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By fax (2537 7053) and by hand

15 October 2013

Hon Wong Yuk-man
Chairman
Panel on Information Technology and Broadcasting
Legislative Council
Room 1001, Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr Wong,

**Applications for a Domestic Free Television
Programme Service Licence**

As you are aware, we have been processing the three applications for a domestic free television programme service ("FTV") licence submitted by Hong Kong Television Network Limited ("HKTVN"), Fantastic Television Limited ("Fantastic TV") and Hong Kong Television Entertainment Company Limited ("HKTVE") under the Broadcasting Ordinance (Chapter 562) ("BO") (collectively as the "FTV Licence Applications").

I write to inform you that having considered all relevant factors at Annex A, the Chief Executive ("CE") in Council decided that: -

(a) it would be in the public interest to adopt a prudent and cautious approach in deciding on the FTV Licence Applications by introducing new operators into the FTV market in a gradual and orderly manner, under which not all FTV Licence Applications would be approved at this juncture, while not precluding the possibility of allowing more FTV operator(s) as and when appropriate ("Gradual and Orderly Approach");

(b) having regard to the Gradual and Orderly Approach and all relevant factors at Annex A, Fantastic TV's and HKTVE's FTV Licence Applications should be granted approval-in-principle ("AIP"), subject to CE in Council's further review and final determination at the Second Stage¹, whilst HKTVN's FTV Licence Application(s) be rejected;

(c) the FTV licence that may be granted to Fantastic TV and HKTVE should be prepared and submitted to the CE in Council for consideration and, if appropriate, approval at the Second Stage, with licensing conditions which should broadly be along the lines set out in Annex B; and

(d) prior to the CE in Council's further review and determination of Fantastic TV's and HKTVE's FTV Licence Applications at the Second Stage: -

(i) the further information as set out in Annex C and as appropriate should be sought from Fantastic TV and HKTVE; and

(ii) any other information that is relevant to Fantastic TV's and HKTVE's FTV Licence Applications should be sought as appropriate.

¹ This means the later stage when the CE in Council is invited to consider whether or not to formally grant a FTV licence under sections 8(1) and 10(1) of the BC to Fantastic TV and HKTVE.

Please note that the grant of this AIP is not a grant of the FTV licence by the CE in Council under sections 8(1) and 10(1) of the BO. The CE in Council's grant of an AIP to each of Fantastic TV and HKTVE does not impose any obligation on him to formally grant to each of them a FTV licence in due course. The AIP does not confer, and should not be understood as conferring, any right, interest or expectation (whether legal, equitable or otherwise) on Fantastic TV and HKTVE that a FTV licence will be granted by the CE in Council under the BO. Nothing in this letter shall prejudice the powers, remedies, interests, rights, authority and discretion of the CE in Council in further considering Fantastic TV's and HKTVE's FTV Licence Applications.

We will hold a press conference later today to announce the CE in Council's decision mentioned above. I enclose at Annex D a bilingual copy of the relevant Legislative Council Brief and press release for your reference. We stand ready to brief Panel Members on this matter at a time convenient to the Panel. Thank you for your attention.

Yours sincerely,



(Miss Susie HO)
Permanent Secretary for
Commerce and Economic Development
(Communications and Technology)

Encls.

c.c. Clerk to Panel
(Attn.: Ms Yue Tin-po, Fax: 2840 0269)

Chairman, Communications Authority
(Attn.: Mr Ambrose Ho, Fax: 2507 2219)

Annex A**Relevant Factors Considered by the CE in Council
in deciding on the free TV licence applications**

- (1) the free TV licence applications submitted by HKTVN, Fantastic TV and HKTVE under the BO (including the proposed corporate restructuring of Fantastic TV and HKTVE, and undertakings given in relation to Fantastic TV's and HKTVE's compliance with the "non-subsidiary" and "no disqualified person" requirements under the BO);
- (2) the Authority's Recommendations;
- (3) the Consultant's Reports (including the Consultant's assessment of the relative competitiveness of each Applicant);
- (4) the applicable statutory requirements under the BO;
- (5) the assessment criteria in the Authority's "Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong";
- (6) all relevant documents, all representations and responses received in relation to the free TV licence applications and as submitted to the CE in Council;
- (7) all public views received;
- (8) all relevant latest developments;
- (9) the Government's prevailing broadcasting policy;
- (10) sustainability of the free TV market in the broad sense of the impact of the grant of additional free TV licences on the broadcasting industry of Hong Kong; and
- (11) public interest.

Annex B

Proposed Licence Conditions for Fantastic TV and HKTVE
(Subject to fine-tuning upon further discussions with
Fantastic TV and HKTVE)

(1) *Requirements applicable to domestic free television programme services*

Most of the requirements imposed on existing licensees for domestic free television programme services would be extended to Fantastic TV and HKTVE. These relate to the need for a mid-term review of licences after six years; the imposition of licence fees; provision of service free of charge; programme diversity; language of broadcast; broadcast of announcements in the public interest and weather programmes / announcements provided by the Government and publicity materials of the Authority; and compliance with the accepted proposals of the new licensee.

(2) *Provisions of Service and Investment Expenditure*

Fantastic TV and HKTVE shall roll out its service in accordance with the six-year investment plans provided in its application.

(3) *Performance Bond*

Fantastic TV and HKTVE should submit a duly issued performance bond in favour of the Government on the commencement date of the licence to secure the performance of the licence conditions. Certain requirements in relation to the provision of a broadcasting service, i.e. roll-out of the service, premises passed and investment expenditure as committed in the relevant application will be set out as milestones. The performance bond will be discharged once the relevant milestones referred to in the performance bond have been fulfilled to the satisfaction of the Authority.

Fantastic TV and HKTVE should also submit an auditor's certificate certifying fulfilment of the milestones set out in the performance bond, including but not limited to, the

premises passed and the addresses thereof on a yearly basis, and make available the addresses of the updated premises that are ready for service (in any form and manner as the Authority thinks fit) for public inspection, free of charge, on a half-yearly basis.

(4) *Positive programme requirements*

Fantastic TV and HKTVE are required to broadcast a minimum amount of the following –

- (a) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels);
- (b) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin);
- (c) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on each of the Cantonese and English channels are wholly of Hong Kong origin);
- (d) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin; on the integrated English channel, at least two hours of programmes per week with educational values targeting teenagers);
- (e) programmes for young people (30 minutes per week on the integrated Cantonese channel only);
- (f) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and
- (g) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).

(5) *English language channel*

Fantastic TV and HKTVE are required to roll out an integrated English channel within 24 months after the grant of licence, with the flexibility of providing up to 20% of the programme materials in other languages (except Cantonese) outside the hours of 7:00 p.m. to 11:30 p.m. and a window of two continuous hours from 7:00 p.m. to 11:30 p.m. one day per week in other languages (except Cantonese) with English subtitles.

(6) *Subtitling*

In light of public demand of subtitling service, Fantastic TV and HKTVE are required to provide the subtitling service incrementally as follows –

- (a) subtitling for all news, current affairs, weather programmes and emergency announcements should be provided within 18 months from service launch of the integrated Cantonese and English channels;
- (b) on the integrated Cantonese channel, Chinese subtitling should be provided for programmes shown between 7:00 p.m. – 11:00 p.m. within 24 months after service launch of the channel; and
- (c) on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel.

(7) *In-building Coaxial Cable Distribution System (IBCCDS) channel*

On the capacity constraint of the IBCCDS, the then Telecommunications Authority (now the Authority¹) has advised that the total number of free IBCCDS channels will

¹ The Telecommunications Authority was dissolved on 1 April 2012 and its functions have since been taken up by the Communications Authority established on the same day.

vary depending on the actual channel utilisation and other constraints applicable to a particular building and that there should be sufficient spare IBCCDS channels to be allocated to the applicants for the time being. To ensure more effective utilization of the IBCCDS channels, the number of IBCCDS channels to be allocated to Fantastic TV and HKTVE will be subject to the approval of the Authority.

(8) *Analogue and digital services*

Similar to the incumbent licensees, Fantastic TV and HKTVE will be required to provide its service in digital form in the entirety by notice served on it by the Government not less than 18 months of the date of service of the notice.

(9) *Means of delivery and speed of service roll-out*

Fantastic TV and HKTVE are required to roll out its service in accordance with the proposed means of delivery and the planned coverage of its network in its application.

(10) *Management of the licensee*

Fantastic TV and HKTVE are required to adopt effective management and control in order to ensure compliance with all the statutory and regulatory requirements. The management of the licensee shall not be performed by persons other than the directors, principal officers² and persons duly authorised by the licensee.

² Under the BO, "principal officer", in relation to a corporation, means –

- (a) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation.

Annex C

Issues Requiring Submission of Further Information By Fantastic TV and HKTVE

Prior to the formal grant of free TV licence, we will require Fantastic TV and HKTVE to submit the following to the Government and the Authority -

- (a) an updated free TV licence application reflecting changes agreed since the first submission;
- (b) further information, including statutory declarations, undertakings and legal opinions, for the purpose of verifying the corporate status of Fantastic TV and HKTVE after the proposed corporate restructuring;
- (c) confirmation that the proposed free TV services will not be “bundled” with any transmission or television programme service which is available only on a subscription basis;
- (d) undertaking that the existing users or viewers of the domestic pay television programme service provided by an affiliate of Fantastic TV and HKTVE will be entitled to view their respective proposed free TV service regardless of whether the viewers continue to subscribe for the domestic pay television programme service of that affiliate; and
- (e) confirmation that Fantastic TV and HKTVE will not act as mere “content providers” supplying programme materials to any of its affiliates who is a domestic pay television programme service licensee.

Annex D

File Ref: CTB(CR)9/3/10

LEGISLATIVE COUNCIL BRIEFBroadcasting Ordinance
(Chapter 562)**Applications for Domestic Free Television
Programme Service Licences****INTRODUCTION**

At the meeting of the Executive Council on 15 October 2013, in connection with the three applications for domestic free television programme service ("free TV") licences from Hong Kong Television Network Limited ("HKTVN"), Fantastic Television Limited ("Fantastic TV") and HK Television Entertainment Company Limited ("HKTVE") (collectively as the "Applicants") submitted under the Broadcasting Ordinance (Cap. 562) ("BO") (individually as a "free TV licence application" and collectively as the "free TV licence applications"), having considered all relevant factors set out at **Annex A**, the Council ADVISED and the Chief Executive ("CE") ORDERED that –

- (a) the "Gradual and Orderly Approach" referred to in paragraph 13 below be adopted in considering the free TV licence applications;
- (b) Fantastic TV's and HKTVE's free TV licence applications be granted approval-in-principle ("AIP"), subject to CE in Council's further review and final determination at the Second Stage¹, whilst HKTVN's free TV licence application be rejected;
- (c) the free TV licences that may be granted to Fantastic TV and HKTVE be prepared and submitted to the CE in Council for consideration and, if appropriate, approval at the Second Stage, with licensing conditions which should broadly be along the lines set out in **Annex B**; and

¹ This means the later stage when the CE in Council is invited to consider whether or not to formally grant a free TV licence under sections 8(1) and 10(1) of the BO to the Applicant(s) to which AIP is granted.

- (d) prior to the CE in Council's further review and determination of Fantastic TV's and HKTVE's free TV licence applications at the Second Stage -
- (i) the further information as set out in Annex C and as appropriate be sought from Fantastic TV and HKTVE; and
- (ii) any other information that is relevant to Fantastic TV's and HKTVE's free TV licence applications be sought as appropriate.

JUSTIFICATIONS

2. The then Broadcasting Authority (now the Communications Authority²) (the "Authority") received the free TV licence applications, from -

- (a) HKTVN³ on 31 December 2009;
- (b) Fantastic TV⁴ on 15 January 2010; and
- (c) HKTVE⁵ on 31 March 2010.

3. The Authority processed the free TV licence applications in accordance with the BO and established procedures and submitted its recommendations (the "Authority's Recommendations") on 13 July 2011.

Prevailing Broadcasting Policy and Licensing Regime for Free TV Licences

4. The Government's broadcasting policy objectives have all along been to broaden programme choices, encourage innovation, maintain Hong Kong's competitiveness and enhance its position as a regional broadcasting hub. Pursuant to a major review of television policy in 1998, the Government announced its decision to open up the television market ("1998 Policy"). In particular, for free TV, the relevant Legislative Council Brief issued on 10 December 1998 reads -

² The Broadcasting Authority was dissolved on 1 April 2012 and its functions have since been taken up by the Communications Authority established on the same day.

³ The name of the applicant was changed from "City Telecom (Hong Kong) Limited" to "Hong Kong Television Network Limited" in January 2013.

⁴ The name of the applicant was changed from "First Gear Limited" to "Fantastic Television Limited" in June 2010.

⁵ The name of the applicant was changed from "Festa Holdings Limited" to "Hong Kong Television Entertainment Company Limited" in May 2010.

“...Under the new technology-neutral licensing regime, there would be no limit on the number of domestic free licences to be issued. Applications for domestic free [TV] licences transmitted through other technically feasible means will be considered.”

5. In line with the above published policy which remains unchanged, the BO enacted in July 2000 has not specified any limit on the number of free TV licences to be issued by the CE in Council. The prevailing broadcasting policy or the statutory licensing framework however does not entail a blanket approval of each and every free TV licence application received, which has to be subject to vetting by the Authority and then the CE in Council according to all relevant factors.

6. Sections 9 and 10 of the BO set out the free TV licensing regime (extracts at Annex D). In brief, any interested party may apply to the Authority for a free TV licence at any time. Once an application is received, the Authority shall consider such an application and make recommendations thereon to the CE in Council. Having considered the Authority's recommendations, the CE in Council may grant a free TV licence to the applicant subject to such conditions as he thinks fit. To facilitate any interested party to apply for a free TV licence, the Authority has since 2002 promulgated a “Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong” (“Guidance Note”).

The Authority's Recommendations

7. The Authority processed the free TV licence applications received in accordance with the BO and established procedures, and assessed each free TV licence application having regard to factors including compliance with the relevant statutory requirements⁶, public opinions received (see paragraph 23 below), assessment criteria set out in the Guidance Note⁷, likelihood of prospective licensees in complying with the proposed licence conditions to be imposed, and the potential impact of new free TV licences on the local television programme service market⁸.

⁶ These requirements include those relating to company registration, residence in Hong Kong, fit and proper person, non-subsidiary, unqualified voting controller and disqualified persons. These are summarised in paragraphs 2.2 to 2.12 of the Guidance Note issued by the Authority in April 2012.

⁷ The assessment criteria set out in the Guidance Note include: (a) the applicant's financial soundness and commitment to investment; (b) the applicant's managerial skills and technical expertise; (c) the variety, quantity and quality of programmes to be provided by the applicant; (d) the technical soundness and quality of the applicant's proposed service; (e) the speed of the applicant's service roll-out; (f) if construction works will be involved in relation to the applicant's proposed service, the level of inconvenience to members of the public; (g) whether any benefit will be brought to the local broadcasting industry, viewers/customers and the economy as a whole; and (h) the effectiveness of the applicant's internal quality control and compliance mechanisms.

⁸ In connection with the free TV licence applications, the Authority commissioned an independent

8. On the whole, the Authority considered that all Applicants had demonstrated their ability to comply with all the statutory requirements under the BO and was satisfied that all Applicants had the requisite financial capability, expertise, transmission infrastructure and commitment to provide quality television programme services to the public. On the sustainability of the free TV market, the Authority noted the Consultant's findings that the market might not be able to sustain a total of five players (two incumbents and three Applicants if free TV licences were granted to them) based on the current business plans submitted by the Applicants, but in view of the dynamic competitive environment and evolving business strategies of individual applicants, the Authority was of view that the sustainability of the market or individual Applicants should not be a primary consideration in deciding as to whether a licence should be granted or not. On 13 July 2011, the Authority recommended to the CE in Council that AIP should be given for the grant of free TV licences to each of the Applicants.

Processing of the Free TV Licence Applications and the Authority's Recommendations

9. Since the submission of the Authority's Recommendations, the CE in Council has been processing the three free TV licence applications expeditiously and prudently in accordance with the BO and established procedures. The processing of the free TV licence applications involve complicated issues, including those relating to the statutory requirements and procedural fairness, the handling of which is time-intensive. During the process, new developments emerge, such as an interested party's attempt to appeal to the CE in Council by way of petition against the Authority's Recommendations and the subsequent applications for leave to apply for judicial review against the CE in Council (see paragraphs 11-12 below), all of which have taken time to handle and resolve.

Procedural Steps

10. To duly process the free TV licence applications, the CE in Council has sought further information / representations from the relevant parties (including the Applicants and the incumbent free TV licensees) as and when the evolving circumstances may require so as to ensure procedural fairness. Where appropriate and necessary, the Authority has also been asked to consider and respond to the relevant representations submitted by the interested parties, and to advise whether the Authority's Recommendations would be affected. Having considered the relevant representations, the Authority has confirmed

consultant (the "Consultant") to conduct a two-stage competition study on the basis of the Applicants' proposals. As the Consultant's assessment was carried out in 2010, the Administration invited the same consultant to update its assessment having regard to the updated inflation rates and Gross Domestic Product growth rates in early 2012 (four reports collectively as the "Consultant Reports").

that there would be no need to revise the Authority's Recommendations. The Authority's responses have been provided to the relevant interested parties for making further representations as appropriate.

Asia Television Limited ("ATV")'s Petition to the CE in Council and Application for Judicial Review

11. Prior to the submission of the Authority's Recommendations, ATV submitted on 30 May 2011 a petition to the CE in Council under section 34 of the BO⁹ against the Authority's recommendation to grant AIP to all three free TV licence applications. Having regard to the representations made by ATV and the Authority, the CE in Council concluded on 8 November 2011 that the petition should be dismissed. Such a decision was conveyed to ATV on 10 November 2011. On 10 February 2012, ATV lodged an application for leave to apply for judicial review against CE in Council's decision ("ATV's JR Application"). On 6 March 2012, the Court of First Instance ("CFI") refused to grant leave to ATV's JR Application.

Television Broadcasts Limited ("TVB")'s Ongoing Application for Judicial Review

12. On 3 January 2013, TVB filed an application for leave to apply for judicial review which, among others, sought to prevent the CE in Council from exercising his power under sections 8(1) and 10(1) of the BO with respect to the free TV licence applications ("TVB's JR Application"). The CFI refused to grant leave to TVB's JR Application on 13 May 2013. TVB filed an appeal on 20 May 2013 against the CFI's judgment ("TVB's Appeal"). As at the time of the CE in Council's decision in paragraph one above, TVB has not taken any further step to fix the date of TVB's Appeal.

Considerations by the CE in Council

Gradual and Orderly Approach

13. After considering all relevant factors at **Annex A**, the CE in Council is of the view that introducing competition into the free TV market would have the benefits of, for example, increasing the programme choice and diversity available to viewers, facilitating the bringing in of additional investments and creation of more employment opportunities in the free TV market, and be conducive to the development of the local content production sector. However, having regard to all relevant factors mentioned above and taking into account all representations and responses in relation to the free TV licence applications, the CE in Council has decided that it would be in public interest to adopt a prudent and cautious approach in deciding the free TV licence applications by introducing new operators into the free TV market in a gradual

⁹ According to section 34 of the BO, a licensee aggrieved by a decision of the Authority in the exercise of a discretion conferred on it under the BO may appeal by way of petition to the CE in Council.

and orderly approach under which not all three free TV licence applications would be approved at this juncture, while not precluding the possibility of allowing more free TV operator(s) as and when appropriate (the "Gradual and Orderly Approach"). The adoption of the Gradual and Orderly Approach is intended to reap the benefits of introducing competition into the free TV market, while at the same time to minimise the risk of any possible adverse impact on the free TV market as a whole. The CE in Council is satisfied that the Gradual and Orderly Approach would serve public interest and is in line with the 1998 Policy, which does not entail a blanket approval of all free TV licence applications received but subject each to vetting by the Authority and then the CE in Council.

Grant of AIP

14. Having regard to all relevant factors at Annex A and the Gradual and Orderly Approach in paragraph 13 above, the CE in Council has decided to grant AIP to Fantastic TV's and HKTVE's free TV licence applications, subject to the conditions as set out in paragraph one above, and reject HKTVN's free TV licence application. The grant of such an AIP is not a grant of free TV licence by the CE in Council under sections 8(1) and 10(1) of the BO. The grant of an AIP will not impose any obligation on the CE in Council to formally grant a free TV licence in due course. The AIP does not confer, and should not be understood as conferring, any right, interest or expectation (whether legal, equitable or otherwise) on the part of Fantastic TV and HKTVE that a free TV licence will be granted by the CE in Council under the BO.

15. The key features of the preliminary particulars in respect of Fantastic TV's and HKTVE's free TV licence applications are at Annex E.

Proposed Licence Conditions

Positive Programme Requirements

16. The CE in Council agreed with the Authority's Recommendations that any new free TV entrants should be subject to more or less the same licence conditions as applicable to the incumbent licensees. However, relaxation may be considered as the potential new free TV licensee(s), unlike the incumbents, would not make use of frequency spectrum for the delivery of the proposed free TV services. In this regard, the Authority recommended and the CE in Council accepted that the positive programme requirements¹⁰ (except children's programmes which will follow a slightly relaxed requirement as set out in sub-paragraph (d) below) applicable to ATV and TVB before the mid-term review of their free TV licences in 2010 should be imposed on the new licensee(s). Fantastic TV and HKTVE have agreed to meet the positive

¹⁰ The positive programme requirements comprise the minimum amount of programmes in respect of specified genres to be broadcast on a free TV licensee's service.

programme requirements as follows –

- (a) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels);
- (b) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin¹¹);
- (c) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes are wholly of Hong Kong origin);
- (d) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin and, on the integrated English channel, at least two hours per week of programmes with educational values targeting teenagers);
- (e) programmes for young persons (30 minutes per week on the integrated Cantonese channel only);
- (f) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and
- (g) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin);

Fantastic TV and HKTVE have also agreed to provide subtitling services incrementally as follows –

- (h) subtitling for all news, current affairs, weather programmes and emergency announcements will be provided within 18 months from service launch of the integrated Cantonese and English channels;

¹¹ "Wholly of Hong Kong origin" means:

- (a) produced
 - (i) in substance and in form in Hong Kong; or
 - (ii) by the licensee, by any employee of the licensee, by any company or employee of any company which, in relation to the licensee, is a subsidiary company within the meaning given by section 2(1) of the BO, or by any other independent production company engaged by the licensee in or outside Hong Kong; and
- (b) the Authority is satisfied that it is produced primarily for the Hong Kong market.

- (i) on the integrated Cantonese channel, Chinese subtitling will be provided for programmes shown between 7:00 p.m. - 11:00 p.m. within 24 months after service launch of the channel; and
- (j) on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel.

Means of delivery and the speed of service roll-out

17. Fantastic TV and HKTVE propose to hire the Hybrid Fibre-coaxial Cable network operated by i-CABLE and the fixed broadband network of PCCW-HKT Limited respectively for transmission of the proposed services. As it is unlikely to be technically feasible for a new licensee to achieve territory-wide coverage¹² in the initial stage of service roll-out with its proposed means of delivery (i.e. fixed telecommunication network), the Authority recommended and the CE in Council accepted that the new licensee should be allowed to achieve territory-wide coverage on a step-by-step basis. In the case of delivery of free TV service via fixed network, two sets of figures will be used to ensure Fantastic TV's and HKTVE's compliance with the coverage requirement –

- (i) the number of premises that are within close proximity (i.e. 10 metres) of the network used by Fantastic TV and HKTVE; and
- (ii) the number of premises that are readily serviceable (i.e. within 28 days after receipt of request from the relevant owner or resident of the premises concerned).

18. In the case of digital terrestrial television (“DTT”), ATV and TVB are exempted from the territory-wide coverage requirement since end 2007 such that they may roll out their respective DTT networks by phases. Hence, it is considered that the phased approach of Fantastic TV and HKTVE in achieving territory-wide coverage is acceptable.

Other Licence Conditions

19. The other proposed licence conditions are more or less modelled on the licence conditions applied to incumbent licensees.

¹² Section 18(1) of the BO requires the free TV licensees to provide their television programme services in such manner as to enable their services to be received throughout Hong Kong to the satisfaction of the Authority. Section 18(2) of the BO empowers the Authority to exempt the licensees from providing coverage to specified parts of Hong Kong during any specified period.

Next Steps

20. In line with established practice, the Authority and the Government will seek further information as necessary from Fantastic TV and HKTVE, and discuss with Fantastic TV and HKTVE the proposed conditions of the licence that may be granted to them if the CE in Council decides to approve the free TV licence applications in due course. The Authority will also review the further information submitted by Fantastic TV and HKTVE and their free TV licence applications, and submit to the CE in Council recommendations on whether a free TV licence should be formally granted to Fantastic TV and HKTVE. After the Authority has submitted the recommendations, the CE in Council will be invited to consider whether or not to formally grant a licence to each of Fantastic TV and HKTVE under sections 8(1) and 10(1) of the BO. At this Second Stage, the CE in Council will further review and take a final view on Fantastic TV's and HKTVE's abilities to meet the licensing criteria as well as each and every relevant aspect of their free TV licence applications, including the matters set out in paragraph 1(d) above.

21. Subject to discussion with Fantastic TV and HKTVE, the proposed key licence conditions are set out at Annex B. During the process, further information as set out in Annex C will be sought, which covers various issues including the undertakings of no de facto control for verifying the "non-subsidiary" status. All further information will be submitted to the CE in Council when he further reviews and makes a final determination on Fantastic TV's and HKTVE's abilities to meet all the statutory requirements and administrative licensing criteria at the Second Stage.

IMPLICATIONS OF THE PROPOSAL

22. The decision has economic, financial, civil service, and sustainability implications as set out at Annex F. The decision is in conformity with the Basic Law, including the provisions concerning human rights. The decision has no productivity, environmental or family implications.

PUBLIC CONSULTATION

23. The Authority published notices on 9 July 2010 at its website and in newspapers, setting out the details of the three free TV licence applications and inviting members of the public to express their views on the applications by 8 September 2010. By the deadline, the Authority received 256 submissions. Eight more submissions were received after the deadline and before the submission of the Authority's Recommendations. These views are summarised in Annex G. The LegCo Panel on Information Technology and Broadcasting also held a meeting on 22 July 2010 to receive public views on the free TV licence applications. In addition to these, the Government and the

Authority have, since the submission of Authority's Recommendations and until 30 August 2013, received over 16 000 relevant submissions of unsolicited public views. The Authority has considered the unsolicited public views addressed to it during the above-mentioned period and is of the view that these unsolicited public views are similar to those which have been taken into account by the Authority in formulating the Authority's Recommendations. A summary of all unsolicited public views received during the above-mentioned period is at Annex H. All the public views received have been submitted to the CE in Council for consideration.

PUBLICITY

24. We will hold a press conference and issue a press release. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

25. For enquiries, please contact Mr Aaron Liu, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A at 2810 2708.

Communications and Technology Branch
Commerce and Economic Development Bureau
15 October 2013

Annex A**Relevant Factors Considered by the CE in Council
in deciding on the free TV licence applications**

- (1) the free TV licence applications submitted by HKTVN, Fantastic TV and HKTVE under the BO (including the proposed corporate restructuring of Fantastic TV and HKTVE, and undertakings given in relation to Fantastic TV's and HKTVE's compliance with the "non-subsidiary" and "no disqualified person" requirements under the BO);
- (2) the Authority's Recommendations;
- (3) the Consultant's Reports (including the Consultant's assessment of the relative competitiveness of each Applicant);
- (4) the applicable statutory requirements under the BO;
- (5) the assessment criteria in the Authority's "Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong";
- (6) all relevant documents, all representations and responses received in relation to the free TV licence applications and as submitted to the CE in Council;
- (7) all public views received;
- (8) all relevant latest developments;
- (9) the Government's prevailing broadcasting policy;
- (10) sustainability of the free TV market in the broad sense of the impact of the grant of additional free TV licences on the broadcasting industry of Hong Kong; and
- (11) public interest.

Annex B

Proposed Licence Conditions for Fantastic TV and HKTVE
(Subject to fine-tuning upon further discussions with
Fantastic TV and HKTVE)

(1) *Requirements applicable to domestic free television programme services*

Most of the requirements imposed on existing licensees for domestic free television programme services would be extended to Fantastic TV and HKTVE. These relate to the need for a mid-term review of licences after six years; the imposition of licence fees; provision of service free of charge; programme diversity; language of broadcast; broadcast of announcements in the public interest and weather programmes / announcements provided by the Government and publicity materials of the Authority; and compliance with the accepted proposals of the new licensee.

(2) *Provisions of Service and Investment Expenditure*

Fantastic TV and HKTVE shall roll out its service in accordance with the six-year investment plans provided in its application.

(3) *Performance Bond*

Fantastic TV and HKTVE should submit a duly issued performance bond in favour of the Government on the commencement date of the licence to secure the performance of the licence conditions. Certain requirements in relation to the provision of a broadcasting service, i.e. roll-out of the service, premises passed and investment expenditure as committed in the relevant application will be set out as milestones. The performance bond will be discharged once the relevant milestones referred to in the performance bond have been fulfilled to the satisfaction of the Authority.

Fantastic TV and HKTVE should also submit an auditor's certificate certifying fulfilment of the milestones set out in the performance bond, including but not limited to, the

premises passed and the addresses thereof on a yearly basis, and make available the addresses of the updated premises that are ready for service (in any form and manner as the Authority thinks fit) for public inspection, free of charge, on a half-yearly basis.

(4) *Positive programme requirements*

Fantastic TV and HKTVE are required to broadcast a minimum amount of the following –

- (a) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels);
- (b) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin);
- (c) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on each of the Cantonese and English channels are wholly of Hong Kong origin);
- (d) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin; on the integrated English channel, at least two hours of programmes per week with educational values targeting teenagers);
- (e) programmes for young people (30 minutes per week on the integrated Cantonese channel only);
- (f) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and
- (g) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).

(5) *English language channel*

Fantastic TV and HKTVE are required to roll out an integrated English channel within 24 months after the grant of licence, with the flexibility of providing up to 20% of the programme materials in other languages (except Cantonese) outside the hours of 7:00 p.m. to 11:30 p.m. and a window of two continuous hours from 7:00 p.m. to 11:30 p.m. one day per week in other languages (except Cantonese) with English subtitles.

(6) *Subtitling*

In light of public demand of subtitling service, Fantastic TV and HKTVE are required to provide the subtitling service incrementally as follows –

- (a) subtitling for all news, current affairs, weather programmes and emergency announcements should be provided within 18 months from service launch of the integrated Cantonese and English channels;
- (b) on the integrated Cantonese channel, Chinese subtitling should be provided for programmes shown between 7:00 p.m. – 11:00 p.m. within 24 months after service launch of the channel; and
- (c) on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel.

(7) *In-building Coaxial Cable Distribution System (IBCCDS) channel*

On the capacity constraint of the IBCCDS, the then Telecommunications Authority (now the Authority¹) has advised that the total number of free IBCCDS channels will

¹ The Telecommunications Authority was dissolved on 1 April 2012 and its functions have since been taken up by the Communications Authority established on the same day.

vary depending on the actual channel utilisation and other constraints applicable to a particular building and that there should be sufficient spare IBCCDS channels to be allocated to the applicants for the time being. To ensure more effective utilization of the IBCCDS channels, the number of IBCCDS channels to be allocated to Fantastic TV and HKTVE will be subject to the approval of the Authority.

(8) *Analogue and digital services*

Similar to the incumbent licensees, Fantastic TV and HKTVE will be required to provide its service in digital form in the entirety by notice served on it by the Government not less than 18 months of the date of service of the notice.

(9) *Means of delivery and speed of service roll-out*

Fantastic TV and HKTVE are required to roll out its service in accordance with the proposed means of delivery and the planned coverage of its network in its application.

(10) *Management of the licensee*

Fantastic TV and HKTVE are required to adopt effective management and control in order to ensure compliance with all the statutory and regulatory requirements. The management of the licensee shall not be performed by persons other than the directors, principal officers² and persons duly authorised by the licensee.

² Under the BO, "principal officer", in relation to a corporation, means –

- (a) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation.

Annex C

Issues Requiring Submission of Further Information By Fantastic TV and HKTVE

Prior to the formal grant of free TV licence, we will require Fantastic TV and HKTVE to submit the following to the Government and the Authority -

- (a) an updated free TV licence application reflecting changes agreed since the first submission;
- (b) further information, including statutory declarations, undertakings and legal opinions, for the purpose of verifying the corporate status of Fantastic TV and HKTVE after the proposed corporate restructuring;
- (c) confirmation that the proposed free TV services will not be “bundled” with any transmission or television programme service which is available only on a subscription basis;
- (d) undertaking that the existing users or viewers of the domestic pay television programme service provided by an affiliate of Fantastic TV and HKTVE will be entitled to view their respective proposed free TV service regardless of whether the viewers continue to subscribe for the domestic pay television programme service of that affiliate; and
- (e) confirmation that Fantastic TV and HKTVE will not act as mere “content providers” supplying programme materials to any of its affiliates who is a domestic pay television programme service licensee.

Annex D**Extract from Broadcasting Ordinance (Cap. 562)**

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9. Recommendations by the Authority on applications for licences

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- (1) An application for the purposes of section 8(1) or (2) shall be submitted to the Authority in the specified form.
- (2) The Authority shall consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and make recommendations thereon to the Chief Executive in Council.
- (3) Where an application is submitted to the Authority, it shall-
 - (a) cause a notice to be published in the Gazette as soon as is practicable-
 - (i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Authority thinks fit; and
 - (ii) stating that members of the public who are interested may make representations on the application to the Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and
 - (b) consider the representations, if any, received by the date

10. Grant of Licence

- (1) The Chief Executive in Council may, after considering recommendations made pursuant to section 9(2), grant a licence under section 8(1) subject to such conditions as he thinks fit specified in the licence.
- (2) Subject to subsection (3), the Authority may grant a licence under section 8(2) subject to such conditions as it thinks fit specified in the licence.
- (3) The Chief Executive in Council, in the case of licences, or a class of licences, that may be granted under section 8(1) and the Authority, in the case of licences, or a class of licences, that may be granted under section 8(2), may by notice in writing specify conditions to which the licences shall be subject.

- (4) The Chief Executive in Council or the Authority, as the case may require, may, where he or it considers it is in the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).
- (5) A licensee may make representations to the Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the Chief Executive in Council, the Authority shall fairly reflect the representations to the Chief Executive in Council.
- (6) The Chief Executive in Council or the Authority, as the case may require, shall consider the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4).
- (7) A licence or an interest in a licence shall not be transferred in whole or in part.

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Fantastic Television Limited (Fantastic TV)
Free TV Licence Applications - Key Features of Preliminary Particulars

Investment	
Investment Amount	Over \$1 billion in the initial six years from the launch of the proposed service
Variety, quantity and quality of programmes	
Proposed date of launch	To commence the integrated Cantonese and English channels within 12 months and 24 months respectively from the grant of licence.
Total number of channels	To operate two integrated channels (Cantonese and English) in both analogue and digital formats.
Positive programme requirements	<p>To meet the positive programme requirements as follows –</p> <ul style="list-style-type: none"> (i) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels); (ii) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin); (iii) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes are wholly of Hong Kong origin); (iv) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin and, on the integrated English channel, at least two hours per week of programmes with educational values targeting teenagers); (v) programmes for young persons (30 minutes per week on the integrated Cantonese channel only); (vi) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and (vii) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).
Subtitling	<p>To comply with the subtitling requirements on its integrated Chinese and English channels as follows -</p> <ul style="list-style-type: none"> • subtitling for all news, current affairs, weather programmes and emergency announcements should be provided within 18 months from service launch of the integrated Cantonese and English channels; • on the integrated Cantonese channel, Chinese subtitling should be provided for programmes shown between 7:00 p.m. – 11:00 p.m. within 24 months after service launch of the channel; and • on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel.

Technical Viability	
Means of delivery	<ul style="list-style-type: none">• To hire the Hybrid Fibre-coaxial Cable ("HFC") network operated by i-CABLE to transmit the proposed service.• 4 In-building Co-axial Cable Distribution System ("IBCCDS") channels (3 VHF and 1 UHF channels) are required for the proposed two-channel services transmitted in both analogue and digital formats.
Connection to buildings and premises	<ul style="list-style-type: none">• For viewers served by IBCCDS, they, after upgrading of IBCCDS, may use their existing analogue TV sets or Integrated Digital TV ("iDTV") sets (or digital terrestrial television decoders) for receiving Fantastic TV's analogue or digital programmes respectively.• Existing customers of Cable TV's pay TV services (via the HFC network) may receive the free TV services.

**HK Television Entertainment Company Limited (HKTVE)
Free TV Licence Applications - Key Features of Preliminary Particulars**

Investment	
Investment Amount	Over \$600 million in the initial three years from the launch of the proposed service
Variety, quantity and quality of programmes	
Proposed date of launch	To commence the integrated Cantonese and English channels within 12 months and 24 months respectively from the grant of licence
Total number of channels	To operate two integrated channels (Cantonese and English) in digital format only
Positive programme requirements	<p>To meet the positive programme requirements as follows –</p> <ul style="list-style-type: none"> (i) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels); (ii) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin); (iii) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes are wholly of Hong Kong origin); (iv) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin and, on the integrated English channel, at least two hours per week of programmes with educational values targeting teenagers); (v) programmes for young persons (30 minutes per week on the integrated Cantonese channel only); (vi) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and (vii) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin)
Subtitling	<p>To comply with the subtitling requirements on its integrated Chinese and English channels as follows -</p> <ul style="list-style-type: none"> • subtitling for all news, current affairs, weather programmes and emergency announcements should be provided within 18 months from service launch of the integrated Cantonese and English channels; • on the integrated Cantonese channel, Chinese subtitling should be provided for programmes shown between 7:00 p.m. – 11:00 p.m. within 24 months after service launch of the channel; and • on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel

Technical Viability

Means of delivery	<ul style="list-style-type: none">• To use PCCW's fixed network to provide the proposed service• In-building Co-axial Cable Distribution System ("IBCCDS") channel required for the proposed two-channel services transmitted in digital format
Connection to buildings and premises	<ul style="list-style-type: none">• For viewers served by IBCCDS, they, after upgrading of IBCCDS, may use their existing analogue TV sets or Integrated Digital TV ("iDTV") sets (or digital terrestrial television decoders) for receiving the applicant's programmes.• Existing subscribers of PCCW's now TV or eye service may receive HKTVE's free TV services via the respective platforms and equipment• Existing PCCW's broadband subscribers may use a set-top box provided by PCCW for receiving HKTVE's free TV services

Annex F

ECONOMIC IMPLICATIONS

Through bringing in additional investment in programming and local content production and increasing competition, the introduction of a new player in the free TV market would help the further development of the broadcasting and creative industries. The community will also benefit from a wider choice of high quality programmes as well as better services.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. The new licensee will have to pay to the Authority an annual licence fee at the prevailing rates stipulated in Schedule 1 to the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. Leg.A). In addition, the Authority may also collect additional variable carrier licence fees from existing carrier licensee for new customer connections as appropriate in accordance with Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V) as the new licensee will use the existing licensed fixed telecommunications networks provided by existing carrier licensee for the delivery of free TV services to viewers.

3. There will be additional workload arising from the administration of the new licence and handling of relevant complaints. The resource requirements for the Office of the Communications Authority will be assessed according to the established mechanism.

SUSTAINABILITY IMPLICATIONS

4. Introduction of a new player will bring about positive gain to the broadcasting industry of Hong Kong by promoting competition and increasing programme choices for viewers. It is conducive to the sustainability principle of achieving a competitive and prosperous market-led economy to meet the aspirations of the public.

Annex G**Summary of Views on Applications for Domestic Free Television Programme Service Licences during the Authority's Consultation Period**

A total of 256 written submissions from 229 individuals and 27 groups/organisations were received during the consultation period from 9 July to 8 September 2010. Further, 8 written submissions were received after the deadline and before the submission of the Authority's Recommendations. The views collected (save for those submitted in confidence to the Authority) are summarised as follows –

(a) Submissions from Members of the Public**Investment Commitments**

- The new free TV operators should have sufficient funding for the provision of their services. The investment commitments pledged by the three applicants are limited compared to those of ATV and TVB and this might adversely affect the quality of programmes provided by the new operators.
- HKTVN should be required to increase its programming investment.

Programming

- Programming of the new free TV operators should be balanced in content and the new free TV operators should provide a comprehensive service to cater for the diverse interests of the community.
- The new free TV operators should broadcast more local productions, RTHK programmes, sports programmes, programmes for ethnic minorities and programmes with healthy themes. More Cantonese programmes should be broadcast on the new TV channels.
- The English channels should broadcast more news, finance and RTHK programmes.
- The new free TV operators should broadcast a minimum of 30 hours of English programmes, 30 hours of Putonghua programmes and 15 hours of Government programmes and programmes on civic education each week on

one of their channels. As an incentive to encourage the new stations to carry more Government programmes and programmes on civic education, the licence fees of the stations should be suitably reduced.

- At least one channel of each new TV licensee should include certain amount of daily news programmes broadcast in Cantonese, English and Putonghua. The new licensees should also broadcast more programmes on arts and culture, and for senior citizens as well as niche viewers.
- Requirements on subtitling, positive programmes and language of service should not be exempted.
- There should not be frequent repeats of pay TV programmes given that some applicants are closely associated with pay TV operators.
- With more competitors in the market, free TV operators might change their programming strategies to produce more popular programmes of low quality to compete for ratings and revenues.
- There might be excessive broadcasts of religious programmes and acquired programmes on the new TV services.
- HKTVN should be required to broadcast more first-run programmes during prime-time slots. HKTVN should strike the right balance in providing both acquired programmes and locally produced programmes. In order to promote local productions and nurture local talents in the television production sector, HKTVN should commission and outsource its programming productions.
- HKTVN's proposal to operate 12 channels initially and to increase to 30 channels in six years is not realistic.
- HKTVN might lease airtime on its channels.
- HKTVN might include programmes of superstition and religion and encourage indirect advertising.
- Religious groups, pro-democratic political parties and social work and environmental organisations should be given more opportunities to express their views on HKTVN's proposed service.
- Fantastic TV's programming plan only covers prime-time programming and does not cater for the needs of children, youth and women viewers. Fantastic TV should operate a sports channel featuring major sports events (e.g. World Cup).

- A free TV licence should not be granted to HKTVE as HKTVE is not willing to offer an English channel, positive programmes and subtitling services in its proposed service.

Advertising

- Current restrictions on advertising time should be applied to all new TV channels.

Technical Information

- The new TV operators should be encouraged to fully utilise the currently idle frequency spectrum, if any, to provide free TV services.
- Viewers would be required to acquire and install multiple decoders for reception of new services. The Government should provide subsidies for the purchase of decoders.
- New operators should provide electronic programme guides as well as interactive services.
- Fantastic TV and HKTVN, which propose to transmit their services via cable/broadband networks, may not achieve territory-wide coverage as currently required for free TV service licensees. The new operators should employ satellite broadcasting to achieve territory-wide coverage.
- HKTVE's proposal to offer DTT service is the most efficient and quickest route to launch new free television services.
- HKTVE should not make use of UHF channel 62, which has already been reserved for RTHK's public broadcasting service.
- The new free TV services should be broadcast in both standard definition and high definition formats.
- To encourage analogue switch-off, the Government should require all new services to broadcast on DTT platform and assist new operators to reach agreements with the other free TV operators on sharing the use of transmission stations.
- The Government should provide the Building Management Offices and Incorporated Owners sufficient support to liaise with HKTVN on interconnection matters.

Cross-Media Restrictions

- As the three applicants are closely associated with companies which operate pay TV services, the Government needs to ensure that the new stations will act independently of their associated companies. Special firewall provisions in relation to the supply of programmes should be imposed on the new operators that are closely associated with the pay TV licensees. The programming deals between these companies should be made known to the public.
- Despite the trust arrangements, PCCW and i-Cable might exercise de facto control over HKTVE and Fantastic TV respectively.
- The restrictions on cross-media ownership should be strictly enforced at all times. Otherwise, such restrictions would become useless.
- Given Mr Li Tzar-kai's ownership of Hong Kong Economic Journal and nowTV, the granting of a free TV licence to HKTVE controlled by Mr Li would enable him to dominate the Hong Kong media market.
- The new free TV operators might promote the services of their pay TV partners via the free TV platforms. The undesirable sales practices of pay TV services might worsen.

Competition in the Television Market

- New free TV licences should be issued to facilitate and promote competition in the free TV market. More competition in the free TV market could enhance programme diversity and viewing pleasure.
- To ensure fair competition, pay TV operators should not be allowed to own and operate free TV services.
- In order to be effective competitors to the existing operators, new free TV operators will need to make huge investments in the long run. Hence, the issue of new free TV licences cannot alter the situation of the free TV market being dominated by an incumbent operator.

Others

- Free TV licences should be granted to interested companies following an open-bidding process. Interested parties other than the three applicants should also be invited to apply for free TV licences.

- New free TV operators should respect editorial freedom and independence of news programmes.
- The Authority should review the performance of the new operators more frequently, e.g. on a half-yearly basis.
- A free TV licence should not be granted to Fantastic TV due to the poor performance of HKCTV, in particular, its sales practices, customer service and manner in the acquisition of exclusive broadcasting rights (e.g. World Cup 2010).

(b) Submissions from TVB

Investment Commitments

- Given the proposed programming investments of the applicants are much smaller than those of the incumbent operators, it is doubtful whether the applicants would be able to provide quality services and services that are currently unavailable in the market.
- There are contradictions between HKTVN's programming strategy to centre on dramas with the use of the same TVB's artistes, scriptwriters, directors and producers as reported by the press and the representations in HKTVN's licence application to the Authority.
- As TVB's investment plan for 2010 – 2015 was devised based on the assumption that there would only be two free TV operators in the market, TVB reserves the right to revise its investment plan, particularly in relation to the DTT development, should new domestic free TV licences be granted before 2015.

Programming

- Given the limited proposed investment and reluctance in providing an English channel, subtitling service, high definition programmes and more local productions, the applicants might not be able to cater for the needs and expectations of the viewing public.

Technical Information

- To avoid the risk of overloading and interfering with the carriage of the existing TV and telecommunications services, the Telecommunications Authority (now the Authority) should immediately conduct a review on the timetable for digitising all IBCCDSs and implement the digitisation within a reasonable timeframe before the grant of new free TV licences.
- As regards frequency spectrum (including radio spectrum and IBCCDS frequency channels), the Government should ensure that all the free TV service licensees will use the allocated frequencies for their own free TV services only. Spectrum trading/leasing between licensees or between a licensee and an outsider should not be allowed.
- If any successful applicant intends to deploy a set-top box at the viewers' end for receiving its free TV service, the set-top box must not be proprietary and must be capable of receiving the services of all operators.
- Appropriate radio frequencies should be reserved for ATV and TVB to allow their competition with the successful applicants by providing more programming channels or other value-added services.

Cross-Media Restrictions

- The Government should examine the independence of Fantastic TV and HKTVE from their related pay TV operators and whether they have met both the letter and the spirit of section 8(3) of the Broadcasting Ordinance (Cap. 562) ("BO")¹ and other relevant legal requirements. In particular, the following issues need to be addressed:
 - whether the trustees will be selected and appointed by i-CABLE and PCCW;
 - whether the trustees concerned will be the professional trustees whose business is to hold shares for and on behalf of their clients in return for payment;
 - whether the investments of the trustees in Fantastic TV / HKTVE come from the pocket of the trustees or i-CABLE / PCCW;

¹ Section 8(3) of the BO provides that a domestic free television programme service licence shall not be granted to a company which is a subsidiary of a corporation.

- whether the trustees will play an active role in overseeing the business of Fantastic TV / HKTVE; and
- whether the trustees possess the necessary expertise and experience in running a free TV business.

Competition in the Television Market

- A thorough economic analysis on the sustainability of the domestic free TV market, taking into account recent developments of digital terrestrial television (“DTT”), should be conducted to ascertain the number of operators that the market could healthily sustain. The mechanism and results of such economic analysis should be published.
- Since all applicants are related to current pay TV and telecommunications service providers, effective measures must be introduced to protect the viewing public from unwittingly entering into a pay TV, broadband or other service contract. A provision similar to section 7M of the Telecommunications Ordinance (Cap. 106) (“TO”)² should be added to the BO before the grant of new free TV licences.
- To avoid monopolisation of the TV rights of major international sports events by pay TV operators, the Government must put in place in parallel an “anti-siphoning law” should a free TV licence be granted to an applicant associated with a pay TV operator.
- The same licence terms and conditions applicable to ATV and TVB, (e.g. the provision of an English channel, positive programme requirements, subtitling service and universal coverage) should be imposed on successful applicants to ensure a level-playing field. Any exemption granted to the new licensees should be extended to ATV and TVB.
- ATV and TVB have committed to comply with various requirements for 2010 – 2015 prior to the submissions of the licence applications. To ensure a level-playing field for all free TV operators, the Government should withhold granting new free TV licence before the expiry of the existing free TV licences in 2015.

² Section 7M of the TO provides that a licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service

- The Authority should carefully assess HKTVN's plan to provide 12-30 channels, taking into account the following considerations:
 - whether the channels provided are substantially similar to those being offered by pay TV operators;
 - how the problem of regulatory dichotomy can be resolved when the same or substantially similar programmes are included in a free TV service and a pay TV service, especially as these services are subject to different regulatory standards); and
 - whether the resultant multi-channel free TV service will disrupt the viability of the existing pay TV market.

Others

- The Government and the Authority should re-evaluate whether each of the applicants possesses the necessary human resources, vocational training facilities, genuine knowledge, experience and capital of its own to meet the commitments in its application and to meet the public's expectations of a new free TV service.

(c) Submissions from Fantastic TV

Cross-Media Restrictions

- Any approval for the involvement of disqualified person(s) and unqualified voting controller(s) should be granted equally to all new licensees.

Programming

- Programming obligations, including the provision of an English channel, positive programme requirements and subtitling service should be imposed equally on all the new licensees.

Technical Information

- Any DTT radio frequency made available for the transmission of new free TV programme services should be offered to all the new licensees fairly and on the same terms and conditions.

Competition in the Television Market

- A level-playing field should be maintained for the new free TV licensees.

Annex H**Summary of Unsolicited Public Views
Since the Authority's Submission of Recommendations in July 2011****(as at 30 August 2013)****(a) Submitted to the Authority****Support for the Grant of Licence(s)**

- Majority of submissions support that more new free TV licences should be issued as soon as possible, based on one or more of the following reasons –
 - to facilitate and promote competition in the free television market;
 - to enhance programme diversity and choice;
 - to offer more infotainment programmes to the viewing public;
 - to allow more public opinions to be expressed on the TV platform;
 - to benefit the local labor market; and
 - the advertising market should be able to support more TV operators.

Arguments against the Grant of Licence(s)

- Some submissions opposed the grant of new free TV licences based on one or more of the following reasons -
 - the poor performance of Hong Kong Cable Television Limited, in particular, its sales practices and customer service;
 - the poor trade practices of HKTVN's then subsidiary, Hong Kong Broadband Network Limited;
 - there have been enough free TV operators;
 - the grant of new free TV licences would not be conducive to the harmonious development of our society; and
 - unlike the incumbent operators which devote both their attention and resources to their primary free TV business, the applicants are engaging in other businesses not directly associated with free TV broadcasting.

Progress of Processing Licence Applications

- Progress and concrete timeline of processing the applications for new free TV licences should be made known to the public.
- The processing of the applications for new free TV licences should not be interrupted by TVB's judicial review application.

Channel Line-up

- New free TV operators should provide English channels.

Technical Information

- Viewers might encounter problems in acquiring and installing multiple decoders and upgrading of communal cable systems etc. for reception of new television services which will be delivered by means of fixed telecommunications network.

(b) Submitted to the Administration
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Support for the Grant of Licence(s)

- The majority of submissions consider that more new free TV licences should be issued as soon as possible, based on one or more of the following reasons: -
 - the current market now suffers from a lack of programme choices, monopoly of a particular broadcaster and absence of creativity in drama production. The processing of the applications should be guided by public interests and expedited as far as possible;
 - additional licences will bring about more investment and increase in job opportunities with better remuneration. The opening up of the free TV industry will inject competition, thereby stimulating the growth of the advertising market;

- free TV is an essential source of daily entertainment, especially for low-income classes. More free TV operators would enrich the diversity of choices;
 - there is currently a lack of quality programmes, especially that for family and children;
 - HKTVN is ready to enter the free TV market. The public-at-large has been benefited from the liberalization of the telecommunications market. Hong Kong as an international city should accommodate not only two free-to-air operators whose programme quality does not meet up with the expectations of the people in the city;
 - the collapse of Commercial Television (佳藝電視) in the 1970s is not relevant to the question of sustainability. As a result of socioeconomic changes and expansion of the advertising market in recent decades, the current situation is different from that in 1970s;
 - ATV's performance has been deteriorating in management and programmes. The entry of new operators will bring about new programmes and drive ATV to produce more programmes, which will be in the public interest. The issue of new licences should not be hindered by ATV's objections;
 - it is unreasonable for TVB to discourage competition just because this will pose a threat to it;
 - the perspectives in ATV programmes are biased;
 - the public is clearly in favour of granting additional free TV licences;
 - the duopoly has been maintained for 34 years, and the two television stations can no longer satisfy the needs of the population which has grown significantly over these 34 years; and
 - the royalties for free TV broadcasters were abolished. There should be no excuse for not opening up the market.
- A motion was passed in each of the six District Councils or their relevant sub-committees¹ in favour of issuing additional free TV licences.
 - A motion was passed by the Legislative Council on 28 November 2012 to urge the Administration to make a decision on the free TV licence applications by March 2013 and issue the additional licences as soon as possible.

¹ The relevant districts are Central and Western, Eastern, Kwai Tsing, Sai Kung, Yuen Long and Tuen Mun.

- The Federation of Hong Kong Filmmakers issued a press statement on 12 December 2012 to demand for issue of new free TV licences immediately. More players in the television industry would not only create more jobs for young people, the added competition would lead to a higher standard in productions. Besides, television was an important platform for the distribution of film productions, and additional new players in the industry would provide more such platforms. They disagreed with arguments by existing players TVB and ATV that the Hong Kong market could not support more free-to-air stations because there was limited advertising revenue available. Just like film productions, television productions should be seeking a much larger overseas export market instead of a small local market.

Arguments against the Grant of Licence(s)

- Some submissions opposed to the grant of new free TV licences, based on one or more of the following reasons –
 - the business ethics of the HKTVN's Chairman is questionable. The Government should carefully consider the HKTVN's application;
 - the advancement of technology has already facilitated citizens' access to different media; and it may not be necessary to introduce more free-to-air operators. The collapse of Commercial Television in the 1970s created social problems, which might happen again if the Government decides to grant new free TV licences. The recent saga for Digital Broadcasting Corporation Hong Kong Limited is an example;
 - if the Government decides to grant new free TV licences, the number should be one or two, considering that RTHK will have its own television channel and not more than 4 television operators will be more acceptable by Hong Kong citizens;
 - granting all three licences may be followed by collapse of television station(s), which may create social instability and unemployment;
 - there are different sources of entertainment, among which free TV is no longer the major one;
 - pay TV operators should not be allowed to straddle into free TV industry;
 - the Government does not need more television stations to stage opposition against it and stir up political pressure; and

- interested parties should join ATV as joint venture partners instead of applying for separate free TV licences.

Others

- There should be live broadcast of at least one soccer competition per month and free broadcast of major international sports events.
- The existing and future free TV licensees should provide Filipino and Indonesian programmes.
- The free TV licensees should be required to invest a minimum of \$1.5 billion in the first three years; to provide local employment of at least 1 200 local staff and to produce, when compared to the incumbents, an equal amount of local prime time drama in Cantonese with major casts in Hong Kong; to produce 520 hours of drama year, each with a budget of not less than \$500,000 per hour/episode.