



廣播事務管理局
Broadcasting Authority

By Fax & By Post

Our Reference 發文編號 : TELA/CR 225/5 Pt. 3
Your Reference 收文編號 :
Telephone 電話 : 2594 5881
Fax 傳真 : 2598 5509

30 May 2006

Mr Eddie Cheung
Principal Assistant Secretary for Commerce, Industry and Technology
Commerce, Industry and Technology Bureau
(Communications and Technology)
2/F., Murray Building,
Garden Road,
Central, Hong Kong

Dear Mr Cheung,

**Summary on the views of the Broadcasting Authority Members on
the Proposed Establishment of the Communications Authority**

At the special meeting of the Broadcasting Authority (BA) on 20 May 2006, Members considered the consultation paper on the establishment of the Communications Authority and the BA Paper No. 38/2006 – “Discussion Framework for the Broadcasting Authority on Proposed Establishment of the Communications Authority (CA) – second submission”. Their views are summarized as follows:

(1) The Need for a Unified Regulator

- Members generally agreed that the need of a unified regulator was well justified given the international trend of convergence of telecommunications and broadcasting.

(2) The Public Mission

- Some Members considered that the public mission set out in paragraph 37 of the consultation paper did not accord sufficient importance to public interest and gave the impression that the establishment of the CA was an administrative expediency. It was too narrow, too commercially oriented and failed to explicitly highlight the safeguard of public interest as it did not seem to cover content regulation. A Member, however, considered that although content regulation was not specifically addressed in the consultation paper, paragraph 37 of the paper stated that one of the duties of the CA was to promote consumers' interest, which in a way was a recognition of the need to safeguard public interest. A Member suggested that the public mission of the new regulator should highlight the furthering of the interest of the citizens and consumers.
- A Member noted the reference to "freedom of speech" in paragraph 38 of the consultation paper. He was of the view that public interest did not mean freedom of speech without any qualification but should rather be a balance between free speech on the one hand and social values and social norms on the other.

(3) Regulatory Approach

- A Member was of the view that the regulatory approach as stated in paragraphs 41 and 42 of the consultation paper focused on the relationship between competing suppliers and competing technologies in the communications sector but failed to give emphasis to the relationship between suppliers on the one hand and individual consumer as well as the general public on the other.

(4) The Functions of the CA

- Members generally agreed that the CA should focus on market, economic and technological issues and allowed its sub-committees to carry out some of its duties. Members supported moving towards co-regulation to relieve the burden of the CA on content regulation as many complaints were trivial and frivolous.

- Members generally did not consider that the CA should have an educational role, although a Member considered that the CA should educate the public on the trend of communications.

(5) Structure of the CA

- A Member raised concern about the small size of the CA in light of the heavy workload. However, Members generally supported a lean structure of seven members for the CA as it would ensure efficiency in decision-making and approval process.

(6) Implementation - A Staged Approach

- Members generally supported the staged approach to set up the CA first and as a comprehensive approach involved a complex and protracted legislative process.
- A Member was of the view that by stating simply that the Broadcasting Ordinance (BO) and Telecommunications Ordinance (TO) would be reviewed in the second stage, the consultation paper seemed to suggest that the two ordinances would merely be combined. He was of the view that the Government should make clear its intention that a new unified communications ordinance would be introduced, just like the enactment of the Communications Act in the UK.
- A Member considered that the consultation paper failed to identify other anomalies in the existing regulatory regime that needed to be resolved such as Internet broadcasting. He considered that the failure to address such regulatory lacuna might attract criticism.
- Two Members suggested that a “Regulators Steering Group” comprising representatives from the BA, TA and CITB should be set up as a precursor of the CA to examine issues related to the merging of the BA and the TA in light of the feedback on the consultation paper and to expedite the establishment of the CA. A Member suggested that some of the review work scheduled for the second stage could be carried out by the steering group before the establishment of the CA.

- A Member was however concerned that if the CA was asked to provide input in the review of the provisions of the BO and the TO, the CA might be perceived as an interested party and hence undermined the impartiality of the review process.

(7) Office of the Communications Authority

- A Member was of the view that the Office of the Communications Authority should be a non-civil service organization to ensure that the new organization would have a new vision and could start out with a clean slate.
- Another Member considered that it would be too risky to go for a non-civil service organization. One Member considered it appropriate for the CA to be supported by a government department as that structure has worked well for both the BA and OFTA.
- The majority of Members considered the matter should be left for the Government to decide.

(8) Competition Provisions

- A Member suggested that the consultation paper should elaborate more on the statement that the competition effect tests should be standardized by explaining the different approaches to competition regulation in the broadcasting and telecommunications regime.

Draft minutes of the special meeting of the Broadcasting Authority on 20 May 2006 is attached at **Annex** for your reference.

Yours sincerely,



(P. L. Po)

Secretary

Broadcasting Authority