

Press Release

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LCQ19: Cross-media ownership restrictions

Following is a question by the Hon Emily Lau and a written reply by the Secretary for Economic, Development and Labour, Mr Stephen Ip, (in the absence of Secretary for Commerce, Industry and Technology) in the Legislative Council today (December 20):

Question:

Under Parts 1 and 2 of Schedule 1 of the Broadcasting Ordinance (Cap. 562), "a disqualified person" includes the proprietor of a local newspaper, a person who exercises control over the proprietor, or an associate of the proprietor or the person. Unless the Chief Executive in Council is satisfied that the public interest so requires and approves otherwise, a disqualified person shall not become the holder of a domestic pay television programme service licence, and he shall not exercise control of a licensee ("cross-media ownership restrictions"). In this connection, will the Executive Authorities inform this Council:

(a) given that the Chairman of PCCW Limited ("PCCW") acquired 50% interest in the Hong Kong Economic Journal through an off-shore company owned by an off-shore discretionary trust in August this year, and that a subsidiary of PCCW is holding the licence mentioned above, whether the relevant authorities have assessed if the Chairman of PCCW has breached the cross-media ownership restrictions;

(b) if the assessment result in item (a) is in the affirmative, whether the relevant authorities have so far received an application from the Chairman of PCCW for exemption from the cross-media ownership restrictions; if so, of the criteria the Chief Executive in Council will adopt for determining whether it "is satisfied that the public interest so requires" when it processes the application; and

(c) if the assessment result in item (a) is in the negative, whether the relevant authorities have reviewed if there are loopholes in the relevant provisions which allow the person concerned to bypass the cross-media ownership restrictions by means of a trust; if the review outcome is in the affirmative, whether the authorities plan to amend the relevant provisions; if the review outcome is in the negative, of the justifications for that?

Reply:

Madam President,

Cross-media ownership restrictions are stipulated in Part 2 of Schedule 1 to the Broadcasting Ordinance (Cap. 562) (hereinafter referred to as "the Ordinance"). Domestic free or domestic pay television programme service licensees are subject to the regulation of the provisions relating to "disqualified persons" (hereinafter referred to as "DPs") under Part 2 of Schedule 1 to the Ordinance. The purpose of these provisions is to avoid conflict of interest, media concentration and

editorial uniformity in the broadcasting industry and other relevant sectors.

According to these provisions, a DP shall not become the holder of a domestic free or domestic pay television programme service licence, or exercise control of such licensees. The following persons (including individuals and companies), their controllers and associates are DPs -

- (i) another television programme service licensee (except that a non-domestic television programme service licensee is not a DP in relation to a domestic pay television programme service licence);
- (ii) a sound broadcasting licensee;
- (iii) an advertising agency; or
- (iv) the proprietor of a newspaper printed or produced in Hong Kong.

The Ordinance provides for the legal definition of whether or not a person is "exercising control" of a company. Under the Ordinance, a person exercises control of a company if -

- (i) he is a director or principal officer of the company;
- (ii) he is the beneficial owner of more than 15% of the voting shares in the company;
- (iii) he is a voting controller of more than 15% of the voting shares in the company; or
- (iv) he otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that company or any other company, to ensure that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person.

"Voting control" means, inter alia, the ability to control, directly or indirectly, the exercise of the right to vote through a nominee or a trust etc.

The Chief Executive-in-Council may approve a DP to exercise control of a domestic free or domestic pay television programme service licensee in the public interest. Under section 3(3) of Schedule 1 to the Ordinance, the Chief Executive-in-Council shall take account of, but not limited to, the following matters when public interest is to be considered -

- (i) the effect on competition in the relevant service market;
- (ii) the extent to which viewers will be offered more diversified television programme choices;
- (iii) the impact on the development of the broadcasting industry; and
- (iv) the overall benefits to the economy.

Regarding parts (a), (b) and (c) of the question, my reply is as follows:

(a) According to our understanding, a new company acquired the publishing rights of the Hong Kong Economic Journal in August this year. It is a joint venture formed by a company owned by an off-shore discretionary trust and the original proprietor of the Hong Kong Economic Journal, each holding 50% interest. The Chairman of PCCW Limited is the settlor of the off-shore discretionary trust concerned. The Broadcasting Authority, an independent regulator of the broadcasting industry, is now examining whether or not this gives rise to the question of


cross-media ownership in accordance with the Ordinance. As Broadcasting Authority's study is still underway, it is inappropriate for the Administration to comment on the case at this stage.

(b) When considering any application for exemption of cross-media ownership restrictions, the Chief Executive-in-Council shall take account of the criteria set out under section 3(3) of Schedule 1 to the Ordinance as above to decide if he is satisfied that the public interest requires for approving the application.

(c) The Broadcasting Authority's study on the case concerned is still underway. It is inappropriate for the Administration to comment or consider whether or not there is a need to review the Ordinance at this stage.

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