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Panel on Information Technology and Broadcasting

Meeting on 11 March 2013

**Background brief on issues relating to the shareholding changes of
Digital Broadcasting Corporation Hong Kong Limited**

Purpose

This paper provides background information on issues relating to the shareholding changes of Digital Broadcasting Corporation Hong Kong Limited ("DBC") and also a summary of views and concerns expressed by Members in previous discussions.

Background

2. In March 2011, the Chief Executive in Council granted sound broadcasting licences to DBC, Metro Broadcast Corporation Limited and Phoenix U Radio Limited to provide digital audio broadcasting ("DAB") services. In the licence of DBC, the company is required to provide seven 24-hour programme channels (including a "Talk Radio" Channel, an Ethnic Minorities Channel and two Music Channels, and three other channels which can be a News and Market Update Channel, Leisure Life Channel, Community Channel or Music Channel) at its formal launch.

3. DBC soft-launched its services in August 2011. Despite media report of the disagreements among DBC's shareholders on a further injection of capital into DBC, the company paid its annual licence fee of about \$3.8 million to the Communications Authority ("CA") in early September 2012 and formally launched all seven channels on 21 September 2012.

4. DBC's service was ceased during the period from 10 to 15 October 2012, and limited to the playing of music from 21 October 2012. The Office of the Communications Authority ("OFCA") wrote to DBC's interim receiver on 22 October 2012 to remind the company of the need to comply with the licence conditions and legal requirements under the Telecommunications Ordinance (Cap. 106), and to request for more details on DBC's broadcasting service so as to ascertain the company's compliance with its licence conditions.

5. On 2 November 2012, the interim receiver of DBC submitted an application to CA seeking its approval for DBC to vary its broadcasting arrangements from 21 October 2012 for a period of up to 60 days. On 19 November 2012, CA announced that having considered the severity, nature and duration of the breach and representations made by DBC arising from the cessation of its service from 10 to 15 October 2012, CA decided to impose on DBC a financial penalty of \$80,000, which was the maximum financial penalty that might be levied on the first occasion a penalty was so imposed on a sound broadcasting licensee.

Previous discussions

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6. The Panel on Information Technology and Broadcasting ("the Panel") held two special meetings on 26 October and 24 November 2012 respectively to follow up on issues relating to the discontinuation of broadcasting service by DBC. Representatives from the Administration, OFCA, DBC and members of the public attended the meetings.

7. At the special Panel meeting on 26 October 2012, the Secretary for Commerce and Economic Development ("SCED") advised that he had met with the management of DBC on 26 September 2012 upon its request on issues relating to the operations of DBC, including the disagreement among its shareholders on further investments into DBC. SCED made it clear to the management of DBC that it was inappropriate for the Government to interfere with the internal operation of broadcasting companies, nor to play the role of commercial mediator to resolve disagreements among the shareholders of a private company. The broadcasting regulatory regime of Hong Kong had always respected the independent operation and editorial independence of the licensees. It was the duty of a licensee to manage its own internal affairs properly. Nonetheless, CA, as the statutory regulatory body, had followed DBC's developments, monitored whether it had complied with its licence conditions and legal requirements under the

Telecommunications Ordinance, and taken follow up actions in accordance with the law.

8. The Panel noted that Mr Albert CHENG, the former President and Editor-in-Chief of DBC, was subject to an injunction issued by the High Court on 27 September 2012 prohibiting him from disclosing details about the business affairs of DBC. Judging from the alleged recordings of DBC meetings circulating on the Internet from 20 October 2012, some Panel members considered that there was prima facie evidence to suggest that the decision of some of the major shareholders against making further investments into DBC was a result of political interference from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. These members were dissatisfied that the Administration had treated the matter simply as an internal affair of DBC. They considered that it was in the public's interest to find out the reason for the cessation of broadcasting service by DBC.

9. Some other Panel members considered the rumour of political interference as pure speculation as DBC had been allowed to soft launch its service in August 2011 and had not been restricted from criticizing the Government. These members also expressed concern that the Council's inquiry into issues relating to the discontinuation of broadcasting service by DBC would prejudice the litigation among its major shareholders.

10. Hon Albert CHAN Wai-yip moved a motion for the appointment of a select committee by the Council to inquire into issues relating to the discontinuation of broadcasting service by DBC. The motion was passed by the Panel. The Panel's proposal for a select committee to be appointed was put to the House Committee ("HC") for consideration on 2 November 2012.

11. At the special Panel meeting on 24 November 2012, the Panel received views from members of the public on issues relating to the discontinuation of broadcasting service by DBC. Noting that the Panel's proposal for a select committee to be appointed was not supported by the HC, the majority of the members of public attending the meeting urged the Administration to facilitate the resumption of broadcasting service by DBC. Panel members also urged the Administration to mediate in the dispute amongst the major shareholders.

Council meeting

12. At the Council meeting on 5 December 2012, Hon Albert CHAN Wai-yip moved a motion on "Appointment of a select committee" to inquire into the discontinuation of broadcasting service by DBC and related issues.

The motion was negatived.

Recent developments

13. On 28 January 2013, CA approved the application of DBC for proposed changes in its shareholding structure. According to the CA, on 10 January 2013, DBC applied for the CA's approval for a proposed transfer of all the 40% of DBC's shares owned by Mr Albert CHENG, Mr Morris HO Kwok-fai and Mr Ronald Joseph ARCULLI to Mr WONG Cho-bau. DBC submitted that upon completion of the transaction, the financial dispute among DBC's shareholders, which had caused the disruptions to/cessation of DBC's broadcasting service since October 2012, would be resolved. DBC also resumed full-fledged broadcasting service with effect from 7:00 am on 28 January 2013.

14. As regards DBC's breaches of the licence conditions arising from the disruptions to/cessation of its broadcasting service from 11:30 pm on 21 October 2012 to 11:00 am on 11 January 2013, the CA decided to impose on DBC a financial penalty of \$200,000, which was the maximum amount of financial penalty that might be imposed on the second occasion a penalty was so imposed on a sound broadcasting licensee.

Latest position

15. The Administration will brief members on the shareholding changes of DBC at the forthcoming meeting to be held on 11 March 2013.

Relevant papers

16. A list of the relevant papers with their hyperlinks is at http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb_ad.htm.