

**Submission by Hong Kong Cable Television Limited  
on the Establishment of the Communications Authority**

1. Hong Kong Cable Television Limited (HKCTV) welcomes the opportunity to comment on the proposed establishment of the Communications Authority (CA), as detailed in the Government's consultation paper issued in March 2006.
2. While we largely agree with the broad direction of the proposals in the consultation paper, we are of the view that the following issues call for attention:-
  - Reduction of licence fees
  - Size and composition of the new regulator
  - Deregulation

*Reduction of Licence Fees*

3. Operating pressure of the broadcasting and telecommunications service licensees has been heightened in recent years by skyrocketing costs and investments (network upgrades, programming and talent costs in particular) brought about by intense competition after opening up of relevant operating markets. We anticipate that in the convergent era, this operating pressure will continue to escalate as the television licensees will compete with not only one another but also the rest of the electronic communications sector. Funds which could have been reinvested by operators to enhance services to meet challenges brought by convergence were either left idle in a trading fund which has been reporting surplus year after year or used by another regulator staffed by civil servants where there is little accountability.
4. Now that both the telecommunications and broadcasting markets are fully opened, we would expect the involvement of the regulators to diminish over time. One of the primary purposes of the regulatory bodies is initially to manage the telecommunications and broadcasting sectors because, for various reasons, it is not possible to have full and open competition within those sectors. However, within recent years there have been huge strides made to open-up the sectors to greater competition and as a result there should be less need for regulatory involvement. (Indeed the objective of any regulatory body should ideally be to do themselves out of a job.) In paragraph 41 of the Consultation Paper, CITB touched on the general paradigm shift from active regulation based on detailed rules to a more relaxed approach with emphasis on fair competition. The light-handed approach should undoubtedly bring a drop in administrative costs and expenses. Ofcom in the UK, for example, is planning a 5% per annum reduction in expenditure.



5. Furthermore, the significant rise in the number of licensees and subscribers of various broadcasting and telecommunications services have boosted the revenue of the regulators and more than absorbed their costs in administering these licensees, as evident in the healthy financial state of the TA's Trading Fund.
6. We are of the view that instead of deferring a review of various licence fees until 3 years after the commencement of operation of the CA, as proposed in paragraph 59 of the Consultation Paper, we would ask for an immediate review of licence fee levels. In our view, substantial fee cut could be achieved via organizational reform and deregulation as stated below.

*Size and Composition of the new regulator*

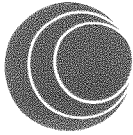
7. The rapidly changing technical and industrial landscapes and market dynamics will give the new regulator many challenges that it needs to swiftly respond to. In our view, a modest regulator with a simple operation system would respond to such challenges more efficiently than a large regulator with red tape.
8. Currently television licensees are often required to deal with different personnel of TELA and OFTA respectively in relation to the same matter (e.g. filing of routine business or operation information of the licensees). Such duplication of work and manpower needs to be taken down as soon as OFTA and the Broadcasting Division of TELA are amalgamated. The amalgamated entity should adopt an organization structure and operation system that is simple and effective, thus doing away the current overlapping and cumbersome structure which places unnecessary burden on licensees.
9. With regard to the composition of the CA, we believe its board of directors should comprise only persons who are experts in the Hong Kong electronic communications market or otherwise familiar with the operations and peculiarities of this market. This will ensure the appropriateness and accuracy of the decisions made by the CA, which in turn will reduce the chance of and expenditure on appeal or judicial review of such decisions.
10. While we support the staged approach to achieve a unified regulator, we do not subscribe to the notion as mentioned in paragraph 53 of the paper that "to go for the establishment of unified regulator and creation of non civil service executive support at the same time will be too unwieldy and this would likely distract the new unified regulator from its focus on the main policy, strategic and regulatory challenges." CITB has proposed that we should leave this matter for the new CA to consider having regard to its own operating experience. We are of the view that this is a classic case of putting the cart before the horse. If we were determined to overhaul the regulatory regime, we need to do it right from the outset. New approach needs new ideas and fresh inputs from outside the Establishment, not



deeply entrenched notions and dogmas. The task could not be achieved simply by establishing the new OFCA through the amalgamation, redeployment and streamlining of the existing resources of OFTA and the Broadcasting Division of TELA. We support a non civil service organization to provide executive support to the CA. If this could not be achieved from outset, the Government should make it clear that it is the ultimate objective with a clear timetable, rather than leaving it to the new CA.

### Deregulation

11. Unlike licensed television services, the emerging electronic media (for instance IPTV, hand-held devices or indoor and outdoor video-walls) are not required to comply with the detailed (to the extent of, for example, controlling where and for how long a programme classification symbol should be displayed) and expensively monitored codes of practice on contents.
12. Take, for example, Hong Kong Broadband's IPTV service. Though it provides television programmes (a number of which are identical to those provided by licensed television service providers) for viewing on television sets, it is "exempted" from observing these codes of practice. The viewing public seems to have no strong objection to this. There is also no indication that the regulators intend to place such service under the same stringent game rule as that of broadcasting licensees.
13. This begs the question: whether it is still necessary and fair to subject the conventional television licensees to the burdensome and stringent codes of practice especially when the following factors are taken into account:-
  - (a) Hong Kong has a set of sophisticated statutes against showing or transmitting objectionable materials to the public. Like other media, television licensees are bound by these statutes and their viewers are therefore protected.
  - (b) Many complaints to the BA against the television licensees are frivolous, vexatious or otherwise unsubstantiated. Despite this, under the existing regulatory regime, both the regulator and the licensees are required to deal with such complaints. Valuable resources, which could have been spent for a more meaningful purpose, have therefore been wasted.
14. We are of the view that in the convergent era, the regulator should rely on the industry's self-regulation on the content side, and concentrate its resources on economic regulation.
15. In this connection, we agree that the Government needs to review the



competition regimes in the Telecommunication and Broadcasting Ordinance with a view to:-

- (a) extending their application to the entire electronic communications sector;
- (b) harmonizing the law so that all members of the electronic communications sector are regulated by the same approach and standards;
- (c) plugging the glaring loophole that competition restrictions do not apply to the television market at the upstream level; and
- (d) ensuring that the implementation of the competition law in the electronic communications sector is overseen by a dedicated body with relevant expertise and competence.

The review should be carried out immediately to avoid disputes on cross-sector regulatory dichotomies when the amalgamation takes place.

Hong Kong Cable Television Limited  
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