

**For discussion on
11 March 2013**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Issues relating to the shareholding changes of
Digital Broadcasting Corporation Hong Kong Limited**

Purpose

This paper updates Members on the latest development relating to the shareholding changes of Digital Broadcasting Corporation Hong Kong Limited (DBC).

Background

2. In March 2011, the Chief Executive in Council (CE in C) granted sound broadcasting licences to DBC and two other broadcasting companies under the Telecommunications Ordinance (TO) (Cap. 106) for the provision of digital audio broadcasting (DAB) services. The Communications Authority (CA), as an independent statutory regulatory body, is responsible for monitoring licensees' compliance with the relevant statutory and licence requirements. In accordance with the deadline set out in its licence, DBC formally launched its services in September 2012¹.

3. Section 13J(1) of the TO stipulates that any right in shares exceeding in aggregate 15% of voting shares in a sound broadcasting licensee (as at the date of the grant of licence) may not be transferred within three years following the date of the grant of the licence, except with the consent of the CA. Condition 40 of the sound broadcasting

¹ In the licence of DBC, unless with the approval of the CA, 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.

licence of DBC requires the company to comply at all times with the statements and representations made in its application for licence, including the shareholding structure of DBC, unless otherwise approved by the CA.

Shareholders' dispute and disruptions to service

4. The media first reported in late July 2012 that a dispute had arisen among the shareholders of DBC over the injection of capital, leading to a lack of working capital of the company. Following a written notification to the Office of the Communications Authority (OFCA) on 10 October 2012, DBC ceased its operations from 8 p.m. that day. The programme service of DBC resumed briefly between 15 and 21 October 2012, followed by a limited service of playing music or re-run programmes between 21 and 31 October 2012. Thereafter, the service ceased completely. The Receivers and Managers² of DBC (the Receiver) informed OFCA that DBC did not have the funds to meet operating costs.

Follow-up actions of the CA

5. The CA as the regulator has all along kept a close watch on DBC's compliance with the statutory and licence requirements, and had taken follow-up actions in accordance with the law and the established procedure. In exercise of its statutory duties, from November to December 2012, the CA twice took decisions with regard to the situation of DBC. In gist, the CA had decided to impose on DBC a financial penalty of \$80,000, and to consider initiating the procedure to suspend the sound broadcasting licence of DBC for 30 days in accordance with the relevant licence condition. The details are set out in CA's press releases at **Annexes A and B**.

² Upon application by a shareholder of DBC, the Court made an order on 17 October 2012 that Deloitte Touche Tohmatsu be appointed to act jointly and severally as Receivers and Managers of DBC. Deloitte Touche Tohmatsu notified OFCA on 17 January 2013 that DBC was relieved from receivership with immediate effect.

Latest developments

6. Upon enquiry by OFCA in late December 2012, the Receiver of DBC confirmed that a letter of intent was signed between Mr Wong Cho-bau (Mr Wong), a shareholder of DBC, and other three shareholders, namely Messrs Albert Cheng Jinghan, Morris Ho Kwok-fai and Ronald Joseph Arculli, under which the latter three shareholders would sell their legal and beneficial interest in DBC's shares to Mr Wong. According to DBC, upon completion of the transaction, the financial dispute among its shareholders would be resolved.

7. In this connection, in accordance with the relevant statutory and licence requirements, DBC made two applications to the CA, namely (a) application for transfer of all the 40% of shares owned by Messrs Cheng, Ho and Arculli to Mr Wong; and (b) application for deviation of its service from the programming requirements to broadcast music only from 11 to 28 January 2013, pending the resumption of a full-fledged broadcasting service on 28 January 2013.

8. Having taken into account DBC's submission, the CA approved the applications, and imposed on DBC a financial penalty of \$200,000. The details are set out in CA's press release at **Annex C**.

Conclusion

9. It is the duty of a licensed broadcaster to properly manage its own internal affairs. As the CA indicated in its decision, the disruptions to and cessation of broadcasting service of DBC for more than two months was very unsatisfactory and a contravention of very serious nature. The CA clearly communicated this to DBC and had reminded DBC of its obligations to maintain a broadcasting service in accordance with all applicable provisions at all times. The CA also indicated in its decision that, in case of further interruptions to DBC's service, the CA would consider imposing more serious sanctions.

10. The CA has closely followed the developments relating to DBC's service and shareholding changes. The Government will continue to support the development of DAB and urge the operators

concerned to enhance the standard of their DAB services to meet the needs of the listening public.

Advice sought

11. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau
March 2013**

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Communications Authority reaches final decision on contravention of licence by DBC

The following is issued on behalf of the Communications Authority:

The Communications Authority (CA) has decided that a financial penalty of \$80,000 should be imposed on Digital Broadcasting Corporation Hong Kong Limited (DBC) for breaching its sound broadcasting licence arising from the cessation of its service between 8pm on October 10, 2012 to 7am on October 15, 2012.


Under its licence, DBC is required to broadcast each day seven 24-hour sound broadcasting service channels of specified genres. DBC did not provide any sound broadcasting service from 8pm on October 10, 2012 to 7am on October 15, 2012. The CA considered that a complete cessation of service lasting for more than four days was a serious breach given that it was a fundamental obligation of DBC, a sound broadcasting licensee, to provide a 24-hour sound broadcasting service to the public in accordance with its licence. The cessation of service also went against public expectation over the proper use of the spectrum, a scarce and valuable public resource that had been assigned to DBC. Also, DBC had not accounted for the efforts it had made, if any, to avoid the service cessation. Having considered the severity, nature and duration of the breach and representations made by DBC, the CA decided to impose on DBC a financial penalty of \$80,000, which is the maximum financial penalty that might be levied on the first occasion a penalty is so imposed on a sound broadcasting licensee. (Note)

Separately, in connection with the broadcast of music and re-run programmes by DBC from 11.30pm on October 21, 2012 to midnight on October 31, 2012, and DBC's cessation of service again from midnight on October 31, 2012, the receivers of DBC (the Receivers) submitted an application on November 2, 2012 for the CA's approval for DBC to vary its broadcasting arrangements from October 21, 2012 for a period of up to 60 days so that the Receivers could be given more time to resolve the funding issue of DBC. The CA has upon receipt of the application written to require DBC to provide further information and justifications. The CA is still awaiting the full reply from the Receivers. The CA will consider DBC's application in accordance with the established procedure once the required information is available. An announcement will be made once the CA has reached a decision on the application.

Note: According to the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), a financial penalty imposed on a sound broadcasting licensee shall not exceed \$80,000 for the first occasion on which a penalty is so imposed on that licensee. No financial penalty has been imposed on DBC before.

Ends/Monday, November 19, 2012
Issued at HKT 17:49

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Communications Authority proposes to suspend DBC's licence

The following is issued on behalf of the Communications Authority:

The Communications Authority (CA) has decided to consider initiating the procedure to suspend the sound broadcasting licence of Digital Broadcasting Corporation Hong Kong Limited (DBC) for a period of 30 days as a sanction for the breaches by DBC of its licence arising from the disruptions to/cessation of its broadcasting service from October 21, 2012, onwards.

Under its licence, DBC is required to broadcast each day seven 24-hour sound broadcasting service channels of specified genres, announcements in the public interest and a specified number of hours of non-Cantonese programmes. It is also required to provide a specified number of hours of first-run and repeated programmes in accordance with the proposal it submitted when applying for the licence.

From 11.30pm on October 21, 2012, to midnight on October 31, 2012, DBC broadcast only music and re-runs, and from midnight on October 31, 2012, DBC ceased to provide service altogether. Having considered the circumstances of the case and the representations of DBC, the CA decided that the service disruptions/cessation of DBC in the period concerned amounted to a contravention of a serious nature of its licence and that a sanction that is commensurate with the severity, nature and duration of the breach should be imposed.

The range of sanctions that may be imposed by the CA against a contravention includes administrative sanctions (i.e. advice and warning), financial penalty and, in case of a most serious breach, a suspension of licence. The powers to revoke a licence rest with the Chief Executive in Council.


On the sanction to be imposed on DBC, the CA considered that the radio frequency spectrum assigned to DBC for the provision of digital audio broadcasting service was a scarce and valuable public resource. DBC had a fundamental obligation to provide service in accordance with the licence conditions and ensure a proper use of the assigned spectrum to provide an adequate and comprehensive service responsive to the diverse needs of the community. DBC had failed this obligation entirely. Also, the CA noted that this was not the first time that DBC had ceased providing service in accordance with its commitments in its licence. It had earlier ceased service from October 10 to 15, 2012, and a financial penalty of \$80,000 had been imposed on it for the breach. The present breaches, which involved a complete service cessation lasting for more than six weeks and continuing, were much more severe in nature and in its impact on the listening public than DBC's earlier service cessation. The CA considered that despite the shareholders' dispute, it was incumbent upon DBC to resolve its financial predicament early in order to resume normal service as soon as possible. Nearly two months had passed since the service disruptions/cessation on October 21, 2012, but DBC was still not able to commit itself to resumption of its service by a definite deadline. Having considered the severity, nature and duration of the breaches and representations made by DBC, the CA decided that DBC's licence should be suspended for a period of 30 days. This is the most serious sanction that the CA could impose on a sound broadcasting licensee under the existing licensing framework.

In accordance with DBC's licence, the CA is inviting DBC to make representations on the proposed suspension of its licence in 28 days. The CA has clearly communicated to DBC that the proposed suspension of the licence is a sanction imposed on it having regard to the severity of its contraventions of the licence, and

is by no means a temporary relief of DBC's licence obligations. Despite the consideration of suspension of the licence by the CA, DBC should as soon as possible resolve its financial problem and resume a full-fledged service at the earliest possible time, and in any event before the expiry of the proposed suspension period. In the event that DBC is able to resume its broadcasting service any time before or during the licence suspension period, the CA would consider whether an alternative sanction should be imposed in lieu of licence suspension.

Ends/Monday, December 17, 2012
Issued at HKT 18:20

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Communications Authority approves DBC's application for shareholding changes

The following is issued on behalf of the Communications Authority:

The Communications Authority (CA) has approved the application of Digital Broadcasting Corporation Hong Kong Limited (DBC) for proposed changes in its shareholding structure.

On January 10, 2013, DBC applied as per the relevant licence requirement for the CA's approval for a proposed transfer of all the 40 per cent of DBC's shares owned by Mr Albert Jinghan 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 disruption to/cessation of DBC's broadcasting service since October 2012, would be resolved. Before completion of the transaction, Mr Wong had already injected further funding into DBC, enabling DBC to resume broadcasting music from 11am on January 11, 2013. DBC submitted that it would provide a full-fledged broadcasting service with effect from 7am on January 28, 2013.

Having taken into account DBC's submissions above, the CA was satisfied that with the changes in its shareholding structure, DBC would be able to comply with the applicable regulatory requirements, and to provide a sound broadcasting service in accordance with its licence. Accordingly, the CA approved DBC's application for changes in its shareholding structures.

DBC resumed limited service on January 11 to 28, 2013, by broadcasting music only. In this connection, DBC has, as per the licence requirement, applied for the CA's approval for its broadcasting service to deviate from the programming requirements set out in its licence (Note 1). DBC submitted that the application was to allow DBC sufficient time to prepare for the resumption of its full-fledged broadcasting service with effect from January 28, 2013.

While the proposed broadcast of only music during the period fell far short of being a good use of the spectrum assigned to DBC, the CA noted that DBC had taken immediate steps to resume a limited broadcast upon availability of further funding. Also, as DBC resumed a full service on January 28, 2013, as undertaken in its application, the waiver was but temporary in nature. Accordingly, the CA approved DBC's application in order that DBC might be afforded the time to make the necessary staffing and other arrangements for resumption of its service step by step.

As to DBC's breaches of the licence conditions arising from the disruption to/cessation of its broadcasting service from 11.30pm on October 21, 2012, to 11am on January 11, 2013, the CA decided in December 2012 to consider initiating the procedure to suspend DBC's licence for a period of 30 days as a sanction for such breaches and invited DBC to make representations on the proposed suspension of its licence.

Having considered DBC's representations, including its commitment to resuming a service in full compliance with the licence requirements from January 28, 2013, onwards, the CA took the view that a decision to suspend DBC's licence under the circumstances would cause interruption to DBC's resumed service and would not be in the interest of the listening public. The CA also noted that once the problem of financing had been resolved, DBC had taken immediate steps to resume broadcasting service, albeit on a limited scale.

In the circumstances, the CA considered it justifiable to impose a financial penalty on DBC in lieu of a suspension of its licence in order to enable DBC to continue providing service in accordance with its licence. In view of the severity, nature and duration of the breaches, 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 (Note 2).


Furthermore, the CA had clearly communicated to DBC that the disruption to/cessation of DBC's broadcasting service for more than two months was very unsatisfactory and a contravention of very serious nature, and reminded DBC of its obligations to maintain a broadcasting service in accordance with all applicable provisions at all times. In case of further interruptions to DBC's service, the CA would consider imposing more serious sanctions.

Note 1: Under its licence, unless with the approval of the CA, DBC is required to broadcast each day seven 24-hour sound broadcasting service channels of specified genres, announcements in the public interest and a specified number of hours of non-Cantonese programmes. It is also required to provide a specified number of hours of first-run and repeated programmes in accordance with the proposal it submitted when applying for the licence.

Note 2: According to section 24(3) of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), a financial penalty imposed on a sound broadcasting licensee under section 24 (2) shall not exceed \$200,000 for the second occasion on which a penalty is so imposed on that licensee. Financial penalty has been imposed on DBC once before.

Ends/Monday, January 28, 2013
Issued at HKT 18:18

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