

立法會
Legislative Council

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Panel on Information Technology and Broadcasting

Meeting on 27 May 2013

**Updated background brief on applications for
domestic free television programme service licences**

Purpose

This paper provides background information on the applications for domestic free television programme service licences and also a summary of views and concerns expressed by Members in previous discussions.

Background

2. Currently, there are four categories of television programme services under the Broadcasting Ordinance ("BO") (Cap. 562). Licences for domestic free television programme service and domestic pay television programme service are issued by the Chief Executive in Council ("CE in Council") while licences for non-domestic television programme service and other licensable television programme service are issued by the Communications Authority¹ ("CA"). Under the BO, the CA shall consider applications for a domestic free television programme service licence and make recommendations thereon to the CE in Council. After considering the recommendations made by the CA, the CE in Council may grant a domestic free television programme service licence, subject to such conditions as he thinks fit specified in the licence.

¹ The CA is an independent statutory body established under the Communications Authority Ordinance (Cap. 616) on 1 April 2012. It is a unified regulatory body overseeing the converging telecommunications and broadcasting sectors.

3. According to the Administration, it has been the Government's established broadcasting policy to promote the sustainable development of the local broadcasting industry and encourage fair competition, investment and the adoption of innovative technologies by the industry, thereby leading to the provision of more choices of quality programmes to the public. The Government's broadcasting policy has remained unchanged. Under the BO, there is no pre-set limit on the number of free television programme service licences to be issued. Any interested and eligible organizations may make applications to the CA for such licences. The CA will assess all applications in accordance with the BO and established procedures as set out in the Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong, and then submit its recommendations to the CE in Council.

Previous discussions

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4. The Information Technology and Broadcasting ("the Panel") has been following up closely on the progress of the Administration's processing of applications for domestic free TV programme service licences. At the special Panel meeting on 22 July 2010, members noted that the former Broadcasting Authority ("BA") (replaced by the CA on 1 April 2012) received domestic free television programme service licence applications from Hong Kong Television Network Limited², Fantastic Television Limited ("Fantastic TV") and HK Television Entertainment Company Limited ("HKTVE") on 31 December 2009, 15 January 2010 and 31 March 2010 respectively. Members were concerned about the lack of progress by the Administration in processing the applications. The Administration undertook to report to the Panel the outcome of the licence applications.

5. At the Panel meeting on 11 June 2012, the Administration briefed members on the progress of processing the three applications for domestic free television programme service licences. Panel members noted that it had been almost 30 months since the submissions by the applicants, and over 12 months since the recommendations on the applications submitted by the former BA. Members considered the delay unreasonable, both from the perspectives of the public and the commercial operators. They urged the CE in Council to make a final decision on the applications as soon as possible. The Administration advised that the Government had been processing the recommendations submitted by the former BA expeditiously and prudently in

² City Telecom (HK) Limited has been renamed as Hong Kong Television Network Limited ("HKTV") with effect from 10 January 2013.

accordance with the statutory requirements and established procedures. The outcome would be announced as soon as the CE in Council made a decision.

Council meetings

6. Members have expressed grave concern about the progress of processing of the applications by the Administration at different forums. At the Council meetings on 11 January, 2 May, 30 May, 17 October and 7 November 2012, Hon LEUNG Yiu-chung, Hon Starry LEE, Hon LEE Wing-tat, Hon Charles Peter MOK and Hon Frederick FUNG raised questions on the subject. Some Members expressed concern that according to the media reports, the Administration took into consideration the political concern of the Central People's Government on opening up the local television market in processing the three applications, hence affecting the progress of the matter.

7. The Administration advised that the CA assessed applications for domestic free television licences in accordance with the BO and established procedures, taking into account a number of relevant factors. Such factors included the statutory requirements, assessment criteria set out in the CA's Guidance Note and public opinions. The assessment criteria set out in the Guidance Note included the applicant's financial soundness and commitment to investment, the applicant's managerial and technical expertise, the variety, quantity and quality of programmes to be provided, the technical soundness and quality of the proposed service, the speed of service roll-out, the impact on members of the public by any construction works associated with the proposed service, the benefit to the local broadcasting industry and the economy as a whole, as well as the applicant's internal quality monitoring mechanism.

8. As for the three applications for free television programme service licences, the Administration advised that the former BA completed the assessment in accordance with the BO and established procedures, and submitted its recommendations to the CE in Council. The CE in Council would take into account the above-mentioned relevant factors in deciding whether a domestic free television programme service licence should be granted. The Administration was processing the applications in a prudent manner and would announce the outcome as soon as possible once a decision was made. The Administration had no comment on the speculative reports by individual media organizations.

9. A motion was passed at the Council meeting on 28 November 2012 urging the Administration to issue the new domestic free television programme service licences before the end of March 2013. The wording of

the motion moved by Hon Claudia MO and amended by Ir Dr Hon LO Wai-kwok is in **Appendix**.

Recent developments

10. At the Panel meeting on 10 December 2012, members expressed concern about media reports that according to the findings of a consultancy report submitted to the CE in Council, Asia Television Limited ("ATV") might not be sustainable if new domestic free television programme service licences were issued, and that the Administration had formulated contingency plans to cope with situation in the event of ATV's failure in providing domestic free television programme service. These members enquired whether the Administration would make open to the public the consultancy report to allay the public's concern. The Administration advised that as the applications for new domestic free television programme service licences were still being considered by the CE in Council, it would not be appropriate for the Administration to comment on the alleged details of the applications.

11. Some members suggested that the Administration should put the television spectrum to auction when considering the renewal of the existing domestic free television programme service licences which were due to expire in 2015. The Administration noted members' suggestion.

12. At the policy briefing for the Panel on 18 January 2013, the Secretary for Commerce and Economic Development briefed members on the relevant initiatives featuring in the Chief Executive's 2013 Policy Address. Some members reiterated their concerns about the progress of processing of the applications by the Administration, and whether the judicial review application filed by Television Broadcasts Limited ("TVB") against the former BA (and now the CA) and the CE in Council in January 2013 would further delay the processing of the applications. The Administration advised that it was not in a position to comment on matters relating to the judicial proceedings.

13. At the special meeting on 25 January 2013, the Panel followed up the issues relating to the applications for domestic free television programme service licences. The Panel also met with representatives of relevant stakeholders to gauge their views on the subject. The free TV licence applicants (namely HKTV, Fantastic TV and HKTVE) attending the meeting urged the Government to issue the new free TV licences as soon as possible, whereas the existing two free TV licensees (namely ATV and TVB) objected to the processing of the applications by the CE in Council. The Panel strongly condemned the Government for ignoring the public's right to know

and their interests by unreasonably delaying the issuance of such licences, and passed a motion to this effect.

Latest position

14. At the Panel's request, the Administration provided a progress report on 28 March 2013 which was circulated to members vide LC Paper CB(4)533/12-13(01). The Administration explained that the processing of the free TV licence applications involved complicated issues, the handling of which was time-intensive. It was also addressing new developments emerged during the process which concerned statutory requirements and procedures. As bound by the confidentiality rule of the Executive Council, the Administration was unable to provide the Panel with further details at a time when the CE in Council was considering the matter. The CE in Council would continue to process the applications in strict compliance with the relevant procedures. The outcome would also be announced as soon as possible once a decision was made.

Relevant papers

15. A list of the relevant papers with their hyperlinks is at http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb_ag.htm.

Council Business Division 4
Legislative Council Secretariat
21 May 2013

(Translation)

Motion on
“Domestic free television programme service licence applications”
Moved by Hon Claudia MO
at the Council meeting of 28 November 2012

Motion as amended by Ir Dr Hon LO Wai-kwok

That, given that the progress of vetting the three applications for domestic free television programme service licences (‘free TV licences’) has always been of major concern to the society, but the Government has not yet announced the application results, causing various speculations in society; in order to give the local free television industry a business environment for fair competition and sustainable development, this Council puts forward the following views and recommendations, and urges the relevant authorities to respond positively, including:

- (a) as the Government has been promoting a pluralistic and open society, but on the applications for free TV licences, it has not made a decision after almost three years, this Council therefore requests the Government to undertake to issue additional free TV licences before the end of March next year and issue the licences as soon as possible;
- (b) as the cultural and creative industry is one of the six industries where Hong Kong enjoys clear advantages, and in Hong Kong a considerable number of young people enroll in relevant multi-media courses, in order to increase employment opportunities for these young people and facilitate the development of creative media, the Government should proactively formulate the relevant policies and measures; and
- (c) the Government should make the vetting process of free TV licence applications open and transparent to dispel public misgivings; the relevant broadcasting ordinances and codes of practice should keep pace with the times and, on a fair and equal basis, apply across the board to existing free TV licensees and operators joining the competition in the future.