

**Submissions on the  
Consultation Paper on the establishment of the Communications  
Authority  
("the Consultation Paper")**

**TVB PAY VISION LIMITED**

**14<sup>th</sup> June, 2006**

TVB PAY VISION welcomes the opportunity to provide comments on the Consultation Paper regarding the merger of the Broadcasting Authority and Telecommunications Authority and, in particular, to the institutional arrangements that might underpin the proposed new regulatory body.

In principle, TVB PAY VISION is not opposed to the merger if it (a) can bring sustainable benefits to the industry operators and the community at large at reasonable costs; and (b) the model fits in well with Hong Kong situation.

Nonetheless, as more particularly detailed below (in particular paragraph 4), the Consultation Paper does not provide us with reasonably necessary information for making an informed judgment on this matter.

***1. Comments on the proposed staged approach of setting up the CA in the first place, without making changes to the existing licensing and regulatory frameworks for telecommunications and broadcasting, and on the proposed priority items for review in the next stage***

1.1 Subject to our comments provided in the immediately preceding paragraph and if we are to proceed with creating the unified regulator, our view is that the phased approach as suggested is not an appropriate approach.

1.2 To meet the immediate objective of meeting the challenges of an increasingly converging environment, we consider that the need of amending the current laws is more imminent than creating a unified regulator. To us, the problem lies more in the current legislations than in the implementing regulators. Presuming that the current laws will remain as they are for the coming few years (until there is a comprehensive review and subsequent amendments of the current sets of laws which may take few years to accomplish), we do not consider it is advisable to let the newly unified regulator to manage two separate pieces of pre-existing sector-specific legislation. The point is that the deficiencies in the current laws will just be haunting the unified regulator in the coming years and it is unlikely that the unified regulator can do anything during this interim period but to continue to implement them.

- 1.3 Based on the above, our view is that the first priority shall be to identify the current lacunae or insufficiencies in the current laws in addressing the industry issues. We agree that competition provisions and the relevant appeal mechanism should be high on the priority list. As regards the former one, the government shall take heed of the fact that other committee has been studying the feasibility of implementing a general competition law in Hong Kong. As early as June 1, 2005, the government announced the appointment of a Competition Policy Review Committee (the committee) by the Competition Policy Advisory Group (COMPAG) to review the existing competition policy and the composition, terms of reference and operations of COMPAG. According to that press release, the committee has convened its first meeting in June last year, and was expected to complete its review in 12 months' time.
- 1.4 In this regard, the government shall take heed of the co-ordination between the competition provisions review exercise pertaining to the Broadcasting Ordinance and the Telecommunications Ordinance and the general competition laws when undergoing the review exercise.
- 1.5 As regards the co-ordination issue between the two regulators, our view is that the current arrangements shall be maintained and encouraged until the setting up of the unified entity. As pointed out in paragraph 12 of the Consultation Paper, OFTA has been providing the BA and the Broadcasting Division of TELA with support and advice in relation to engineering and technical issues in broadcasting matters as well as economic regulation matters. To enhance efficiency, written guidelines shall be prepared so as to formalize the current arrangements and coordination between OFTA/TA and TELA/BA before the setting up of the unified entity.

## ***2. Comments on the public mission, core values and regulatory approach of the CA***

- 2.1 On the whole, we share the same view with the government on the public mission, core values and regulatory approach as detailed in paragraphs 37 to 43 of the Consultation Paper.

**3. *Comments on the proposed structure that the CA should be a committee supported by a government department***

3.1 The board of the merged entity shall be comprised of full time and dedicated people who have a practical and commercial understanding of the industries that are the subject to regulation, with equal numbers of board members with broadcasting industry experience and with telecommunications industry experience.

**4. *Other comments***

4.1 While agreeing that merger is the international trend, we have yet to see any quantitative evidence from the government supporting their claims that this will provide the intended benefits to the Hong Kong community at large, i.e. “efficient, effective and coordinated regulation” (1<sup>st</sup> para. of the foreword of the Consultation Paper).

4.2 Paragraph 24 of the Consultation Paper only lists out some very abstract benefits such as “one-stop-shop for resolving regulatory issues in a converging environment”, “better assurance of consistency in regulatory approach and practice in a converged environment”, “reduce administrative work and enhance working efficiency”, “pool different kinds of expertise together to tackle a communications issues”. As a member of the industry, we support and cherish these admirable goals. However, at what costs are we going to achieve such goals and it appears to us that the Consultation Paper is silent on this. As opposed to the merger of KCRC and MTRC (which may not a good and fair parallel to draw for the present purposes) in which the public has been given an idea of the concrete benefits (e.g. reduced fares) all along. For the current exercise, what concrete benefits (quantitatively, for instance, in terms of savings) can be achieved?

4.3 The above concerns are warranted for the following reasons:

4.3.1 shortly after the announcement of the proposed merger, the government has repeatedly announced on a number of occasions that there will be no layoff of staffs in both of the

offices of TELA and OFTA as a result of the intended merger;

4.3.2 paragraph 59 of the Consultation Paper envisages that there will be an increase in the operating expenses of the new unified regulator at least for the first few years since its inception;

4.3.3 while the Consultation Paper cites other overseas experience as examples, it cannot be overemphasized that adoption of changes based on overseas model must be seen in the context of our own communications history.

4.4 This is particularly the case in view of the government's preference to keep the current workforce. From our perspective, the key principle of the whole exercise shall be reducing costs imposed on industry and the broader community. Otherwise, the merger proposal may be seen as economically inefficient and unsustainable, since increased industry costs must ultimately be recovered from customers and the broader community.

4.5 In this respect, the government is asked to conduct a comprehensive cost-benefit analysis to justify the intended merger exercise before embarking on the same. In particular, we would like to see a clearer picture of the savings/cost-effectiveness that can be achieved under such proposed merger.

4.6 Neither have we been offered with other alternatives to the regulatory approach which operators in other jurisdictions have been given the opportunity to consider. For instance, a discussion paper entitled "Options for Structural Reform in Spectrum Management" released in August, 2002 by the Department of Communications, Information Technology and the Arts of Australian government canvassed industry and public views on 3 institutional reform options: (a) creation of a single agency with responsibility for broadcasting, telecommunications, radiocommunications and online regulation; (b) transfer of the Australian Broadcasting Authority's spectrum planning, licence allocation and enforcement functions to the Australian Communications Authority; and (c) transfer of ABA's broadcasting spectrum planning functions to the ACA.

- 4.7 In the UK, the management consultancy firm McKinsey, in a study in May 2002 entitled "Comparative Review of Content Regulation - A McKinsey Report for the Independent Television Commission, identified four alternative approaches to regulatory structure. These are: creation of an integrated communications, some functions remain outside the merged regulator, some consolidation by function, but no stated intentions for further consolidation and highly fragmented, but moving towards consolidation. A succinct summary of McKinsey's report (quoted from the Australian Film Commission in its submissions on the review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority at ([http://www.dcita.gov.au/\\_data/assets/file/11525/Australian\\_Film\\_Commission\\_-\\_response\\_to\\_review\\_of\\_the\\_ABA\\_and\\_the\\_ACA.rtf](http://www.dcita.gov.au/_data/assets/file/11525/Australian_Film_Commission_-_response_to_review_of_the_ABA_and_the_ACA.rtf)) detailing the different approaches adopted by various countries as in 2002 is reproduced hereto as Appendix A.
- 4.8 In the light of the above, we propose that a consultancy firm shall be commissioned to study the alternative approaches to regulatory structures that best fit Hong Kong situation.
- 4.9 As rightly pointed out by the Australian Film Commission in its submissions on the review of the roles of the Australian Broadcasting Authority and the Australian Communications Authority, "*the reality is that the situation in those countries is more complex both in terms of the structure of regulatory agencies and the style of rulemaking in which they engage.... Many countries are grappling with the issues of convergence and their implications for the regulatory future. The responses of countries to these issues have as much to do with their economic and social circumstances, the historical approach to regulation, and the nature of the telecommunications and broadcasting systems they have constructed, as they do with any common response to these issues. As a consequence there is no international template for regulatory reform. While undoubtedly there are lessons to be learned from approaches to regulatory change in other nations, these must be seen in the context of Australia's own regulatory and communications history.*" ([http://www.dcita.gov.au/\\_data/assets/file/11525/Australian\\_Film](http://www.dcita.gov.au/_data/assets/file/11525/Australian_Film)

### **Conclusions**

1. The phased approach as suggested is not an appropriate approach.
2. The need of amending the current laws is more imminent than creating a unified regulator.
3. The first priority shall be to identify the current lacunae or insufficiencies in the current laws in addressing the industry issues.
4. As regards the co-ordination issue between the two regulators, our view is that the current arrangements shall be maintained and encouraged until the setting up of the unified entity.
5. The board of the merged entity shall be comprised of full time and dedicated people who have a practical and commercial understanding of the industries.
6. The government is asked to conduct a comprehensive cost-benefit analysis to justify the intended merger exercise before embarking on the same.
7. A consultancy firm shall be commissioned to study the alternative approaches to regulatory structures that best fit Hong Kong situation.

## Appendix A

### **3.1. Regulatory structures**

The management consultancy firm McKinsey, in a study commissioned by the UK's Independent Television Commission (ITC), identified four alternative approaches to regulatory structure. These are:

1. Creation of an integrated communications regulator;  
The US and Japan being examples of this approach, as is the proposed establishment of the Office of Communications in the UK.
2. Some functions remain outside the merged regulator;  
Canada, Italy and Finland are cited as examples of this approach. In Canada there is industry self-regulation that is not supervised by the Canadian Radio and Telecommunications Commission (CRTC). Also, despite strong regulation of Canadian content by the CRTC, the Canadian Audiovisual Certification Office plays a significant role in determining what is Canadian content.
3. Some consolidation by function, but no stated intentions for further consolidation;  
Australia falls into this category in that during the nineties it merged all broadcasting regulatory functions in the ABA and spectrum management and telecommunications functions in the ACA. New Zealand, France and Sweden are also countries where regulation of broadcasting and telecommunications remain in separate bodies.
4. Highly fragmented, but moving towards consolidation;  
The UK currently has a highly fragmented regulatory structure with three broadcast regulators, a non-broadcast spectrum regulator and a telecommunications regulator. The BBC is only partially subject to external regulation and is predominantly regulated by its board of governors. Germany also has a highly fragmented regulatory structure, a function of its federal constitution, which means that regulation is conducted at the level of the constituent states of the federal republic.



Like Australia, many countries have a general competition regulator that stands beside the communications regulator and has some responsibilities for regulating the competition aspects of communications. Canada, Japan and the US are examples of this. In determining the role of a new regulator in Australia, we urge that consideration be given to the media related operations of the Australian Consumer and Competition Commission (ACCC).

While the McKinsey report cites the US as a model for an integrated communications regulator, this does not present the full picture of regulation in the US. The FCC is the sole regulator of communications at the federal level, but the state and municipal governments also have responsibility for the regulation of telecommunications and broadcasting. This means that while the *Communications Act 1934 (US)* provides an overarching regulatory framework, there is a fragmentary approach between the three levels of government.

An example of how this works in practice is the US cable industry. The providers of cable television services, the system operators, are licensed not by the FCC, but by the municipal government in the city in which they build the cable system. The rationale being that in order to build a cable system, permission is needed from the owner of the public land on which it is built. The *Communications Act 1934 (US)* sets the general terms of licences, which are for 15 years, but the municipal government is responsible for licensing, renewal and some other aspects of regulation, for which it receives licence fees from the operators.

Similar arrangements apply to telecommunications so that, for example, the New York State Public Service Commission amongst its other functions is a telecommunications regulator.

The point being that the regulatory structure in the US is more complex than at first sight and this reflects the unique nature of its telecommunications and broadcasting systems and the history of regulation in that country.