

立法會
Legislative Council

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Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Friday, 8 November 2013, at 5:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon WONG Yuk-man (Chairman)
Dr Hon Elizabeth QUAT, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members attending : Hon Abraham SHEK Lai-him, GBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon WU Chi-wai, MH
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon Dennis KWOK
Hon IP Kin-yuen

Members absent : Hon SIN Chung-kai, SBS, JP

Public officers attending : Agenda item I

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

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

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

Attendance by invitation : Agenda item I

Hong Kong Television Network Limited

Mr Ricky WONG
Chairman

Mr Simon LEUNG
Head of Legal

Hong Kong Television Trade Union

Mr Henry YEUNG Chi-ho
Chairman

Hong Kong Television Entertainment Company Limited

Mr Stuart CHIRON
Head of Group Regulatory Affairs

Ms Janice LEE
Managing Director
TV & New Media

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (4)3

Ms Anki NG
Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)2

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

Members noted the letter dated 7 November 2013 from the Communications Authority ("CA") with a note setting out the manner in which it had processed the three applications for domestic free television programme service licences ("free TV licences"), and its advice that it would not be represented at the meeting as it had nothing to add to the issues to be discussed by the Panel. Members expressed disappointment that the Chairman of the CA had declined the Panel's invitation to attend this meeting.

The Chairman suggested and members agreed to schedule another special meeting and invite the Chairman of the CA to attend.

(Post-meeting note: With the concurrence of the Chairman, the special meeting was held on 2 December 2013.)

Welcoming remarks by the Chairman

2. The Chairman welcomed representatives of the Administration and organizations to the meeting. He informed the meeting that Television Broadcasts Limited, Asia Television Limited and Fantastic Television Limited had declined the Panel's invitation to attend this meeting. He reminded the organizations that, when addressing the Panel at the meeting, they were not covered by the privileges and immunities provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO"), and their written submissions were also not protected by the said Ordinance. He also reminded members of Rules 83A and 84 of the Rules of Procedure ("RoP") on declaration of interest.

Presentation by the Administration

3. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") briefed members on the Chief Executive ("CE") in Council's decision on free TV licence applications. He said that in considering public interest, the CE in Council was of the view that the sustainable and steady development of the free TV market was an important consideration, including the impact of the new licences on the sustainability of the TV market in the broad sense. He stressed that it remained the Government's policy not to set a ceiling on the number of licences to be issued. This, however, could not be interpreted as meaning that any applicant meeting certain basic requirements must be granted a licence.

Presentation by deputations

Mr Ricky WONG, Chairman of Hong Kong Television Network Limited ("HKTV")

4. Mr Ricky WONG addressed the Panel by quoting from various paragraphs of a book which he had recommended to local university students who asked him if Hong Kong was still a good place to start a business despite the difficulties he was facing. Mr WONG said that the book, with the title "If they were your children" ("如果是你的子女"), was written by the CE, Mr LEUNG Chun-ying. According to the book, Hong Kong was a place where

people were encouraged to pursue their dreams, where the principle of survival of the fittest, a driving force for success, was upheld. As such, Mr WONG remained hopeful in pursuit of the Hong Kong dream.

Mr Henry YEUNG Chi-ho, Chariman of HKTV Trade Union

5. Mr Henry YEUNG said that he did not see any reason why a licence should not be granted to HKTV which fully met the statutory requirements under the Broadcasting Ordinance ("BO") (Cap. 562). He was of the view that allowing more competition would be beneficial to the TV industry and the society.

Ms Janice LEE, Managing Director – TV & New Media, Hong Kong Television Entertainment Limited ("HKTVE")

6. Ms Janice LEE welcomed the approval-in-principle ("AIP") for the free TV licence application of HKTVE granted by the CE in Council and hoped that the licence conditions would be negotiated as soon as possible. She then briefed members on HKTVE's plan to provide free TV service for the Hong Kong audience for the coming few years. She said that the total investment plan across the first six years of operations would be over HK\$1.3 billion, a substantial part of which would be invested in programming and production. In addition to its productions, HKTVE had set aside a pool of funds to be accessed by local creative talents. In this regard, the Independent Productions Fund formed part of HKTVE's preparation for its free TV service. In addition to identifying and acquiring local independent TV productions, HKTVE would also acquire local and international drama productions. It had already completed the filming of its first drama series, and had started preparation for the second and third drama series. Furthermore, HKTVE intended to show some world-class sports content. To support the development of local sports culture, HKTVE would also broadcast various local and school community sporting events.

Discussion

The former Broadcasting Authority ("BA")'s recommendations

7. Noting that the former BA's recommendations for the granting of three free TV licences was not adopted by the CE in Council, Mr Ronny TONG, Mr James TO and Ms Emily LAU considered that the CE in Council should have referred the applications back to the former BA or the CA for reconsideration, especially when he had made a change in policy by adopting the "gradual and orderly approach" in considering the free TV licence

applications subsequent to the former BA's recommendations. These members also considered that procedural justice had been compromised in the CE in Council's handling of the applications. Mr Michael TIEN Puk-sun shared similar views.

8. Mr CHAN Chi-chuen and Mr LEUNG Kwok-hung expressed strong dissatisfaction that the CE in Council had completely disregarded the former BA's recommendations. These members questioned why the CE in Council had never consulted the former BA or the CA on neither the gradual and orderly approach nor the ranking of the three applications. Mr Dennis KWOK and Mr WU Chi-wai shared similar views.

9. SCED advised that the gradual and orderly approach was not yet a consideration when the former BA made its recommendations to the CE in Council in July 2011. The CE in Council subsequently adopted a broader perspective in considering the applications by taking into account the sustainability of the TV market as a whole. Nevertheless, he stressed that the Administration did not consider the adoption of the gradual and orderly approach a change in policy, nor did it see the need to consult the former BA or the CA on the applications again. In processing the applications, the CE in Council had sought further information/representations from the relevant parties (including the applicants and the existing licensees) as and when the evolving circumstances required. The applicants had been given ample time and opportunities to submit rounds of responses and representations on these matters. On the basis of legal advice, the requirement of procedural fairness was strictly adhered to throughout the process.

10. Noting that there was no statutory requirement under the BO to adopt the gradual and orderly approach in considering the free TV licence applications, Ms Cyd HO opined that there was no legal basis for the CE in Council's decision to grant two instead of three free TV licences. She was concerned whether the decision was made in order to protect the existing free TV licencees, especially Asia Television Limited which might not be sustainable if all three licences were granted. In response, SCED reiterated that the CE in Council had processed the free TV licence applications in accordance with the BO and established procedures. There was no question of protecting any vested interests.

11. Noting the seemingly contradictory explanations provided by the Administration and the CA, Mr MA Fung-kuok and Mr NG Leung-sing enquired why the CE in Council had come to a different conclusion from the recommendations of the CA. SCED advised that the CE in Council and the former BA had attached unequal weights to the factors considered in the decision making process. The former BA was of the view that the

sustainability of individual applicants should not be a primary consideration in deciding whether a licence should be granted. On the other hand, the CE in Council was of the view that the sustainable and steady development of the free TV market as a whole was an important consideration. The gradual and orderly approach should be adopted in introducing competition, lest an adverse impact be brought about by a sharp increase in the number of free TV operators.

12. SCED further advised that the CE in Council had considered the three free TV licence applications against 11 factors and four assessment criteria. The 11 factors included the three applications, the recommendation submitted by the former BA, the statutory requirements under the BO, the assessment criteria in the "Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong", the sustainability of the free TV market in the broad sense, the consultant's reports on the impact of introducing new competitors on the competition environment of the free TV market, all representations/responses by relevant parties and all relevant documents, all relevant latest developments, all public views received, the Government's prevailing broadcasting policy, and public interest. The four assessment criteria included financial capability, programming investment, programming strategy and capability, and technical soundness. Accordingly, the CE in Council had decided to approve two of the three applications at this juncture.

13. Mr Paul TSE and Mr Steven HO Chun-yin enquired whether it was a statutory requirement under the BO for the CE in Council to accept the recommendations made by the former BA or the CA in making the licensing decision. In response, SCED advised that under the BO, the former BA or the CA would consider applications for free TV licences and make recommendations thereon to the CE in Council. By virtue of section 10(1) of the BO, after considering the recommendations made by the former BA or the CA, the CE in Council might grant a free TV licence, subject to such conditions as he thought fit specified in the licence. It was up to the CE in Council to accept or reject the recommendations of the former BA or the CA and make the final decision.

Disclosure of information

14. Mr Charles Peter MOK enquired if the licence applicants had ever been consulted by the Administration on whether they would disclose the information involved in the processes of vetting and approval of free TV licence applications. In this connection, Ms Claudia MO said that she had written to the Chairman of the House Committee proposing to seek the Council's authorization for the appointment of a select committee to inquire

into the matter, and for the select committee to exercise the powers under section 9(1) of the LCPPO to summon Mr Ricky WONG, Chairman of HKTV, to attend before the select committee to give evidence and produce all relevant information involved in the processes of vetting and approval of domestic free television programme service licence applications. Ms MO asked Mr WONG whether he would be willing to disclose the relevant information, in particular those contained in the four consultancy reports commissioned by the Administration during the process, if the select committee was so appointed and authorized.

15. Mr Ricky WONG responded that he would consider disclosing the relevant information under the protection of the LCPPO. As regards the information provided by the Administration to him on a confidential basis, he declined to say whether he would agree to the disclosure at this stage. Nevertheless, he was seeking legal advice on his right to disclose the relevant information on the grounds that he had never signed any undertaking preventing him from doing so.

16. Mr Stuart CHIRON, Head of Group Regulatory Affairs of HKTVE said that HKTVE was never consulted by the Administration on the subject of information disclosure. The question of disclosure did not arise as the information it submitted to the Administration was provided and should be treated on a confidential basis by both HKTVE and the Administration. In addition, much of the information was commercially sensitive.

Other issues

17. Mrs Regina IP and Ms CHIANG Lai-wan sought clarification from Mr Ricky WONG about some media reports that a high-ranking Government official had promised to grant him a licence. Mrs IP opined that if the reports were true, it would have been ultra vires for the official to make such a promise.

18. In response, Mr Ricky WONG quoted the Government official as saying that as long as his company could meet the statutory requirements, the Administration had no reason not to issue the licence. Mr WONG said that he was not surprised at the time because the official was only stating an existing licensing policy. SCED said that he was not aware that such a promise had ever been made and he did not make such a promise.

19. In response to Mr YIU Si-wing's enquiry whether HKTVE would give priority to hire the HKTV staff who were laid off after the CE in Council's decision not to grant HKTV a licence, Ms Janice LEE advised that HKTVE had plans to hire 400 to 500 additional staff to prepare for the award of the

free TV licence, and would welcome former staff of HKTV to apply for the job vacancies.

(To allow sufficient time for discussion, the Chairman directed that the meeting be extended for 15 minutes.)

Motion

20. The following motion was proposed jointly by eight members namely, Mr James TO Kun-sun, Ms Emily LAU Wai-hing, Mr Ronny TONG Ka-wah, Ms Cyd HO Sau-lan, Mr LEUNG Kwok-hung, Mr Charles Peter MOK, Mr CHAN Chi-chuen and Mr SIN Chung-kai:

"本會根據《立法會(權力及特權)條例》(第 382 章)第 9(2)條授權資訊科技及廣播事務委員會行使該條例第 9(1)條所授予的權力，以命令香港電視網絡有限公司董事會主席及/或其授權代表到資訊科技及廣播事務委員會席前，出示香港特別行政區政府在審批本地免費電視節目服務牌照申請的過程中所有相關的文據、簿冊、記錄或文件。"

(Translation)

"That the Panel on Information Technology and Broadcasting be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance to order the Chairman of Hong Kong Television Network Limited and/or his authorized representatives to attend before the Panel on Information Technology and Broadcasting to produce all relevant papers, books, records or documents involved in the processes of vetting and approval of domestic free television programme service licence applications by the Hong Kong Special Administrative Region Government."

21. Mr Paul TSE said that at the meeting of 6 November 2013, the Council had already negated Hon Charles Peter MOK's motion under the LCPPO seeking the Council's authorization to empower the Panel to exercise the powers under section 9(1) of the LCPPO and to order the SCED to attend before the Panel on or before 8 November 2013 to produce all relevant papers, books, records or documents involved in the processes of vetting and approval of domestic free television programme service licence applications by the Hong Kong Special Administrative Region Government ("HKSARG") (including but not limited to all relevant documents and reports submitted by the former BA to the HKSARG). Mr TSE expressed concern whether the

negatived motion was substantially the same as the motion being proposed, and should therefore not be dealt with by the Panel. In this regard, he drew members' attention to Rule 32(2) of the RoP on "Motions on Previous Decisions of Council", which stated that "where the Council has taken a decision on a specific question and the question has been decided in the negative, no further motion shall be moved in relation to that question during the current session." He asked Assistant Legal Adviser 3 ("ALA3") to advise on the matter.

22. ALA 3 opined that Rule 32(2) referred to "a specific question" rather than "a subject matter" and that the two motions were arguably different in terms of the persons to be ordered to produce the relevant information, namely SCED in the case of the first motion, and the Chairman of HKTU and/or his authorized representatives in the case of the second motion. ALA3 added that if the motion being proposed was supported by the Panel and would be moved at a future Council meeting, it would be for the President of the Legislative Council to decide whether the two motions were substantially the same and referred to the same "specific question".

23. Ms Cyd HO considered that the motion being proposed should be dealt with by the Panel. In this connection, Mr Paul TSE asked whether Rule 32(2) was applicable in the context of a Panel meeting. In response, ALA 3 advised that it was not expressly stated in the RoP that Rule 32(2) also applied to the proceedings in a committee (including a Panel meeting).

24. Mr Paul TSE requested the Chairman to make a ruling on whether the motion being proposed should be dealt with by the Panel. Mr James TO opined that there was no need for the Chairman to rule on the matter as the first motion was moved at a Council meeting whilst the motion being proposed was moved at a Panel meeting. As such, the question of whether the two motions were substantially the same did not arise.

25. The Chairman decided that if Rule 32(2) applied to the proceedings of a Panel, the motion being proposed was not substantially the same as the one negatived at the Council meeting of 6 November 2013. He also considered that the motion could be dealt with by the Panel as it was directly related to the agenda item under discussion. Members raised no objection. The Chairman put the motion to vote. Of the 20 members present, 8 members voted for and 10 members against the motion and two members abstained from voting. The Chairman declared that the motion was negatived.

Any other business

26. There being no other business, the meeting ended at 7: 15 pm.

Council Business Division 4
Legislative Council Secretariat
6 January 2014