be instead different levels of penalties. This is because penalties which are appropriate for e.g. breaches of the Code of Practice may not be commensurate with the gains or losses that may result from anti-competitive conduct. We also ask that the Broadcasting Authority consider whether, in the case of a breach by a licensee of anti-competitive provisions, the Authority should be empowered to direct the licensee to desist from the infringing conduct or vitiate arrangements pertaining to such conduct with the consequence of suspension of licence for failure to comply with the direction, or revocation of the licence for more serious breaches. These appear to be more effective and direct sanctions for this type of contravention.

23. We recognise the need for the Broadcasting Authority to have diverse powers, in order that it may properly carry out its duties and functions. It is important therefore and we repeat here the recommendation in our Chapter 3 that the Authority is reasonably constituted to widely represent society. We also recognise that many matters will have to be decided upon by the Authority. Again, we repeat our earlier recommendation that all proceedings

and decisions of the Authority should be transparent and open to the public. The Authority's decisions and the grounds for the decisions, insofar as is reasonable and does not injure a licensee's competitiveness nor reveal the licensee's commercial secrets, should be made public.

#### **Rapid Technological Advancements: Implications for Licensing**

24. To date, regulation has been technology specific i.e. couched in terms of the three broadcasting technologies, terrestrial, cable and satellite, and payment mode specific, e.g., free TV and subscription TV. Until the introduction of wireless TV in Hong Kong, licensing was defined in terms of that particular technology i.e. terrestrial TV. This means that it is unclear how it applies to new technology. For instance, Satellite TV can only be licensed under the Telecommunications Ordinance as the Broadcasting Ordinance was not equipped for the technology. More recent examples are the current concerns over VOD or the transmission of Internet images - whether they should be regarded as broadcasting or narrowcasting, and whether they should be subject to regulation by BA. The emergence of these and of other technologies in the future will therefore have a significant impact on the licensing regime, and on how a level playing field can be maintained and consumer interests protected.

25. Hong Kong Telecommunications Ltd's position on VOD is that the technology is a point-to-point service akin to renting movies from rental shops but transmitted through telephone lines. It should not be regarded as cable or subscription TV. Cable TV, on the hand, argued that VOD is a new technology applied to television and should be treated as such. In other words, they see VOD as a competitor and VOD should therefore come under the same licensing process and conditions. As such Hong Kong Telecommunications Ltd. will have to obtain an appropriate licence from the Government in order to proceed with the project.

26. The convergence is not only between broadcasting and telecommunications. It is likely that the Internet will provide point-to-point entertainment programmes in future. This is a market which the entertainment conglomerates in the United States are actively developing.

27. To facilitate Hong Kong's aspiration to become the communication hub of Asia, the regulatory framework needs to demonstrate foresight and fairness in licensing and franchise award to broadcasters. The Government has attempted to amend existing legislation to accommodate the new technologies. However, this is a reactive approach and means that the licensing system still does not have the flexibility to encompass new technologies without making basic changes to existing legislation.

28. The Government recognizes that the current legislative control can be improved upon. It has decided to bring the legislation within a single framework for terrestrial, satellite and subscription television as well as sound broadcasting services. The Broadcasting Bill was originally scheduled for discussion in the Legislative Council in July 1994. In the most recent Policy Commitment<sup>2</sup>, the Government has promised to “update and bring together in a single piece of legislation Hong Kong’s regulatory framework for the provision of television and sound broadcasting services and to introduce a licensing framework for video-on-demand.” in the 1995/96 Session for the Legislative Council.<sup>3</sup>

#### **A Forward-looking Licensing Framework**

29. The Consumer Council believes that a logical regulatory framework would be created by organizing broadcasting regulation under the two broad categories: Carrier and Content Regulation.

##### ***Carrier Regulation***

30. Carrier regulation encompasses all modes of broadcast, including terrestrial (use of spectrum), cable, satellite as well as telecommunication networks and unknown technology in the future.

31. The carrier regulation should be technology neutral. Indeed, consumers are much more concerned about the service they receive in their home than about the technological means by which it is delivered. This means, Government does not specify the technology to be employed, but only prescribes the standard and target to be met. Government is moving in this direction, for example, the cable licence specified a fixed network to be laid by a named date. It was Wharf Cable’s prerogative to transmit signals via microwave to areas not reached by a fibre optic network

32. The Government’s open network policy in the FTNS licence, ensures access to transmission networks on a non-discriminatory basis. This will enable programme providers of VOD to enter the market without the installation of an additional transmission network. It would be impractical, inefficient and an enormous barrier to entry to require new licensees to build their own transmission networks. Needless to say, the common carrier should be suitably compensated by programme providers for use of its asset. In the case of a dispute, the two parties will need to have recourse to an authoritative (i.e. professional and impartial) adjudicator.

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<sup>2</sup> Policy Commitments : The 1995 Policy Address by HK Government P.196

<sup>3</sup> Legislative Programme: The 1995 Policy Address by HK Government P.6

33. In keeping with rapid technological development of the industry, the legislative framework should be sufficiently flexible in order to accommodate new technology without requiring major amendments each time a new form of technology comes on stream.

34. The policy making process should also provide enough transparency to reduce uncertainty for broadcasters. This will also allow the public to fully understand the licensing process and its implication to the viewers.

### *Content Regulation*

35. Content regulation would be applied to the programme or service suppliers of the broadcasting service either in a highly structured mode as an entire programming service of Wharf Cable's services, or in a looser format such as VOD.

36. All programme providers must comply with a common core programming code of practice prescribed by BA. BA's advertising code of practice and more detailed programming codes of practice should be applied where relevant (Cable does not have advertising).

### *How It Works*

37. The idea is that for any future new services there will be two types of licence, a carrier licence and a programming service licence. An applicant may apply for one or both licences as his circumstances warrant. In the case of a FTNS operator holding a carrier licence, it must open its network to any programme supplier, subject to availability of capacity and interconnection charges. The carrier licensee may by way of contract, subject the programme supplier to the rulings of BA on content regulation. The programme supplier must also satisfy the prevailing licensing requirements for its own activities, e.g. stock brokerage services could only be offered in conjunction with an authorised dealer.

38. The Consumer Council sees definite benefits in organizing the regulatory framework under carrier and content regulation. In particular, it gives a clear indication as to how innovations will be dealt with. The Government will obviously have to look at transitional arrangements for existing licensees: whether or not or how far to exempt them from the new arrangements. HKT would need a programme service licence, however, if they were to provide a video subscription service, rather than providing a transmission service.

39. Naturally, the Government should devise different programme service licences according to the different scale and nature of the services being provided. The licence for a comprehensive structured programming

service similar to that offered by a terrestrial broadcaster will be very different, for example, from that for a small independent programme supplier.

40. Licensing for small independent programme suppliers should be a simple licence obtainable at low cost and issued promptly. The options are a simple notification system with automatic approval upon a lapse of time; an approval system or a registration procedure. The Council does not have a strong view on which option should be adopted, but believes some form of licensing is necessary to enable the authority to keep track of developments in the market.

#### *“Must Carry”*

41. A related issue is whether Government should impose any “must carry” rule on the network operators regarding programme services offered by other providers, for example, terrestrial broadcasters. This proposal arose out of the Government’s desire to make it easier for consumers to change from terrestrial to cable channels and vice versa without having to switch back and forth between their local antenna and cable decoder. However, both ATV and TVB argued that the “must carry” rule involved rebroadcasting of their signals and raised a concern over copyright of programming and quality of signals to be delivered. The same issue is being hotly debated in the U.S. with the major networks asking cable operators to make payments for the right to rebroadcast their programming on the one hand, and cable operators resisting payment on the other. To date, no legislative ruling has been finalized.

42. The prime force behind resolution of such a debate is how the broadcasters perceive the importance of (a) providing consumers with the convenience of not having to switch back and forth between terrestrial and cable channels, and (b) the picture quality of the terrestrial programmes delivered via the cable system. Licensees will only be motivated to enter into an agreement if consumers can find a way of exerting influence. On the other hand, if in certain areas, cable can better transmit signals resulting in better reception, then it may be desirable for terrestrial broadcasters to grant permission to cable operators without the requirement to pay. The Council is, therefore, of the opinion that market forces will dictate the development and government arbitration should only be used as a last resort.

#### **A Level Playing Field in terms of Royalty and Licensing Fees**

43. With the introduction of satellite broadcasters, cable operators and VOD in the future, the broadcasting market is becoming increasingly competitive. These moves are likely to have a significant impact on the revenue of existing terrestrial broadcasters. Since the objective of introducing competition is to enhance choice and diversity for the local consumer, it is in the interests of the Government to ensure financial viability for the existing



broadcasters. Consequently, the Consumer Council considers it appropriate for the Government to evaluate and review the royalty obligations of existing broadcasters in light of the new competitive environment.

44. According to the report of the Broadcasting Review Board, the purpose of charging a royalty is to ensure a public share of the financial benefits of the terrestrial licensees accruing from the use of spectrum which is of limited supply (scarcity concept). Accordingly the Board recommended that royalty payments should be based on turnover (annual gross receipts) and calculated on a sliding scale subject to a prescribed overall maximum.

45. Since the introduction of satellite and cable TV, payment of royalties and fees has been a controversial subject. Firstly, royalty charges for cable and satellite TV have been substantially lower than the two terrestrial broadcasters'.

46. Secondly, the terrestrial TV companies have experienced reduced market share. This raises the question of fairness and has implications for fair competition.

47. Royalty payments for the terrestrial TV broadcasters have been revised a few times recently. Fees were revised in 1988 to 12% of turnover before tax. In 1991, TVB was required to pay HK\$148 million and ATV HK\$20 million to the Hong Kong Government. The rate was further reviewed in 1993 to 10%. This reduction was meant to compensate terrestrial broadcasters for the loss of revenues anticipated from the introduction of subscription and satellite TV.

48. The royalty payments made by satellite and cable operators are significantly lower than those paid by ATV and TVB. For Wharf Cable, its royalty is determined by a sliding scale based on subscription revenues with a ceiling of 7.5% once penetration reaches 250,000 households. For Star TV, royalty payment is specified in Section 3.1 of its licence and is paid in the form of licensing and an annual service organization fee averaging approximately HK\$3 million per year for the 12 years of the licence.

49. The royalty issue was reviewed again in late 1994 because the Government had to consider the effect of lifting the restriction on broadcasting in Cantonese from Star TV and its effects on the advertising income of the two terrestrial TV licensees. In December, on the recommendation of a consultant's report, the GIC decided not to change the royalty rate as it was advised that there was no economic justification for a further reduction despite increased competition. The terrestrial TV broadcasters disagreed. The Government's rationale was that the terrestrial stations have exclusive access to the UHF broadcasting frequencies. However, the market environment has

changed markedly since the renewal of their licence in 1992. There are potentially more players in the market.

50. Currently royalty payment is considered to be a revenue issue to be determined by the Treasury. However, royalty payment could be considered as a broadcasting matter too. This is to be resolved between the BA and the Government.

51. The planned increases in the licence fee for terrestrial broadcasters from HK\$1,000 in 1995 to approximately \$1M in 1996 rising to a projected amount of about \$10 million in 2005 is under criticism by Legislative Councilors and licensees in November 1995. The Administration gave "recovery of cost" in line with government licensing policy, as the reason.

52. If the Government is contemplating a reduction of royalty fees for these licensees and took the opportunity to increase the licence fees in order to maintain government revenues while adhering to the cost-recovery principle, it should say so.

53. In any case, this points to a transparency problem and the paucity of information on the rational basis for the royalty and licence fee formula. We believe the Government should urgently review the financial charging system.

## **Recommendations**

### **Recommendation 1:**

#### **Licences for Terrestrial Broadcasting Channels**

54. Technological changes and/or the reorganization of spectrum space may enable an increase in the number of terrestrial channels. The Council recommends the Government awards licences for use of spectrum on an open bidding process. Bidding for the use of spectrum rather than a specified service will encourage innovation and efficient use of the spectrum. The licensee will be encouraged to try out compression or any other new technologies that may come on stream.

55. The basis on which existing licences will be contested or maintained following their expiry in 2000 should be considered by the Government in good time to enable full public consultation and an early announcement to be made.

### **Recommendation 2:**

#### **Licences for Subscription TV**

56. This Council recommends that the Government should conclude its deliberations on its market assessment study for issuing further subscription

TV licences with no unnecessary delay, bearing in mind market forces and the competitive environment.

**Recommendation 3:**

**Improving the “Free Competition” Clause**

57. The Consumer Council is of the view that the following initiatives should be adopted in order that the purpose and effect of the “Free Competition” Clause may be improved upon:-

- (a) the licence conditions (including the Free Competition Clause) should be given statutory force;
- (b) the prohibition against anti-competitive practices should be sufficiently comprehensive so as to achieve the intended effect that a licensee shall not be able to engage in any conduct which in the opinion of the Broadcasting Authority has the effect or purpose of preventing, restricting or restraining competition in the broadcasting industry;
- (c) the exceptions to the general prohibition should be limited;
- (d) the Broadcasting Authority should ensure that the penalties achieve the necessary deterrent effect by e.g. prescribing penalties that are commensurate with the gains or losses that may result from a breach of the Free Competition Clause. The Broadcasting Authority should also consider whether the Authority should be empowered to direct a licensee to desist from an anti-competitive conduct or vitiate arrangements pertaining to such conduct with suspension or revocation of licence as the ultimate sanctions;
- (e) the Broadcasting Authority should be reasonably constituted and widely represent the society as well as including members with diverse experiences so as to be able to handle competition issues that may arise. Further, there should be reasonable disclosure of the Authority’s decisions and the grounds of the decisions, balancing the right of the public to know and not revealing a licensee’s commercial secrets in the process.

**Recommendation 4:**

**A New Regulatory Regime**

58. With rapid developments in technology, the industry is likely to undergo dramatic changes in structure. Fair competition can only be ensured if entrance is not hindered by rigid legal definitions of technology. The Consumer Council recommends that the Administration should ensure that the regulatory structure and ancillary legislation are sufficiently flexible to

accommodate the merging of Broadcasting, Telecom and Information Technologies.

59. The Council recommends a new regulatory framework based on separate carrier and content regulation by issuing carrier and programme or service provider licences.

60. A **carrier licence** is an effective vehicle for the Government to prescribe standards and targets for transmission. It should not prescribe the technology (technology neutral).

61. A **programme or service licence** will provide the means for the Government to specify requirements for content regulation including :

- (a) programming and advertising standards, and
- (b) permission to operate a subscription service.

62. A licensee can apply for one or both licences in respect of its activities as its own commercial decision dictates. For example, a network owner who wishes to provide programmes would have to hold both licences.

63. The length and terms of individual licences should correspond to the size and nature of the activities for which approval is sought. A programme licence may be a licence for a full range of scheduled programmes e.g. those currently provided by Cable TV. Alternately, it can be a specific service licence, in which case, service providers must also satisfy the prevailing requirements for their activities, e.g. banking service.

64. Licences for small, independent programme suppliers, say transmitted directly on our Fixed Telecommunications Network Services network, should be simple and easily obtainable at low cost. A straight forward notification procedure may be enough for the authority to keep track of developments.

65. The Government will probably not propose any change for existing licensees e.g. terrestrial broadcasters. However, it may need to look at transitional arrangements for some licensees.

#### **Recommendation 5: Financial Level Playing Field**

66. With increasing competition in the broadcasting market, it is likely that the value of the exclusive franchises held by the two existing terrestrial broadcasters will be reduced. The Government should review the royalties

paid by these operators in the light of this and ensure that they are fair and equitable under the new competitive environment. The Government should review the royalty and licence fee system as a whole to ensure that it is:

- (a) even-handed to terrestrial broadcasting cable, satellite or any future service providers;
- (b) rational;
- (c) transparent and that the Government should disclose how and why the levels are changed.

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## CHAPTER 5

### Media Ownership

#### Introduction

1. Media ownership concentration is a major policy concern in many countries. Two general principles guide media ownership regulation. First, the need to preserve competition by preventing firms from merging or reaching agreements that would increase market dominance or create barriers to entry. This is particularly important in the broadcasting sector since it is capital intensive and carries a high cost of entry. Second, the need to ensure diversity of views given the importance of the media as a source of information for the public and its impact on the community.

2. For these reasons, most countries have restrictions on media ownership, both on ownership within a single form of media, in this case television broadcasting and on cross media ownership, e.g. ownership of television stations or networks and radio outlets or newspapers. The restrictions seek to limit ownership of a single or multiple media to a certain proportion of the audience reached by that media in a particular geographical area.

3. Cross media ownership policies around the world have been undergoing significant changes in recent years. This is partly due to innovations that overcome the traditional limitations of spectrum availability and thereby reduce a major barrier to entry and increasing technological convergence between broadcasting and telecommunication technology. Companies from these industries can now provide both services to consumers and enter each other's traditional businesses.

4. The Consumer Council's principal concern in assessing control of media ownership in Hong Kong is the need to ensure fair competition and diversity of views. In general, the Council supports the Government's pronounced intention to revise and extend certain rules covering media ownership, e.g. to cover print media. However, the Council believes there is scope for making existing policy more consistent and transparent. In addition, we assess the implications of cross media ownership between television and telecommunications operators<sup>1</sup>; examine residency restrictions; and evaluate the direct and indirect impact of these issues on the interests of consumers.

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<sup>1</sup> Telecom operators are not defined as 'media'. Yet technological developments have given them the potential to take media businesses like subscription television. Telecommunications operators which engage in media activity will also be discussed in this paper. We do not discuss ownership of

**Current Provisions on Media Ownership**

5. In Hong Kong, policy on ownership of broadcasting companies aims at ensuring that 'programming in the broadcasting system is varied and comprehensive, providing a reasonable and balanced opportunity for the expression of a broad spectrum of views on matters of public concern'<sup>2</sup>. The rationale is based on the premise that television in Hong Kong enjoys a high degree of penetration and has the potential to influence opinions and social attitudes on a large scale.

6. Media ownership rules cover the following:

- (a) Control on ownership by disqualified persons;
- (b) Control on investments by broadcasters;
- (c) Prohibition of cross ownership and multiple ownership of local broadcasting licences through (a) & (b);
- (d) control on ownership by foreign residents.

The Government enjoys a wide degree of discretion in the application of these rules. Absolute restrictions on media ownership focus primarily on the local broadcasting market and electronic media, which includes terrestrial television, subscription television and radio.

**Ownership by Disqualified Persons**

7. "Disqualified persons" are certain categories of persons who the Government 'does not wish to have control over broadcasters'. They are disqualified 'either because of the likelihood of a conflict of interest, or because of the need to guard against media domination, reduced competition and undue influence by individual groups of "broadcasting magnates"'.<sup>3</sup>

8. Under the Television Ordinance (TVO), a disqualified person is defined as:

- (a) An advertising agency;

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broadcasters by non-media businesses or advertising agencies or broadcasting suppliers, despite the fact that they are "disqualified persons" under TVO.

<sup>2</sup> "Ownership Restrictions on Broadcasting Licensees", Information paper for Legislative Council Panel on Information Policy and Recreation and Culture, 28 October 1993, p.1.

<sup>3</sup> *Ibid.*, p.2.

- 
- (b) A company which supplies materials for broadcasting by a licensee;
  - (c) A company -
    - i. which is a licensee, or
    - ii. which transmits sound or television material, whether within or without Hong Kong, or
    - iii. which is the sole or dominant supplier of a public switched telephone service by wire to residential premises in Hong Kong;
  - (d) A person who exercises control of a company specified in (b) or (c);
  - (e) An associate of any category of disqualified person specified in (a) or (d).

9. As can be seen, this definition discourages concentration of ownership by terrestrial and subscription TV operators according to condition (c)i. and satellite TV operators under (c)ii. The disqualification for the dominant telephone supplier only applies in relation to subscription television. However, classification as a disqualified person is not a complete bar on acquiring a controlling interest in a licensee. The Governor-in-Council has the power to award licences or allow acquisition of a controlling interest in a licensee to a disqualified person by special approval.

### Limits on Investment by Broadcasters

#### *The 15% limit on investment in other broadcasting activities*

10. Under Part 1(2) of Television Ordinance (TVO), to 'exercise control of a company' means:-

- (a) to hold office<sup>4</sup> in the company; or
- (b) to be a beneficial owner of more than 15% of the voting shares of that company; or
- (c) to be a voting controller of more than 15% of the voting shares in that company.<sup>5</sup>

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<sup>4</sup> In the absence of a specific definition in TVO, the Companies Ordinance was consulted. There "officer" in relation to a body corporate was defined as including a director, manager or secretary.

<sup>5</sup> Definitions for "exercise control of a company" are basically the same in Section 13A(2) of TO, except that limits for beneficial owners are 35% rather than 15%.



11. This 15% level of restriction is the same as the limit in Australia. It is more stringent than the 20% ceiling prescribed in the UK but less restrictive than the 5%<sup>6</sup> limit in the US.

12. The 15% limit applies to terrestrial and subscription TV broadcasters' exercise of control in other broadcasting related business<sup>7</sup>. It is also applied to radio stations under Section 13(A) of the Telecommunication Ordinance (TO). A corporation (other than a terrestrial or subscription TV licensee) can hold up to 35% of a sound broadcasting corporation (e.g. a commercial radio operator). Because these restrictions do not apply to satellite TV operators, Hutchvision (a satellite television operator) holds 28% of Metro radio's controlling interest.

13. The Consumer Council is of the view that overall restrictions on ownership are necessary, particularly in the local broadcasting market, in order to ensure multiplicity of choice and prevent market dominance. We note that satellite operators are treated as a separate case in the legislation and are subject to more relaxed controls. This is discussed below.

#### **The Changing Regional Broadcasting Market - Satellite Transmission**

14. For Hong Kong's broadcasting industry, the relevant market has expanded to cover the whole of Asia, including the vast mainland China and the Southeast Asian markets. This raises the following questions: (a) what is the implication of the licensing requirements on Hong Kong's ability to develop into a regional broadcasting centre, and (b) how are the interests of domestic viewers affected when the broadcasters position themselves for competition in the regional market.

15. Clearly, with a much larger population and growing affluence, the Asian market presents significant growth opportunity for broadcasters in Hong Kong. This is further enhanced by Hong Kong's position as the premier provider of Cantonese programming in overseas markets. It is believed that local broadcasters can sustain this competitive advantage over other regional broadcasters and regionalization of the broadcasting market could bring about improvements in programming quality, to the benefit of consumers.

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<sup>6</sup> But 10% for investment companies, insurance companies and banks holding stock through their trust departments in trust accounts (US Federal Communications Commission Rules and Regulations, Broadcasting and Cable Year 1995).

<sup>7</sup> Under Section 17B(1)(b) of the TVO, "a licensee may hold or acquire, directly or indirectly, interests in not more than 15% in aggregate of the issued shares in any other company, the principal business of which is directly connected with television (including satellite television) or sound broadcasting. (1A) For the purposes of subsection (1) (b), "licensee" shall include an associate of a licensee. (Added 22 of 1993 s.16)." A licensee may however own any number of shares in a company licensed under TO to provide telecom services using television transmission networks (TVO 17B 1F).

16. At present, satellite television is not subject to the same restrictions as other television broadcasters. A satellite television licensee is classified as a disqualified person in Television Ordinance and Part III(A) of Telecommunication Ordinance. However, the Government has said it has no intention of enforcing the disqualified person restrictions on future satellite television broadcasters<sup>8</sup>. This policy would appear to put terrestrial and subscription TV owners at a disadvantage, since they are subject to limits on investment in other broadcasters, (including satellite TV operators) under other clauses in the Television Ordinance (Section 17B) which cannot be waived.

17. TVB and ATV have complained that the media ownership rule is not equally applied to satellite television operators. They consider that such inconsistency is unfair and violates the level playing field principle. The Government's rationale for not extending media ownership restrictions to satellite television is that satellite television operates in a competitive regional broadcasting market. Thus, the possibility of dominance is not as much of a concern as it is in the local market.

18. Meanwhile, local broadcasting licensees can, with GIC's approval, exercise control of satellite uplink or downlink. In October 1994, the Executive Council approved TVB's application for an uplink and downlink licence to operate a regional satellite service. This has set a significant precedent for local terrestrial broadcasters seeking to operate satellite television services, and has encouraged local broadcasters to branch out into the region. This is subject to the approval of the Governor in Council (GIC). The Government sets a limit on TVB's level of investment in the new satellite broadcasting business in the licensing conditions and was assured that such investment should not jeopardize the interests of the public viewers in Hong Kong.

19. The Consumer Council also takes the view that local broadcasting licensees should be allowed, subject to the GIC's approval, to enter the satellite market. This will provide more choice to viewers in the region, boost exports in services, and encourage competition. However, it is important to emphasise that the terrestrial licensee's priority should be to serve local, rather than regional interests. There are already some safeguards in this respect, e.g., the requirement to provide a minimum amount of programming targeted at local audiences. The Consumer Council recommends that the Government should monitor the impact of relaxation on local viewers' interests and be willing to introduce further safeguards if necessary.

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<sup>8</sup>"Ownership Restrictions on Broadcasting Licensees", Information Paper for Legislative Council Panels on Information Policy and Recreation and Culture, 28 October 1993, p.4.

20. The Consumer Council notes that the entry of either terrestrial/subscription TV broadcasters into the satellite market or satellite TV operators into the terrestrial or cable TV market is subject to approval by the GIC. The Government should make known the circumstances in which approval is likely to be given. Such transparency will provide a stable framework for broadcasters' investment decisions.

### **Telecom Operators as Disqualified Persons in Broadcasting**

21. According to the definition of disqualified persons under the Television Ordinance, the dominant telephone service supplier, Hong Kong Telecommunications Ltd. (HKT), its principal shareholders and associates are not allowed to hold more than a 15% interest in subscription television business. Section 3.3 of the 1992 Guidance Note for the Second Telecommunications Network also sets out a 15% limitation on holdings by any telecommunications operations in another licensee.

22. These rules, prompted by concerns about market dominance, restrict HKT from operating subscription television unless they have special approval from the GIC. The Consumer Council thinks that this "legal incapacity" to entry is unnecessary and should be removed where possible. Concerns about market dominance should be addressed when assessing the licence application from a telecom operator.

23. HKT has already expressed an interest in offering subscription TV after Wharf Cable's exclusive licence expires in 1996. The change we propose would allow HKT to plan for such a possibility when the Government calls for tender of new subscription TV licence, but would give no guarantee as to the outcome.

24. The licensing authorities, in considering HKT's application for this will need to take into account competition in the market at the time.

25. Any move to enable HKT to enter media ownership should be subject to certain safeguards for the reasons discussed below.

### **Video-On-Demand**

26. HKT has applied to develop a point-to-point video service, which is not regulated by the existing broadcasting legislation. The Council's assessment of the market is as follows :

- (a) Experiments to provide innovative services which will have potential benefit to consumers should be encouraged. It is

anticipated that an experiment of such complexity and magnitude will call for colossal sinking costs. HKT has the infrastructure and resources to meet the capital investment required for a move into VOD on a territory-wide basis.

- (b) Competition has been introduced to the domestic telecommunications market. Since its deregulation in July 1995, the telecommunications market witnessed the entrance of 3 fixed network operators and consequently HKT will no longer be the monopoly telephone service supplier, although its dominant market position remains.
- (c) As long as a company is not granted exclusive rights to provide VOD services and provided Government maintains an open market policy, competition will be possible (as discussed in Chapter 4). Competition for provision of broadcasting by telecommunications operators will also depend on technological developments and growth of the market for VOD.

27. In line with the proposed licensing framework of awarding carrier and/or programming licences, (Chapter 4 above), HKT needs to hold two licences, a carrier licence which it already has; and a programming licence for putting through the video on demand.

28. A TV/telecom conglomerate may have significant stakes in activities outside the ambit of the cross media ownership restrictions and thereby become an extremely powerful company in this territory. The Consumer Council believes that, because the dominance would arise from interests spanning more than one industry, it should logically be handled by a mechanism overseeing competition policy.

### **Extension Of Cross Media Ownership Control To Print Media**

29. Currently, there is no restriction on cross ownership of broadcasting licences and newspaper proprietors or other print media. It is however subject to certain ceilings in countries such as Australia, the U.K. and the U.S. (see annex 5.1 for details) in the belief that a combination of print media and broadcasting media can exert a great influence on public views.

30. The possibility of print and broadcast media joining hands, and thereby becoming influential and dominating public opinion is also a concern of the Consumer Council. In addition, the combination of two dominant organisations in different media may create a significant barrier to entry and

market dominance. The Council therefore welcomes the Government's intention to fill this gap in the forthcoming Omnibus Broadcasting Bill<sup>9</sup>.

31. If the Government should extend the cross media ownership restrictions to other electronic media and print media, it should naturally devise specific rules as to the permissible ceiling of cross holdings and the effective date for such rules. Section 17B (2) of the Television Ordinance empowers the Broadcasting Authority to give a period within which the licensee should transfer or dispose of shares. The provision has provided certain flexibility for the Government to waive the regulation on a case by case basis. It is anticipated that adequate time will be allowed for the parties affected to meet the new requirements. Some investors, for example, hold shares in both newspapers and terrestrial television services.

32. The Council supports the principle of extending the cross media ownership rules and awaits with interest the Government's detailed proposal on the subject.

### Residency Restrictions

33. Nationality as defined in the Television Ordinance is based on residency not citizenship. The residency requirement is set by defining 'unqualified voting controller'. To qualify as a voting controller, an individual person must be ordinarily resident in Hong Kong and have been so for at least one continuous period of not less than 7 years, and in case of a corporation, it must also be ordinarily resident in Hong Kong<sup>10</sup>.

34. Both Part IIIA of the Television Ordinance and Section 13I of the Telecommunication Ordinance impose restrictions on voting by 'unqualified voting controllers'. Unlike the limitations on foreign ownership by broadcasters in other countries, these restrictions allow the Government to approve higher levels of foreign investment without compromising local control.

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<sup>9</sup> Legco Panel on Recreation and Culture, 27 April 1995.

<sup>10</sup> *Television Ordinance*: (2) defines "ordinarily resident in Hong Kong" as: - "(a) in the case of a person - (i) residence in Hong Kong for not less than 180 days in any calendar year; or (ii) residence in Hong Kong for not less than 300 days in any 2 consecutive calendar years; and (b) in the case of a company, a company, - (i) which is formed and registered in Hong Kong under the Companies Ordinance (Cap. 32); (ii) of which the directors participating actively in the direction of the company - (A) in case there are 2 such directors, each shall be ; or (B) in case there are more than 2 such directors, the majority thereof shall each be, for the time being ordinarily resident in Hong Kong and also have been so resident for at least one continuous period of not less than 7 years; and (iii) the control and management of which is bona fide exercised in Hong Kong."

35. In the case of terrestrial and subscription television, no unqualified voting controller "shall hold, acquire or exercise or cause or permit to exercise more than 49% of the total voting control of a licensee." Directors and principal officers must also fulfil the residency requirement. The Consumer Council believes that this restriction is necessary to protect variety and local viewers interests and should be maintained.

36. Increases in foreign voting control below the 49% are subject to approval by BA at trigger points up to 10% and by GIC between 10% and 49%. With the aim of liberalising in order to provide flexibility conducive to encouraging investment, the Consumer Council recommends that the BA's authority to approve control limits is raised above 10%.

37. Currently, residency requirements also apply to satellite uplinks. STAR's uplinking licence is subject to a foreign ownership limit of 49%. This rule has prevented Murdoch from purchasing Hutchvision (HK) Ltd. It was said to be the reason behind the uplink of Home Box Office and Asian Business Network from Singapore instead of Hong Kong.

38. Abolition of controls over foreign ownership on satellite broadcasting may be necessary for practical reasons. This is because, regardless of where the uplink is from, Hong Kong residents can obtain access to the programming with a receiver dish and it is impossible to impose extra-territorial control under such circumstances. It is only when the satellite operators uplink from Hong Kong, that the Government can seek assurances of compliance with programming standards. The Consumer Council believes that foreign ownership controls on satellite TV operators should therefore be abolished. The relaxation would not only recognize the impossibility of enforcing controls, it would also give flexibility for commercial operations, encourage investment into Hong Kong and provide greater competition.

## **Recommendations**

39. The Consumer Council is of the view that it is important for Hong Kong to maintain a competitive environment for the media market. A well-constructed regulatory framework of cross media ownership control should be in place to prevent the domination of the market by a few. The Consumer Council also proposes rationalization of existing controls to ensure consistency:

### **Recommendation 1:**

#### **Entry of Local Broadcasters into the Satellite Market**

40. The Consumer Council shares the Government's view that local broadcasting licensees should be allowed, subject to GIC's approval, to enter

the satellite market. The Consumer Council however, recommends that the Government should keep the matter under review, to monitor the impact of any such moves on local viewers' interests.

**Recommendation 2:**

**Rationalising Cross Media Ownership Restrictions on Telecom Operators**

41. Following deregulation of the local Fixed Telecommunications market, the Government needs to define what constitutes "a dominant carrier" under the Television Ordinance.

42. Recognizing convergence of technology and in order to promote competition, the Government should remove the "legal incapacity" to HKT's entry to the subscription TV market. However, concern about market dominance should be addressed when assessing the licence application, taking into the capacity of network and amount of, and effect on market competition at the time.

43. Once a telecom operator enters the broadcasting market, it will be subject to the cross media ownership regulations.

**Recommendation 3:**

**Extending Cross Media Ownership Restrictions to Print Media**

44. In view of the profound influence of a combined electronic and print media interest on public views, the Council supports Government's intention to extend the cross media ownership rule to newspapers. The Council awaits with interest the details to be proposed by Government.

**Recommendation 4:**

**Relaxing Foreign Ownership Restrictions**

45. In order to provide flexibility conducive to encouraging investment, the Consumer Council recommends relaxation of the 10% threshold above which Governor-in-Council's approval is required for increases in foreign ownership of voting shares in local broadcasters. It is important to note that the prescribed control limit serves only as a trigger point for GIC review and does not represent an absolute limit on foreign control on voting shares.

46. To encourage competition as well as flexibility in commercial operations, restrictions on foreign ownership of satellite broadcasters should be lifted altogether. This also reflects practical realities, i.e. that Hong Kong residents can obtain access to Satellite programmes regardless of the place from which the operator is uplinked.

## Annex 5.1

In Australia within a Defined Service Area a person may not hold an interest (as defined in the act) in more than one of the following: a licence for a commercial television station, a licence for a commercial radio station, or an associated newspaper. A person who publishes or controls a newspaper or has a shareholding or voting interest in excess of 15 per cent in a newspaper has a prescribed interest in that newspaper. The Act does, however, protect (or "grandfather") some holdings of excess interests acquired prior to certain dates, although no increases in those interest are allowed.

In the UK, national and local newspaper proprietors may not have more than 20 per cent interest in a first Channel 3, 5 or national radio services nor more than 25 per cent interest in additional licences (except that the limits do not apply where there is a little overlap between the coverage of a local newspaper and a regional Channel 3 licence); local newspaper proprietors may not have more than a 20 per cent interest in local radio licences; neither national nor local newspaper proprietors may have more than a 20 per cent interest in a domestic satellite licence nor more than a 5 per cent interest in a second such licence; and generally similar restrictions apply in reverse to broadcast licensees' interests in newspapers.

In the US, a person may own in the same geographic area two stations in the same service, a daily newspaper and a broadcast station, a television station and a radio station, or a television station and a cable system.



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## CHAPTER 6

### Public Service Broadcasting

#### Introduction

1. This chapter looks at the role of the public broadcaster, the public broadcaster's position relative to commercial broadcasters, vis a vis access and regulatory oversight as well as community access TV in enhancing viewers' choice.

#### RTHK and Public Broadcasting in Hong Kong

2. The need for public broadcasting is universally recognized. Until recently, public broadcasting has dominated television broadcasting in the European Union. The British Broadcasting Corporation (BBC) is a notable example of a public broadcaster. In the U.S., the public broadcaster function is served by the Corporation for Public Broadcasting. In Hong Kong, Radio Television Hong Kong (RTHK) is the public broadcaster.

3. At present, RTHK operates seven radio channels but it does not have any TV channel of its own. The licensing conditions for terrestrial commercial licensees (ATV and TVB) prescribe that the commercial broadcasters should allocate a specified amount of time per week for the airing of RTHK programmes, during primetime on one channel and during weekends on another channel. Two licensees rotate the required access every six months.

#### Role of Public Broadcasting

4. Public broadcasting is a "public good" designated to serve the community in general and its viewers in particular. In Hong Kong, this involves the public broadcaster (PBS), RTHK, in public education, improving programming choice - providing educational, information and current affairs programmes not provided by the market; and catering for minority interests.

#### *Programming Choice*

5. The two terrestrial broadcasters' programming is driven by commercial considerations. It caters for the majority and is often similar<sup>1</sup>

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<sup>1</sup> In Hong Kong all four services of the terrestrial broadcasters aired Olympic Games events at the same time slot in 1992 and "Justice Pao" was broadcast by the two Chinese services back to back during primetime. This series was also aired three times by the two Chinese services between 1994

since both broadcasters are generally following the same successful formula. RTHK on the other hand tends to focus on programmes that are informative and educational in nature, e.g. current affairs programmes, generally regarded as lacking in commercial appeal.

6. A comparison of the programmes most commonly shown by the two terrestrial broadcasters and those due to be produced by RTHK (Annex 6.1) suggests that there is very little overlap between RTHK's programming and the others'. This is indicative of RTHK's unique function in providing alternative programming for viewers in Hong Kong.

#### *Comprehensive Access to Programmes*

7. Digital broadcasting and compression techniques now under development elsewhere will expand the number of channels networks can carry and improve the picture quality immensely. If access to these new technologies depends on ability to pay and most broadcasters eventually become "pay as you view", as is currently observed in Europe, we could see a new division in society between the information-rich and information-poor. This will obviously disadvantage poorer consumers. We are particularly concerned about their access to information and educational programmes. It is therefore vital that the Government ensures that Hong Kong continues to have a public broadcaster providing universal (i.e. free) access to these services.

#### **RTHK's Access to Television and Sound Broadcasting**

8. Radio Television Hong Kong has access to both TV and radio air-time, in a way other broadcasters do not have due to cross media ownership restrictions. We believe RTHK's status as a public broadcasting service justifies a strong presence and wide exposure. The fact that RTHK does not have a full-time TV channel significantly reduces the cross-media implications. Also, RTHK is not privately owned, so its access to radio and TV or other media does not give rise to the situations such as undue influence by a private individual, which the cross-media ownership rules are designed to prevent.

9. When it bid for its subscription TV licence, Wharf cable made a commitment to set aside three Government channels. To date, the Government channel has not materialised. The Council considers that the Government should take up the offer to give RTHK access to the cable operator. This is not only to enhance the ability of RTHK to fulfill its

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and 1995. In mid September of 1995, as competition between two pseudo investigative reporting programmes, "Hong Kong Today (ATV) and "Focus on Focus" (TVB), became fierce, both stations covered exactly the same stories during the same primetime slot.

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function, but also to ensure that the different operators show RTHK programmes.

### **Accountability and Regulatory Oversight of the Public Broadcaster**

10. The public broadcasting service is not subject to market competition in the same way as commercial licensees. Nonetheless, Radio Television Hong Kong needs to be accountable for its service. There are two principal forms in which RTHK can be held publicly accountable, first by its accountability to government and secondly by its accountability to viewers.

11. As a Government department, RTHK is not subject to regulations under the broadcasting legislative framework, i.e. Television and Broadcasting Ordinances. It is held accountable to the Secretary for Recreation and Culture as a Government department and operates largely on self-discipline insofar as programming standards are concerned. Public accountability in terms of oversight by an independent or regulatory body is not apparent. This issue has been a source of complaint from commercial broadcasters and members of the public, who saw this as a double standard. For example, commercial licensees are liable to sanctions imposed by the Broadcasting Authority (BA), but RTHK falls outside the purview of BA.

12. The commercial channels have been largely reconciled to such differential treatment of RTHK following the signing of a "Memorandum of Understanding" by RTHK on 26th September, 1995 signifying that "RTHK is as always more than willing to follow the Code on broadcasting." The BA will set up a mechanism to investigate all complaints received against any programme produced or broadcast by RTHK. The BA and RTHK may individually release to the public the decision of the BA and RTHK's response." This represents a major step forward in ending the anomaly which has existed for some years.

13. We understand that RTHK has recently concluded a Framework Agreement with the Secretary for Recreation and Culture which sets out RTHK's scope, status and responsibilities, programme, aims and financial planning and control. These two memoranda will provide a solid foundation for RTHK's future activities and development.

14. As for accountability to viewers, RTHK issues a Performance Pledge which is a form of public accountability, and forms specialist advisory panels e.g. for children and youth programming to advise on its programmes. The public can express their views through, for example, prompt feedback through viewership surveys, viewers groups etc. RTHK should maintain and where possible supplement the channels through which viewers can express their opinions so that it will be continually keeping in close touch with community it serves, and respond to viewers' needs.

15. Rapid technological development has brought about new vehicles for delivery of visual and sound signals. RTHK has taken the advantage of technology by making its audio service available via Internet.

### **Programmes by Community Groups on TV**

16. The Consumer Council believe there would be significant consumer benefit in supplementing the public programming available from RTHK with programmes produced by other well-established and recognized public organizations, such as Independent Commission Against Corruption and some educational organizations. There are many organizations in Hong Kong able to produce good programmes for public educational purposes and therefore worthy of the support given and exposure provided by community access TV. This is not the same as the public access channel already vetoed by the Executive Council on the grounds of possible misuse by irresponsible organizations.

### **Recommendations**

17. In order to facilitate RTHK's crucial functions as a public broadcaster in providing choice and quality programming for the public, the Council puts forward the following recommendations:-

#### **Recommendation 1**

##### **Access to Multiple Broadcasting Mediums**

18. Due to its special role in society, the public broadcaster's operation of radio services and access to terrestrial television air time should continue. It would also be equitable for RTHK to have access to cable as well as terrestrial broadcasting channels. Government should enable RTHK to take up the public broadcasting channel currently reserved by cable TV.

#### **Recommendation 2**

##### **Giving Statutory Force to RTHK/BA Memorandum**

19. RTHK's voluntary decision to follow the BA's code and decisions somewhat removes the concern expressed by commercial licensees that a

“double standard” exists in terms of regulatory oversight. The Consumer Council supports Government’s intention to spell this out in the impending Omnibus Broadcasting Bill.

**Recommendation 3****Community Programming on TV**

20. The Council recommends that Government encourages licensees, particularly the cable operators to provide community access TV for programmes made by recognized public organizations, such as Independent Commission Against Corruption, Civic Education and Environmental Publicity Campaign Committees and educational institutes. The channel would be subject to the same code of conduct as that applying to other programme service licensees.

## Annex 6.1

**Breakdown of programming by TVB (Chinese Service), ATV (Chinese Service) and RTHK**

Type of Programme (%)	TVB1	ATV1	RTHK2
Drama	24.6	19.6	-
Feature Films / TV Movies	16.4	19.2	-
News / Weather Reports	12.0	19.6	-
Children Animation	9.5	7.8	-
Education / Enrichment	7.9	-	26.8
Magazine / Talk Show	-	6.0	-
Current Affairs	-	-	32.1
Servicing	-	-	14.7
School Educational TV	-	-	8.4
Youth and Children	-	-	7.8

Sources: 1Hong Kong Broadcasting Authority 1993-1994

2Radio Television Hong Kong Performance Pledge 1995

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## CHAPTER 7

### Overall Conclusion

1. In this study we have attempted to think through and anticipate as far as possible, the implications of new technology and convergence between broadcasting telecommunications and information technology, on consumers and the competitive environment.
2. It is clear that, as a result of new technology, the historical constraint on the number of players in the market - the number of channels available on the spectrum - is fast disappearing. For example, as a result of transmission of images via telephone lines and the possibility of digital compression, broadcasting capacity on cable and telephone systems using fibre optic cables could soon increase by one thousand times or more. As the owner of the world's first fibre optic telecommunications network, Hong Kong already has a headstart in the race to expand capacity.
3. This study concludes that, while competition is likely to improve as a result of such changes, a number of institutional changes are needed to ensure that these technological changes are in fact accompanied by enhanced competition and consumer choice. In some cases, restrictions need to be lifted. Rationalization of the regulatory and policy formulation framework is vital, in order to escape the straightjacket of a regime designed with one particular technology in mind, and develop a new regime with sufficient flexibility to accommodate new technologies quickly and on equal terms; to encourage diversity of ownership, a high level of transparency; which supports pluralism of views and choice for consumers.
4. We urge industry to pay regard to consumer interests in the interface between different technologies in developing new technology and equipment.
5. We also ask Government to take note of the implications of enhanced competition at a local and regional level on programming for Hong Kong consumers and on programming for minority audiences and to be willing to take measures to protect these interests where necessary.
6. Looking at the wider competitive environment for broadcasters, we have, in the course of our study, come across instances where the existing regulatory structure, despite the best intentions, was found to be inadequate in dealing with the situation. For example, current provisions on cross-media ownership restrictions may not be sufficient to prevent TV/telecom conglomerates from assuming extraordinary market power detrimental to competition and consumer interest in the territory. Neither could the anti-competition clauses in the licences curb breaches if such conduct involves a

third party outside the jurisdiction of BA. It will take a mechanism like a Fair Trade Commission, able to look across industrial sectors, to address this adequately. We recommend that the Government recognizes this fact and awaits the recommendations of the Consumer Council in a separate study, which will address the issue of whether Hong Kong needs to enact Competition Laws and establish a Fair Trade Commission.

7. Finally, this study has provided with us a valuable opportunity to revisit the philosophy underlying the current broadcasting policy and to understand the practical difficulties encountered by the Administration and various parties. Against this background, we have put forward recommendations aimed at re-aligning the regulatory structure and most important of all, mapping out a long-term strategy to meet the challenges ahead.





配合轉變市場  
發展競爭良策  
廣播事業競爭研究報告

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# 配合轉變市場 發展競爭良策

## 廣播事業競爭研究報告

### 摘要

廣播事業和其他行業一樣，需要有競爭，讓消費者有多元化的選擇和增加本港公司的競爭能力。締造有利於競爭的市場環境，對香港整體社會經濟均有莫大裨益。

### 研究目的

目的為分析廣播業的競爭情況，看市場上是否存在公平競爭或有礙競爭的因素，研究如何加強競爭，促進市場效率，有利於經營者，同時保障消費者利益。

這研究以消費者利益為出發點，由於電視觀眾目前和日後的選擇，終會受到廣播政策和監察體制的影響，因此這研究也同時討論這些政策問題。

### 廣播科技的急劇改變

近年的科技突破，令廣播業急劇改變。衛星廣播和有線傳送系統，加上數據化及壓縮技術的發展，令觀眾可接收的電視頻道倍增，這發展趨勢將會持續。順應這形勢，香港亟需確立具遠見的監察體制。

### 具遠見的監察體制

目前的發牌體制以傳送技術和收費模式來分類，政府因應不同傳送技術而發出三類廣播牌照：無線電廣播、有線傳播和衛星廣播；又分收費和不收費兩類電視牌照。這種按廣播技術和收費形式制訂的監管則例，將難以配合日新月異的廣播業發展。事實上，電視、電訊和通訊科技三種行業日漸融合，經已成為世界趨勢。

面對未來挑戰，監察體制必須配合日益複雜和創新的廣播業發展，使經營者有公平競爭的機會。

我們需要制定一些措施，預防市場過度集中，以保障本港觀眾的利益、照顧非主流觀眾的選擇，及維持一定的廣播水準。

本會有以下的建議：

- 順應行業的長遠發展，新的監管體制分為兩大類：

#### 傳送網絡牌照和節目或服務供應牌照。

這監管體制具足夠的靈活性，毋須因應每項科技和服務的更新，草擬新的監管體制。

- 網絡牌照上列明政府要求達到的技術標準，但毋須指定採用那一種技術。
- 節目或服務牌照指定經營者須符合節目和廣告守則的規定，和核准持牌人是否可以提供收費電視服務。

節目或服務供應商所提供的服務，須符合該服務監管要求，如股票經紀服務必須擁有該行業的牌照。

- 政府宜鼓勵經營者引入新科技，讓消費者享用：

在情況許可下，政府宜規定技術間的互相聯繫(interconnect)，使消費者可以用同一解碼器接收節目，免使解碼器堆滿屋同時亦不會增加支出；

電訊條例規定，電訊或有線電視公司有權進入大廈敷設線路，住戶接駁新科技的要求，管理公司及業主立案法團亦應儘量協助；

電訊局經已發出指引，建議發展商在新建樓宇，預留敷設網絡的空間，為消費者提供方便，政府宜積極鼓勵發展商付諸實行；

經營者之間的接駁地點(gatekeeper)，須設在對各經營者均公平的地方。

#### 增加公平的競爭

目前本港有兩無線廣播公司、每公司各有一個中文電視台和英文電視台、一間衛星電視台、一間有線電視台和一間公營電台，除此以外，電影院和影視租賃也為觀眾提供選擇。為加強競爭，增加消費者的選擇，本會有以下建議：

- 使發牌的決定和程序更具透明度，除非有足夠理由支持對某些條款保密，否則牌照的所有條款均應公開。

- 制訂適當措施，以防擁有多媒體的公司市場力量過度集中：
  - 政府正考慮把跨媒體經營的限制包括報章在內，本會認同這原則，有待政府公佈細則。
- 放寬非本地人士入股本港的廣播公司的規限，以鼓勵投資：
  - 刪除對外籍人士或公司入股衛星電視的管制，事實上，政府亦難以控制衛星電視的播送涵蓋面，撤銷這規定是基於實際需要；
  - 修改外籍人士或公司擁有本港廣播持牌人股份的申報要求。目前一間外國公司持有投票權的股份 10%或以上即需向行政局申請批准，本會建議放寬。但外籍人士或公司持有投票權股份的總額，仍維持在原定的 49%。
- 順應技術融合的世界趨勢，同時為消費者提供更多的選擇；政府宜刪除現行對市場佔有率大的電訊服務經營者從事廣播業的法律限制。
  - 這即是說，香港電訊公司除根據電訊條例，可以從事影像自選服務外(但須開放網絡讓其他節目或服務提供者使用)，並可申請收費電視牌照。至於香港電訊公司能否獲取廣播牌照，端視乎政府當局在審理發牌申請時，就市場因素，特別是市場會否因而過度集中的情況，來作出最終決定。
- 政府應讓持牌人清楚知道政府如何考慮續牌或開放市場的決定：
  - 政府宜儘快完成廣播業的市場研究，考慮市場的競爭情況和其他因素，決定是否開放收費電視市場，接受新的牌照申請。
- 把在牌照內的「保障競爭」條款納入草擬中的「廣播法例」，並加強條款的法律地位；
  - 改善條款，減少不必要的豁免項目，以達到保障競爭的目的；及確保規定具足夠的阻嚇作用；
- 公開專利稅和牌照費徵收的準則。

### 行政體制配合廣播業的發展

面對當前的挑戰，政府的行政架構必須權責清晰，有健全體制以發揮專業領導，推動所需的監察體制和法律改革。

本會建議：

- 政府委任一位新司級官員，統籌廣播、電訊和資訊科技的政策發展。

- 擴大廣播事務管理局的成員數目，以吸納廣大社會人士的意見。
- 聘任廣播專業人才，協助廣管局和新的廣播、電訊及資訊科技司的工作。

### 確保消費者節目選擇

面對更多競爭，商營電視台的收視壓力相應增加，節目的取向將需迎合大眾的口味。本會希望廣播節目能照顧各方需要，讓消費者有充份的選擇，本會建議：

- 香港電台的節目在有線電視播放，香港電台在無線電視及亞視播放節目的安排和現有的電台服務，維持不變。
- 發展社區廣播節目，由認可的公營及社會服務機構製作節目，如廉政公署、公民教育委員會、環保教育宣傳委員會、專上學院的校外課程等。

### 本會又建議

- 把香港電台和廣管局的協議，納入草擬的廣播法例內，使港台的節目和其他電視台的節目一樣，受廣管局監察。

### 總結

廣播及電訊科技日漸融合，日新月異，監察體制未必容易及時配合。同時地區性的廣播市場迅速發展，使廣播業所面對的挑戰和發展的機會，史無前例。若安排得當，對消費者和本港的商業均大有裨益。為取得更美滿的成果，需致力消除市場內潛在的障礙，使市場從科技發展中得益，市場更日漸擴大。

一九九六年一月二十日