

## **Consumer Council Submission on Establishment of a Communications Authority**

1. The Consumer Council (CC) welcomes the Government's proactive stance in proposing the establishment of a unified regulator, the Communications Authority (CA), for the entire electronic communications sector by merging the Broadcasting Authority (BA) and the Telecommunications Authority (TA).
2. In this submission CC is making a number of suggestions in response to the comments sought by the Government in the following matters:
  - (a) the Government's proposed staged approach of setting up the CA in the first place without making changes to the licensing and regulatory frameworks for the telecommunications and broadcasting sectors;
  - (b) priority items for review in the next stage; and
  - (c) the public mission, core value, regulatory approach and composition of the CA.

### **The Proposed Staged Approach**

3. CC believes that competition works within economic markets. Markets are constantly evolving and require a flexible regulatory framework that is able to accommodate the changes in the market.
4. CC is pleased the Government is now taking the initiative to establish a unified regulator who has jurisdiction and powers over different business operations integrating telecommunications services and broadcasting services, but considers that attention should be devoted to the process of establishing the CA without amending the current regulatory frameworks for broadcasting and telecommunications remain unchanged.
5. Consumers and/or licensees will have difficulties distinguishing between different regulatory rules administered by the same regulator and may be confused to find that certain measures, for example, those against misleading sales tactics, only apply to some but not all the licensees providing comparable services regulated by the CA before any unified electronic communications service provisions are enacted.
6. For that reason, CC considers that the Government should provide the public with a road map on the transitional arrangements after the establishment of the CA, and make clarifications of such matters as how discrepancy between the Broadcasting Ordinance (BO) and Telecommunications Ordinance (TO) will be handled, which ordinance will be overriding, and what the ground rules are, etc. The transition period should be as short as possible to minimize possible market distortions due to different treatment of different licensees within the same market.

### **Priority Items for Review in the Next Stage**

7. CC welcomes the Government proposal to enact a comprehensive Communications Bill that encompasses all necessary provisions for effective regulation of the evolving communications sector. CC expects the new legislation to rationalize the existing provisions of the BO and TO and help expand consumer choices, ensure competitive environment, protect consumer privacy and safeguard against misleading and deceptive conducts in the communications market.

#### *Misleading and Deceptive Conduct*

8. There are currently safeguards administered by the Television and Entertainment Licensing Authority (TELA) against the dissemination of misleading advertising in the electronic media. However, as distinct from this form of advertising, there is nothing to address possible misleading and deceptive sales tactics by employees and agents of broadcasting service providers in the same way as the provisions of section 7M of the TO.
9. Whilst general prohibitions against misleading advertising exist under the Trade Descriptions Ordinance, they apply only to goods but not services. Accordingly, any misrepresentations by sales agents in marketing the services of licensees, except those under the Telecommunications Ordinance, which are not made through the electronic media but are made in pamphlets, or verbally by the sales agents, are outside the bounds of any current regime.
10. CC previously suggested that in the interests of providing safeguards for consumers, and to protect the interests of responsible broadcasting service providers whose competitive position may be detrimentally affected by unfair sales tactics of competitors, certain prohibitions against misleading and deceptive conduct should be introduced in the broadcasting services market.
11. Upon liberalization of the paid television services market, CC has received record high complaints against paid TV services and bundled sales of paid TV services with Internet broadband services in 2005 concerning misleading sales tactics of sale agents of service providers. CC encountered difficulties in seeking redress for consumers in the absence of the legal backing similar to section 7M in the TO. CC would like the Government to consider the inclusion of consumer safeguards as in section 7M in provisions under the new Ordinance to cover all communications services providers including broadcasting & telecommunications licensees in the new provisions.

#### *Consolidation of Competition Provisions*

12. CC agrees that there is a need to rationalize the two existing competition regimes in BO and TO to avoid creating confusion to and unfairness amongst service providers. CC is of the view that expansion of the Telecommunications (Competition Provisions) Appeal Broad as well as extension of merger and acquisitions control provisions to cover the entire electronic communications sector should be considered as soon as possible.

#### *Regulations on Privacy*

13. In the U.K., the duties of the Office of Communications which regulates the U.K. communications industries include providing adequate protection for audiences against unfairness or the infringement of privacy. CC invites the Government to consider giving the CA similar duty and power of enforcement to protect the privacy of communications services users. It will be more expedient to provide for a direct enforcement power but this should be complementary to the duties of the Privacy Commissioner.

#### *Office of the Communications Authority*

14. It is understood that the executive arm of the CA will be a new government department formed from merging the Office of the Telecommunications Authority and the Broadcasting Division of the TELA. CC agrees that this will facilitate smooth operations of the CA at the time of establishment. However, CC invites the Government to review the situation once the CA is on track to determine whether it will be more beneficial to make it a statutory body as in some other jurisdictions.

**Public Mission, Core value, Regulatory Approach and Composition of the CA**

15. From a consumer perspective, CC welcomes the CA to adopt overseas practices, like the one in the United Kingdom, to have a statutory role that emphasizes promoting the interests of consumers in communications matters and ensuring fair competition in the market place.
16. CC fully supports the new regulator to be open and transparent, fair and consistent, and engaging and supportive in discharging its duties. CC also considers the proposed regulatory approach of the CA appropriate, namely, to operate with a bias against intervention as long as public interest is safeguarded, but with a willingness to intervene firmly, promptly and effectively where required. The latter part is especially important.

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