

立法會
Legislative Council

LC Paper No. CB(4)36/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Friday, 25 January 2013, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon WONG Yuk-man (Chairman)
Dr Hon Elizabeth QUAT, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Claudia MO
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon SIN Chung-kai, SBS, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members attending** : Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai

Members absent : Hon James TO Kun-sun
Hon Mrs Regina IP LAU Suk-yea, GBS, JP

Public officers attending : Agenda item I

Mr Gregory SO, GBS, JP
Secretary for Commerce and Economic
Development

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Attendance by invitation : Agenda Item I

Hong Kong Television Entertainment Company
Limited

Mr Stuart CHIRON
Head of Group Regulatory Affairs

Ms Janice LEE
Managing Director
TV & New Media

Hong Kong Television Network Limited

Mr Ricky WONG
Chairman

Mr Simon LEUNG
Head of Legal

Fantastic Television Limited

Mr S Y WAI
Project Manager

Mr Christopher LUK
Corporate Lawyer

Television Broadcasts Limited

Mr Mark LEE
Executive Director & Group General Manager

Mr Desmond CHAN
Assistant General Manager

Mr K K YUEN
Director
A-World Consulting

Asia Television Limited

Mr KWONG Hoi-ying
Senior Vice President
Corporate Development & External Affairs

Ms Rossana CHU
Partner
Baker & McKenzie

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Joey LO
Senior Council Secretary (4)3

Miss Iris CHEUNG
Legislative Assistant (4)2

I. Issues relating to the applications for domestic free television programme service licences

(LC Paper No. CB(4)343/12-13(01) -- Administration's paper on applications for domestic free television programme service licences

LC Paper No. CB(4)343/12-13(02) -- Letter from the Administration dated 17 January 2013

LC Paper No. CB(4)343/12-13(03) -- Letter from the Communications Authority dated 17 January 2013
(*English version only*)

LC Paper No. CB(4)343/12-13(04) -- Paper on the applications for domestic free television programme service licences prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(4)343/12-13(05) -- Relevant newspaper cuttings

LC Paper No. CB(4)212/12-13(01) -- Letter from Hon CHAN Chi-chuen dated 4 December 2012
(*Chinese version only*)

LC Paper No. CB(4)235/12-13(01) -- Letter from Hon SIN Chung-kai dated 10 December 2012
(*Chinese version only*)

Welcoming remarks by the Chairman

The Chairman welcomed representatives of the deputations to the meeting. He requested the deputations to provide a written submission if they had not already done so, and also to provide supplementary submissions, if any, to the Panel after the meeting. He reminded the deputations that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were not

covered by the said Ordinance.

Presentation by deputations

Hong Kong Television Entertainment Company Limited
[LC Paper No. CB(4)360/12-13(01)]

2. Ms Janice LEE of Hong Kong Television Entertainment Company Limited ("HKTE") expressed the views of HKTE as detailed in its submission. She said that it was in the interest of the public to issue domestic free television programme service licence ("free TV licence") to HKTE.

Hong Kong Television Network Limited

3. Mr Ricky WONG of Hong Kong Television Network Limited ("HKTV") urged the Administration to speed up the processing of the three applications for free TV licence and to issue the licences as early as possible in the best interests of the community and the TV industry. He said that more competition in the market would benefit the industry's development and the public. He then gave a video presentation of the views of HKTV in this respect.

Fantastic Television Limited

4. Mr S Y WAI of Fantastic Television Limited ("FTV") hoped that the Chief Executive ("CE") in Council would make a decision in principle on the free TV licence applications as soon as possible after the current judicial review ("JR") against the CE in Council's relevant decision. The Administration should make clear whether and how many new licences would be issued, and the licensing conditions. In the face of more legal challenges posed by stakeholders in the TV industry, it would be more practical for the Administration to expedite the processing of the applications instead of waiting until the completion of the judicial proceedings.

Television Broadcasts Limited
[LC Paper No. CB(4)360/12-13(02)]

5. Mr Mark LEE of Television Broadcasts Limited ("TVB") expressed the views of TVB as detailed in its submission. He said that TVB objected to the processing of the applications by the CE in Council as the recommendation of the former Broadcasting Authority ("BA") for granting more free TV licences had been misled by incorrect data provided by the consultant. As such, TVB had applied to the High Court for leave to seek

JR of decisions alleged to have been made by the Communications Authority ("CA") and the CE in Council in relation to the processing of the applications.

Asia Television Limited

6. Mr KWONG Hoi-ying of Asia Television Limited ("ATV") said that the Administration should guard against vicious competition as the volume of advertising revenue in the free TV industry had not increased in many years. He said that ATV opposed to the issuance of the free TV licences.

Presentation by the Administration

7. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") briefed members on the progress of processing the three free TV licence applications. Details of the briefing were set out in the Administration's papers (LC Paper No. CB(4)343/12-13(01) and (02)). He said that officials attending the meeting did not represent the former BA, the CA or the CE in Council. He would only explain to members the prevailing broadcasting policy and licensing regime, and the latest progress of the matter. As a party was applying for JR in respect of the free TV licence applications, the attending officials would refrain from commenting on any matter related to the details of the handling of the JR application so as not to prejudice the legal proceedings. The attending officials would not respond to any opinions or comments expressed by the relevant organizations or persons at the meeting that might relate to the JR application. The Administration reserved all rights to dispute such opinions or comments in any future legal proceedings. The Administration had been processing each free TV licence application expeditiously and prudently in accordance with established procedures and the requirements under the Broadcasting Ordinance ("BO") (Cap. 562). The processing of these applications involved complicated issues, including those relating to the statutory requirements and procedural fairness. The Administration would continue to process the free TV licence applications in compliance with the relevant procedures. The outcome would be announced as soon as possible after a decision was made by the CE in Council.

8. SCED added that the two existing free TV licencees, ATV and TVB, were consulted on the issuance of more free TV licences in the review of broadcasting policy in 1998. According to the Legislative Council Brief on the 1998 Review of Television Policy (T/C 126/98 in ITBB/B 203/2 (98) VII), there would not be any limit on the number of domestic free TV licences. Under the new regulatory regime, the free TV market, like the pay TV and other markets, would be opened up for competition. It was therefore

decided that the advertising and subscription royalties for all TV and sound broadcasting licensees should be abolished. During the public consultation, the two free TV stations did not raise any objection in their written submissions against the issuance of more free TV licences.

Discussion

Competitive environment of the free TV market

9. Ms Claudia MO and Ms Elizabeth QUAT queried why the existing domestic free TV programme licensees were adamantly opposed to the processing of new free TV licence applications, but raised no objection when the Administration announced in 1998 its decision to open up the television market after a comprehensive review of television policy involving consultation with the television industry and the public.

10. Mr KWONG Hoi-ying of ATV said that ATV did not object to the opening of the free TV market. However, advertising revenue in the free TV market had not grown much over the past two decades due to the challenges from new forms of media and advertising platforms. ATV was of the view that advertising revenue in the free TV market would not be able to accommodate new market entrants.

11. Mr Mark LEE of TVB said that the opening of the free TV market should not be without limits. Since 1998, the Administration failed to predict with much accuracy the development of the free TV market. Eventually, the market had not grown enough to sustain its development with the emergence of new licencees. According to the Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong ("Guidance Note"), in assessing the applications for domestic free TV licences, the CA should take into account a number of relevant factors, including the benefit to the local broadcasting industry and the economy as a whole. TVB was of the view that introducing competition to a saturated free TV market would not be in the interest of the industry and the economy.

12. Mr Ricky WONG of HKTV said that as Hong Kong was a free market economy, it should be left for the market to determine the optimal number of free TV licences through fair competition. Mr S Y WAI of FTV and Ms Janice LEE of HKTE echoed the view that the free TV market should be opened and all eligible applicants should be granted with licences.

13. With a view to allaying the public's concern about whether the recommendation made by the former BA to the CE in Council was based on correct data, Mr CHAN Chi-chuen and Mr SIN Chung-kai urged the Administration to make public the consultancy report on the local free TV industry commissioned by the former BA when making recommendation to the CE in Council.

14. SCED advised that as the applications for new domestic free television programme service licences were still being considered by the CE in Council, it would neither be appropriate for the Administration to comment on the alleged details of the applications, nor on any matter related to the details of the handling of the JR application so as not to prejudice the legal proceedings.

15. In response to Mr MA Fung-kwok's enquiry about the anticipated development of the TV advertising market, Mr S Y WAI of FTV and Ms Janice LEE of HKTE said that the market was anticipated to grow and support the sustainable development of the TV industry as a whole. Mr Mark LEE of TVB did not subscribe to the views of FTV and HKTE, and considered that advertisement was a demand-driven rather than supply-driven commodity. Demand for TV advertising would not grow with the emergence of new advertising channels.

16. Ms Emily LAU enquired about the potential benefits to be brought by the issuance of more free TV licences to practitioners of the TV industry in terms of pay and conditions of service.

17. Mr Ricky WONG of HKTV, Mr S Y WAI of FTV and Mr Stuart CHIRON of HKTE anticipated that the professionals' pay and conditions of service would improve with increased demand for TV industry professionals as a result of the entry of new market players.

Processing of the free TV licence applications

18. Ms Elizabeth QUAT, Mr Charles Peter MOK, Mr LEUNG Kwok-hung and Mr WU Chi-wai enquired whether the Administration would have to wait until all existing and potential legal challenges had been dealt with before making any decisions on the applications for free TV licences. In this regard, Mr Paul TSE enquired whether interim licences would be issued to the eligible applicants pending the conclusion of any existing legal challenges.

19. SCED reiterated the Administration's stance that it would not respond to any opinions or comments expressed by the relevant organizations or persons at the meeting that might relate to the JR application. The Administration would continue to process the free TV licence applications in compliance with the relevant procedures. He added that the existing legislation did not provide for the granting of interim licences.

20. Ms Cyd HO and Mr Albert CHAN considered the delay in processing the applications by the Administration unreasonable, both from the perspectives of the public and the commercial operators. They opined that the Administration had ignored the public's right to know and their interests by unreasonably delaying the issuance of such licences. In this regard, Mr Ronny TONG enquired about the assessment criteria for the granting of free TV licences.

21. SCED advised that the CA assessed applications for domestic free television licences in accordance with the BO and established procedures, taking into account a number of relevant factors. Such factors included the statutory requirements, assessment criteria set out in the CA's Guidance Note and public opinions. The assessment criteria set out in the Guidance Note included the applicants' financial soundness and commitment to investment, the applicant's managerial and technical expertise, the variety, quantity and quality of programmes to be provided, as well as the benefit to the local broadcasting industry and the economy as a whole.

22. Noting the assessment criteria for granting free TV licencees, Mr Christopher CHUNG urged the Administration to carefully consider the applicants' financial soundness and commitment to investment, so as to minimize the chances of discontinuation of broadcasting services by the new licensees in future.

23. Ms Emily LAU enquired whether the applicants for free TV licences had been subject to any political pressure to exercise self-censorship in news reporting in return for the grant of licence.

24. Mr Ricky WONG of HKTV said that no such political pressure was brought to bear on his company. Mr S Y WAI of FTV and Mr Stuart CHIRON of HKTE advised that their respective companies would produce news programmes according to the licensing conditions and statutory requirements.

Motion moved by Mr CHAN Chi-chuen

25. Mr CHAN Chi-chuen proposed the following motion which was seconded by Mr Albert CHAN and Mr LEUNG Kwok-hung and amended by Ms Claudia MO:

"本事務委員會強烈譴責政府漠視公眾的知情權和公眾利益，不合理地拖延發放本地免費電視節目服務牌照。"

(Translation)

"That this Panel strongly condemns the Government for ignoring the public's right to know and their interests by unreasonably delaying the issuance of domestic free television programme service licences."

26. The Chairman considered that the proposed motion was directly related to the agenda item under discussion and members agreed that the motion should be dealt with at the meeting. At members' request, the Chairman ordered a division and the division bell was rung for five minutes. The Chairman then put the motion to vote. Of the members present, eight members (namely, Ms Emily LAU, Ms Cyd HO, Mr LEUNG Kwok-hung, Mr Albert CHAN, Ms Claudia MO, Mr Charles Peter MOK, Mr CHAN Chi-chuen and Mr SIN Chung-kai) voted for the motion and four members (namely, Ms Elizabeth QUAT, Mr WONG Ting-kwong, Mr Steven HO Chun-yin and Mr Christopher CHUNG) voted against the motion. The Chairman declared that the motion was passed.

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(4)361/12-13 on 28 January 2013.)

II. Any other business

27. There being no other business, the meeting ended at 12:53 pm.

Council Business Division 4
Legislative Council Secretariat
16 October 2013