

For discussion
on 27 March 2014

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

**Matters related to the Broadcast-type Mobile Television Service
("Mobile TV Service") Proposed to be Provided by Hong Kong
Mobile Television Network Limited ("HKMTV")**

Purpose

Since the launch of Mobile TV Service in 2012, China Mobile Multimedia Broadcasting ("CMMB") has all long been adopted as the transmission standard. The operator, HKMTV, advised the Office of the Communications Authority ("OFCA") on 23 January 2014 of its proposal to change the original transmission standard to Digital Terrestrial Multimedia Broadcasting ("DTMB") for its new Mobile TV Service. As DTMB is also adopted for the existing domestic free television programme services ("FTV"), HKMTV's eventual adoption of the same standard would render its television service available for reception by an audience of more than 5 000 specified premises in Hong Kong. This, under the existing legislation and policy, requires that a FTV licence or domestic pay television programme service ("PTV") licence under the Broadcasting Ordinance (Cap. 562) ("BO") be obtained prior to the provision of the service. OFCA held two meetings with HKMTV on 24 January 2014 and advised HKMTV of the relevant requirements under the BO. HKMTV then via its solicitor made representations to OFCA. The parent company of HKMTV, Hong Kong Television Network Limited ("HKTV"), also held press conferences to oppose OFCA's position. The Communications Authority ("CA") and OFCA have in the past two weeks responded to the issues raised by HKTV and HKMTV through different channels. This paper briefs Members on the Government's policy and the CA's position on the matters.

Background

The Licensing and Regulatory Regime of FTV and PTV

2. Under section 5 of the BO, “a person shall not provide a broadcasting service except under and in accordance with a licence”. Under section 2 of the BO, the definitions of “FTV” and “PTV” are as follows:

- *Domestic free television programme service means a television programme service which*
 - (a) *is intended or available for reception by the public free of charge in Hong Kong;*
 - (b) *is intended or available for reception by an audience of more than 5 000 specified premises¹; and*
 - (c) *primarily targets Hong Kong; and*

- *Domestic pay television programme service means a television programme service which*
 - (a) *is intended or available for reception by the public, on payment, whether periodically or otherwise, of a subscription in Hong Kong;*
 - (b) *is intended or available for reception by an audience of more than 5 000 specified premises; and*
 - (c) *primarily targets Hong Kong.*

The Framework for Development of Mobile TV Service Promulgated by the Government (“Policy Framework”)

3. To facilitate the development of Mobile TV Service in Hong Kong, the Government, after two rounds of public consultations in 2007 and 2008², promulgated the Policy Framework in December 2008³. As mentioned in the relevant Legislative Council Brief (“LegCo Brief”) (**Annex A**), “mobile TV services” generally refers to “*the provision of*

¹ Specified premises mean any domestic premises, or hotel room, in Hong Kong.

² The first consultation paper is available at http://www.cedb.gov.hk/ctb/eng/paper/doc/mobile_TV.pdf, and the second consultation paper is available at http://www.cedb.gov.hk/ctb/eng/paper/doc/mobile_TV2.pdf.

³ The Government announced on 11 February 2010 the revised Policy Framework, in which the flexibility for introducing digital audio broadcasting services in the Mobile TV context was removed, and the cap allowed for providing other value-added communications services was adjusted from 50% to 25% of the spectrum allocated.

television programme services by wireless transmission of audio-visual content for reception by mobile phones or other portable devices” (emphasis added). Furthermore, paragraph 14 of the LegCo Brief clearly states that:

“In relation to programming, the [BO] currently does not regulate television programme services for mobile reception (i.e. reception on the move not related to any specified premises) in Hong Kong unless the services are not primarily targeting Hong Kong.” (emphasis added)

4. Simply put, the Government’s policy on mobile TV services has always been compatible with the legislation, under which domestic television programme services **for reception by mobile devices not related to any specified premises** are only subject to the Unified Carrier Licence (“UCL”) issued under the Telecommunications Ordinance (Cap. 106) (“TO”), but not the licensing requirements under the BO. These services include the local “broadcast-type mobile television service” transmitted via airwaves for “reception on the move not related to any specified premises” as well as the “streaming-type mobile television service” provided over the platform of mobile network operators or the Internet⁴.

5. In fact, the policy of Mobile TV Service is forward-looking and adopts the technology neutral principle. While there is no restriction on the transmission standard to be adopted by the Mobile TV Service operator, the operator shall ensure that its service complies with the requirements of all legislations and licence, including the obtaining of all the required licences under the relevant legislations. In the light of Mobile TV Service being a nascent personalised service, the Government made a policy decision in 2008 not to amend the BO to cover Mobile TV Service not involving reception by audience of any specified premises, and hence a more light-handed regulation on the content of such service. This policy stance remains unchanged today.

6. However, it should be pointed out that under the existing legislation and policy, any person intending to provide Mobile TV Service for reception by audience of specified premises shall obtain the

⁴ Any service provided on the service commonly known as the Internet is not regarded as television programme service and is exempt under the BO.

relevant licences under the BO prior to the service provision⁵. The mere fact that any person holds a UCL under the TO does not automatically displace further licensing requirements under the BO if the service the said person intends to provide triggers the licensing requirement thereunder.

7. On the other hand, under the Policy Framework and the UCL issued to HKMTV under the TO, HKMTV is required to provide service coverage to at least 50% of the population of Hong Kong, which means the Mobile TV Service shall be available for reception via portable devices in areas where at least 50% of the population of Hong Kong live. Simply put, the 50% of the population is the service coverage requirement.

8. Since the reception modes and the receiving apparatus for Mobile TV Service are different from those for FTV, the requirement of service coverage for reception by at least 50% of the population via portable devices is not equivalent to authorising the signal concerned to be available for reception by household television sets at specified premises without any licence under the BO. As a matter of fact, there is no contradiction between the two requirements.

Different Regulatory Regimes for “Services” under the BO and TO

9. The current licensing and regulatory regimes for television programme services is formulated based on the nature and pervasiveness, rather than the transmission mode, of the services. For the four types of television programme services regulated under the BO (namely FTV, PTV, non-domestic television programme service and other licensable television programme service), licensees shall comply with the relevant legislations including the BO, Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) and other relevant subsidiary regulations, including but not limited to the requirements in relation to the control and management of the licensees, prohibition on anti-competitive conduct, prohibition on abuse of dominance, etc. Furthermore, licensees shall comply with the terms and conditions of their licences as well as the codes of practice issued by the CA. The codes of practice set out clearly the programme, advertising and technical standards for compliance by

⁵ Services regulated under the BO include FTV, PTV and other licensable television programme service for reception by an audience of specified premises, as well as non-domestic television programme service not primarily targeting Hong Kong.

licensees. Since FTV is the most pervasive among the four types of television programme services, it is subject to the most stringent regulation with a view to protecting children and public morals. As such, if any Mobile TV Service operator in effect also provides FTV for reception by audience of specified premises, such service, under the spirit of the policy and legislation, should also be subject to the same licensing and regulatory regimes as other conventional FTV providers with a view to safeguarding the public interest. Allowing any person through the provision of Mobile TV Service to easily bypass the stringent requirement on programme content under the BO will demolish the regulatory regime that serves to protect the public interest.

10. We must point out that the BO and the TO regulate different areas, and differ in the criteria triggering a requirement for licence as well as how “services” are to be regulated. Against the background mentioned in paragraph 9 above, under the BO, as long as the domestic television programme signal is **intended or available for reception** by an audience of more than 5 000 specified premises, this would constitute “provision of television programme service”. In other words, as long as the domestic television programme signal is technically **capable for reception** by an audience of more than 5 000 specified premises, this would constitute “provision of television programme service” irrespective of whether the concerned operator has any plan to provide such service for reception by audience of specified premises, thereby triggering the licensing requirement under the BO and rendering its programme content subject to the regulation under the BO. On the other hand, under section 8(1)(aa) of the TO, no person shall in Hong Kong in the course of business “offer a telecommunications service” except under and in accordance with a licence. Under section 8(1A) of the TO, a person is to be regarded as “offering a telecommunications service” if he **makes an offer** which, if accepted, would give rise to an agreement, arrangement or understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service. In other words, the mere fact that television programme signal is technically capable for reception at moving and/or fixed locations **is not equivalent to the concerned operator in the course of business offering a telecommunications service**, and the concerned operator therefore does not need to obtain a licence under the TO. This is different from the requirement under the BO that an operator is required to obtain a licence as long as the signal concerned is available for reception by specified premises.

The UCL held by HKMTV

11. At present, there is only one operator authorised to provide Mobile TV Service in Hong Kong. The service was launched in February 2012 based on the transmission standard of CMMB. On 20 December 2013, HKTV announced the acquisition of 100% of the equity interest of the original operator and changed the name of the operator to HKMTV on 17 January 2014. Currently, HKMTV holds a UCL issued under the TO, authorising it to provide Mobile TV Service specified under paragraph 1.1 of Schedule 1 to the UCL.

12. Paragraph 1.1 of Schedule 1 to the UCL of HKMTV stipulates that:

*“broadcast-type mobile television services mean the services of conveying television programmes operating at the frequencies specified in Schedule 3 with the use of digital broadcasting technologies **for reception at moving locations in Hong Kong.**”* (emphasis added)

Paragraph 2 of the same schedule further provides that: *“**nothing in this licence authorises the licensee...to provide any fixed services using the frequencies specified in Schedule 3**”* (emphasis added);

and

*“**nothing in this licence authorises the licensee...to provide any service subject to licensing under any other ordinance**”* (emphasis added).

The Service Proposed to be Provided by HKMTV

13. In view of the change in HKMTV’s shareholding structure, OFCA wrote to HKMTV on 17 January 2014 and requested it to provide and update information in relation to the launch of its Mobile TV Service. HKMTV replied OFCA in writing on 23 January 2014 and confirmed that it proposed to change the transmission standard from CMMB to DTMB which is currently adopted for the provision of digital terrestrial television service. On 24 January 2014, OFCA held two meetings with HKMTV to discuss the issues in relation to the launch of its Mobile TV Service. On the proposed change to DTMB by HKMTV, OFCA

reminded HKMTV that the consequence of the change would render its Mobile TV Service available for reception by an audience of more than 5,000 specified premises in Hong Kong, thereby triggering the requirement for a FTV licence or PTV licence under the BO. The notes of the two meetings were issued to HKMTV on 6 February 2014 (the redacted version of the notes of the meetings with HKMTV's responses removed was attached at **Annex B**).

14. Subsequently, HKMTV via its solicitor issued a total of four letters to OFCA on 20, 21 and 28 February 2014 and 4 March 2014, disputing OFCA's views on the proposed change of transmission standard. Based on the legal advice of an external independent legal advisor and a London Queen's Counsel, OFCA via its external legal advisor replied to HKMTV in writing on 11 March 2014 and confirmed OFCA's position as mentioned in paragraph 13 above as requested by HKMTV.

The Administration's Position on the Proposed Change of Transmission Standard by HKMTV for Provision of its Mobile TV Service

15. As mentioned in paragraph 5 above, the CA has all along been adopting the technology neutral principle. An operator is free to choose the transmission technology and standard for the provision of its television service, as long as it complies with the requirements of all relevant legislations and its licence. This is the same for Mobile TV Service. The market can freely choose a technical standard that is internationally recognized, subject to operators' compliance with the requirements in all legislations, including the obtaining of the required licences under the relevant legislations. In fact, due to the nature of broadcasting technology, amongst the various standards applicable for digital terrestrial television, some of them may support reception at fixed or moving locations. However, the most important issue is whether the service intended to be provided by the operator in effect is a fixed or a mobile service. We do not consider that there is any conflict between the technology neutral principle and compliance with legal requirements.

16. It is incumbent upon all television programme service providers to ensure that the proposed services, upon and after their launch, comply with the requirements of all legislations and licence conditions. Under the policy and the laws, the mere fact that a company holds a UCL

issued under the TO for provision of Mobile TV Service does not automatically displace further licensing requirements under the BO if the service the said company intends to provide triggers the licensing requirement thereunder. In fact, as stated in paragraph 12 above, the UCL of HKMTV does not permit HKMTV to provide any fixed services, and clearly specifies that “*nothing in this licence authorises the licensee to provide any service subject to licensing under any other ordinance*”, including FTV and/or PTV as defined under the BO. As such, if HKMTV proposes to adopt a transmission standard, thereby in effect providing both Mobile TV Service as well as FTV or PTV for reception by specified premises, HKMTV not only needs to hold a telecommunications licence issued under the TO but must also obtain a broadcasting licence issued under the BO.

17. Since DTMB is adopted as the transmission standard for the provision of digital terrestrial television programme services in Hong Kong, a vast majority of the household television sets have already been equipped with DTMB receivers. Furthermore, according to OFCA’s information, at present there are around 90 000 residential buildings (which is close to 70% of buildings in Hong Kong) made use of standalone antennas for reception of television programme services. These buildings are not legally obligated to install filters to block reception of Mobile TV signal. If HKMTV changes the transmission standard of its Mobile TV Service from CMMB to DTMB, the number of households that would be able to receive the concerned television signals would far exceed the minimum threshold that triggers the requirement for a FTV licence or PTV licence under the BO. As such, HKMTV needs to first obtain a FTV licence or PTV licence under the BO prior to service provision. As HKMTV currently is not a holder of a FTV licence or PTV issued under the BO, HKMTV may consider transmission standards other than DTMB, such as Digital Video Broadcasting - Handheld (“DVB-H”), CMMB or other mobile TV transmission standards for the provision of its Mobile TV service. If HKMTV is concerned that the television sets to be manufactured in the future will be equipped with receivers of the standard that it has chosen to adopt such as DVB-H or CMMB, rendering its Mobile TV Service available for reception by an audience of more than 5 000 specified premises, HKMTV may consider encryption of their signal prior to transmission. The aforementioned mobile TV standards and encryption are technically viable options. All operators have the responsibility in monitoring the market situation and to ensure that they comply with the requirements of all legislations and licence conditions during the validity of their licences. If an operator has any queries in

relation to the transmission standard, the CA/OFCa is willing to discuss with the operator concerned.

The CA/OFCa's Responses to Messages Released by Mr Ricky Wong to the Media

18. To enable Members to have a better understanding of the statements made by the Chairman of HKTV, Mr Ricky Wong ("Mr Wong"), since 11 March 2014 in relation to the transmission standards of Mobile TV Service and other related matters as well as the responses from the CA/OFCa, we have summarised the messages released by Mr Wong as reported by the media and the responses from the CA/OFCa, and listed the key points of argument at **Annex C** for Members' reference.

Way Forward

19. As mentioned in the meeting on 24 January 2014, the CA and OFCA welcome further discussion with HKMTV on its proposal of transmission standard and other related matters.

20. In response to the request made by HKMTV on 28 February 2014, the CA has made the arrangement for HKMTV to make verbal representation to the CA, at the regular meeting to be held in March 2014, on issues relating to the provision of its Mobile TV Service.

21. It is also noted that HKMTV has indicated that they might apply for judicial review on the change of transmission standard. OFCA will respond accordingly if HKMTV makes such application.

**Commerce and Economic Development Bureau
(Communications and Technology Branch) and
Office of the Communications Authority
March 2014**

File Ref: CTB(CR)9/19/14(08) Pt.4

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

FRAMEWORK FOR DEVELOPMENT OF MOBILE TELEVISION SERVICES

INTRODUCTION

At the meeting of the Executive Council on 16 December 2008, the Council ADVISED and the Chief Executive ORDERED that broadcast-type mobile TV services should be developed in Hong Kong, according to the proposed implementation framework set out at Annex.

JUSTIFICATIONS

Mobile TV Services

2. The expression “mobile TV services” generally refers to the provision of television programme services by wireless transmission of audio-visual content for reception by mobile phones or other portable devices. The inherent characteristics distinguishing mobile TV services from conventional TV services are mobility and personalised consumption. Currently, the 2.5G and 3G mobile telecommunications platforms allow operators to deliver audio-visual content on demand through streaming technologies¹. Such services, often known as “streaming-type mobile TV”, ride on the frequency spectrum that have already been allocated to the existing 2.5G and 3G mobile telecommunications licensees. This allows mobile multimedia content to be transmitted in a point-to-point manner. However, there are a number of limitations with this approach, not least the fact that the quality of such service may degrade when the number of receiving mobile devices used at the same time in the vicinity exceeds the capacity of the relevant network.

¹ Provision of streaming-type mobile TV service is not separately licensed other than through the mobile carrier licences held by the mobile phone operators.

3. Internationally, communications operators have been working to provide a truly mobile TV service that can deliver audio-visual content to a critical mass of viewers. A number of point-to-multipoint technologies, with higher transmission capacity, have been developed to capitalise on the emerging market opportunities. The introduction of such services, often known as “broadcast-type mobile TV”, requires additional frequency spectrum. The commercial deployment of competing technologies is now taking place in a number of economies, including the United States, the United Kingdom, Germany, Italy, Japan and South Korea. Many other jurisdictions are conducting technical trials to pave the way for the commercial operation of broadcast-type mobile TV services.

Relevant Spectrum for Mobile TV and Other Digital Broadcasting Services

4. According to overseas experience, four frequency bands are suitable for digital broadcasting services, including broadcast-type mobile TV services. They are:

- (a) UHF Band (470MHz – 806MHz);
- (b) Band III (174MHz – 230MHz);
- (c) L Band (1466MHz – 1480MHz); and
- (d) part of S Band (2635MHz – 2660MHz).

5. In respect of UHF Band, this may be used to provide either digital terrestrial television (DTT) or broadcast-type mobile TV services. In Hong Kong, we have identified a total of five multiplexes² in the UHF Band. The two free-to-air TV broadcasters have been allocated three of the multiplexes to allow them to provide DTT services. Originally reserved on technical grounds pending the launch of DTT, the two remaining multiplexes are now available for the provision of more digital broadcasting services including DTT and/or broadcast-type mobile TV service following the successful implementation of DTT. A frequency multiplex of 8 MHz in UHF Band is capable of carrying about 20 mobile TV channels³.

² A frequency multiplex is a digital transmission channel which combines programme materials and other data in a digital form for transmission via a frequency channel.

³ This is based on the technical trials conducted in Hong Kong with the use of DVB-H and MediaFLO technologies, the prevalent mobile TV technologies in Europe and the US operating in this band. Alternatively, one UHF Band multiplex may accommodate one to two high-definition television channels or four to eight standard-definition television channels based on national DTT standard or European DVB-T standard.

6. Band III has been used for digital audio broadcasting (DAB) services in Europe for some time now but the use of this frequency band for broadcast-type mobile TV services is also now feasible. A Band III frequency multiplex of 1.5 MHz can carry three mobile TV channels or seven DAB channels, or a mix of both⁴. In Hong Kong, four frequency multiplexes in Band III will be available from 2009 onwards⁵. Overseas experience has shown that Band III frequencies are acceptable substitutes when the UHF Band frequencies are not available.

7. As regards L Band, the use of it for mobile TV services is not popular. The local market response is that this frequency band should be reserved subject to further development of the worldwide market. As regards S Band, it is mainly used for satellite-based mobile TV services for a wide regional coverage. The local market response is that this band should not be allocated for the time being but should be reserved keeping in view the development in satellite-based mobile TV services on the Mainland.

The Implementation Framework

8. Taking into account the outcome of the consultation exercises and in accordance with the market-led, technology-neutral and facilitating regulatory approach, we have mapped out an implementation framework. This is set out at **Annex**. A summary of the proposal is set out in the ensuing paragraphs.

Spectrum Availability and Allocation

9. The availability of suitable frequency spectrum is a prerequisite for the introduction of broadcast-type mobile TV services in Hong Kong. Overseas experience has shown that UHF Band frequencies are popular for broadcast-type mobile TV services while Band III frequencies are acceptable substitutes when the UHF Band frequencies are not available. Having regard to technological advancement, public views and market response received as well as overseas experience, we propose to allocate half of the available frequencies in UHF Band and Band III for the introduction of broadcast-type mobile TV services. We will reserve the

⁴ The prevailing digital broadcasting technologies using Band III are Eureka-147 DAB developed in Europe for digital radio, and T-DMB which is a mobile TV technology developed in South Korea based on DAB. A frequency multiplex of 1.5MHz in Band III can carry three T-DMB mobile TV channels or 7 DAB radio channels, or a combination of one to two mobile TV channels and two to three digital radio channels.

⁵ One Band III multiplex is immediately available. The other three multiplexes are being occupied by existing radio users but band vacation has been planned with a view to releasing them in phases in 2009.

remaining half for other broadcasting services. In other words, we propose to release one out of the two available frequency multiplexes in UHF Band and two out of the four available frequency multiplexes in Band III, which will enable the provision of a maximum of some 26 mobile TV programme channels⁶. The remaining frequency multiplexes (one in the UHF Band and two in Band III) will be reserved for future DTT or DAB services, or other possible electronic communications services when technology further evolves.

10. We propose to adopt a “pro-mobile TV” approach whereby we allocate the available frequency spectrum primarily for the provision of mobile TV services. This was generally accepted by the industry and the public during the consultation process. Successful bidders will be required to use at least half of the transmission capacity for the provision of mobile TV services while the remaining capacity can be used to provide other non-mobile TV services, such as DAB or datacasting. Such value-added services could be provided either by the successful bidders themselves direct, or by others who hire the remaining transmission capacity from the successful bidders. The 50% threshold will be subject to review five years after the initial frequency assignment, taking into account market developments and the emergence of new technology and services.

Spectrum Assignment

11. In line with the established spectrum policy framework⁷, which has provided a fair and efficient way to assign frequency spectrum to potential operators, we propose to follow the market-based approach whereby frequency spectrum for broadcast-type mobile TV should be allocated by auction. Prospective broadcast-type mobile TV operators will be subject to the payment of a spectrum utilisation fee, which will be determined by auction, in addition to the necessary licence fees which cover the licence administration costs.

12. To encourage a wider variety of services in the mobile TV service market to be provided by different players, we propose to offer the following as two different packages in the auction:

⁶ A frequency multiplex of 8 MHz in UHF Band is capable of carrying about 20 mobile TV channels. A Band III frequency multiplex of 1.5 MHz can carry three mobile TV channels.

⁷ The spectrum policy framework was promulgated in April 2007. The guiding principle under the framework is to use a market-led approach in spectrum management when there are competing commercial demands for the frequency spectrum. This should generally lead to most economically and technically efficient, and hence most valuable, use of the frequency spectrum.

- (a) the UHF Band multiplex; and
- (b) the two Band III multiplexes.

Individual party will not be allowed to acquire more than one package from the auction.

Licensing Arrangements for Mobile TV Services

13. Under the established technology-neutral regulatory approach, there are separate licensing regimes for regulating “conveyance” and “content” of TV services. Establishing and maintaining a distributing network for transmitting local broadcast-type mobile TV services (i.e. conveyance) will require a unified carrier licence to be issued under the Telecommunications Ordinance (TO)(Cap. 106). In case the successful bidder of a designated frequency spectrum rents out its transmission capacity to a mobile TV service provider, the latter needs a public non-exclusive telecommunications services licence for the provision of mobile TV services and other permitted telecommunications or value-added services to the public.

14. In relation to programming, the Broadcasting Ordinance (BO) (Cap. 562) currently does not regulate television programme services for mobile reception (i.e. reception on the move not related to any specified premises) in Hong Kong unless the services are not primarily targeting Hong Kong⁸.

15. The prospective local broadcast-type mobile TV service is a nascent and relatively personal service. It is unlikely to have the same pervasive impact as conventional TV at this stage, and can be likened to broadcasting services on the Internet. As such, we propose to adopt a light-handed approach in regulating its content. Both streaming-type mobile TV services in operation and the proposed broadcast-type mobile TV services should therefore be governed by general laws. We do not propose to amend the BO to license local broadcast-type or streaming-type mobile TV services or to impose cross-media ownership restrictions on the providers of these services or their associates. However, we will require the operators to develop codes of practice for self-regulation and will monitor the situation closely. This regulatory approach accords with international best practices and was accepted by the public and the industry in the two rounds of consultation.

⁸ The services which the BO regulates include “domestic free television programme services,” “domestic pay television programme services” and “other licensable television programme services”, which are services available for reception by audiences in specified premises, and “non-domestic television programme services”, which are services not primarily targeting Hong Kong.

Licensing Arrangements for Other Value-added Services

16. On the other hand, other telecommunications or value-added services, if provided alongside mobile TV services either by the mobile TV operators themselves or by others who hire the transmission capacity, shall continue to be subject to the relevant licensing arrangements under relevant existing legislation. In particular, DAB services would be subject to the existing sound broadcasting licensing regime as contained in Part IIIA of the TO.

Geographical Coverage

17. Currently, we have an established mechanism for prospective operators to access the existing hilltop broadcasting facilities through commercial negotiation and OFTA's adjudication if necessary. In this light and taking into account the scarcity of frequencies for broadcast-type mobile TV services, we consider it reasonable to impose a baseline coverage requirement of 50% of the population on the provision of broadcast-type mobile TV services, as in the case of the coming auction for broadband wireless access services. The geographical coverage will be secured by means of performance bonds to be imposed upon the prospective mobile TV operators.

18. We do not propose to impose heavier coverage requirement (e.g. territory-wide coverage obligation in the case of conventional free-to-air TV) so that the nascent service can be developed at its own pace and in response to market demand. We will also leave coverage in tunnels as well as the mass transit railway network to be decided by prospective broadcast-type mobile TV operators based on commercial consideration, similar to the regulatory practice in many overseas countries

IMPLICATIONS OF THE PROPOSAL

19. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service implication. The proposal to facilitate the development of mobile TV services in Hong Kong is in line with the sustainability principle of achieving a market-based economy that provides the resources to meet the needs and aspirations of the population, both now and in the future.

20. As for financial implications, there will be additional revenue for Government when the frequency spectrum is auctioned in 2009. The spectrum utilisation fee receivable will be determined by auction.

21. The prospective mobile network operators need to hold a unified carrier licence or a public non-exclusive telecommunications services licence issued under the Telecommunications Ordinance. The exact additional revenue to be generated in respect of the unified carrier licence would hinge on whether the mobile TV spectrum is to be taken up by new or existing unified carrier licensees. Assuming two new unified carrier licences would be granted, the annual licence fees should be around \$6.7 million (comprising fixed fee, spectrum fee, base station fee and customer connection fee). In case that the mobile TV spectrum is assigned to existing unified carrier licensees, the annual licence fee is estimated to be around \$670,000 as the licensees have already paid the fixed fee and customer connection fee under existing licences. The licence fee payable by the operators will by and large recover the full cost incurred by OFTA in regulating the services and should be subject to review on the basis of the full-cost recovery principle. OFTA will also absorb the extra resources required for coordination with the industry on the implementation details.

22. As regard economic implications, the introduction of mobile TV services will be conducive to widening programme choices for mobile communications users and enhancing development of the local media and telecommunications industry as a whole. It will also bring in capital investment for the broadcasting network and associated content production facilities. The incremental economic activities and employment opportunities thus generated will largely hinge on the extent of service coverage which in turn will be based on the business plans of the successful bidders as well as the spill-over along the supply chain from content production, network conveyance to service provision and innovation. Ancillary services such as DAB and datacasting may also be offered to meet public demand.

23. As for environmental implications, the hilltop transmitting stations of new mobile TV networks are expected to be accommodated in the DTT infrastructure established by the two free-to-air television broadcasters. As such, civil engineering works at hilltop sites by new mobile TV operators will be of a small-scale and confined within the site boundary of the existing DTT infrastructure and should satisfy the relevant statutory requirements including those under the Environmental Impact Assessment Ordinance (Cap. 499).

PUBLIC CONSULTATION

24. We first consulted the public on this subject in January to April 2007. Taking into account international best practices and the feedback collected in the first consultation, we prepared a draft implementation framework for broadcast-type mobile TV services for a second consultation in January to April 2008. The majority of the respondents to the second consultation accepted the proposed implementation framework. Broadcasting and telecommunications operators have indicated interest in introducing local broadcast-type mobile TV services and some of them have already tested a number of mobile TV technologies with the assistance of the Office of the Telecommunications Authority (OFTA). The submissions to the two public consultations are available on the web site of the Communications and Technology Branch of the Commerce and Economic Development Bureau at <http://www.cedb.gov.hk/ctb/eng/paper/index.htm>.

PUBLICITY

25. The Administration will hold a press conference to promulgate the implementation framework and issue a press release on 22 December 2008. A spokesperson will be made available to answer enquiries from the media and the public. We will also brief the Legislative Council Panel on Information Technology and Broadcasting.

ENQUIRIES

26. Enquiries about this brief can be directed to Mr Kevin Choi, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A, on 2189 2236 or at kevinchoi@cedb.gov.hk.

Communications and Technology Branch
Commerce and Economic Development Bureau

22 December 2008

**Framework for Development of
Broadcast-type Mobile TV Services in Hong Kong**

(A) Spectrum Availability

The following frequency multiplexes (i.e., a frequency channel for digital transmission) in the relevant bands of frequency spectrum should be released for the introduction of broadcast-type mobile TV services in Hong Kong:

- (i) Two frequency multiplexes of 1.5MHz (216.160MHz – 217.696MHz and 217.872MHz – 219.408MHz, also known as Channel Nos. 11A and 11B) in Band III; and
- (ii) One frequency multiplex of 8MHz (678MHz – 686MHz, also known as Channel No. 47) in UHF Band.

(B) Spectrum Allocation

The spectrum to be released in (A) above should be allocated primarily for development of broadcast-type mobile TV services. While at least 50% of the transmission capacity should be used to provide mobile TV services, the operators may harness the remaining capacity of their mobile TV networks for delivery of other services such as digital audio radio (DAB) and datacasting services. To allow further flexibility, the mandatory percentage of transmission capacity dedicated for mobile TV services will be subject to review by OFTA within five years from the assignment of the frequency multiplexes to successful bidders.

(C) Spectrum Assignment

The spectrum to be released primarily for mobile TV services in (A) above should be assigned through auction with a pre-qualification process. The spectrum utilization fee (SUF) should be determined by auction. Bidders should propose obligations to roll out mobile TV services taking into account their deployment plan of the relevant mobile TV transmission technology. Such milestones will be tied with performance bonds at an appropriate amount imposed on the successful bidders.

To enhance the variety of services in the mobile TV market, the two Band III multiplexes and the UHF Band multiplex are to be auctioned in two separate packages, and an individual party will not be allowed to acquire more than one package from the auction.

(D) Licensing Arrangements

Under the Telecommunications Ordinance (TO) (Cap. 106), an operator of the network used to transmit mobile TV services via the assigned spectrum is required to obtain a unified carrier licence¹. In case that the successful bidder rents out its transmission capacity to another mobile TV service provider, the latter is required to obtain a public non-exclusive telecommunications services licence for the provision of mobile TV services and other permitted telecommunications services to the public.

Regarding the regulation of mobile TV programming, the content of mobile TV, either local broadcast-type or streaming-type, should be subject to regulation by general laws but not the Broadcasting Ordinance (Cap. 562)². To enable self-regulation, the industry will be required to develop codes of practice on provision of mobile TV services before service commencement. The codes should include, among others, the requirement of conditional access with a view to protecting public morals and children.

If a mobile TV operator intends to offer DAB service as well, the DAB service should be provided under a sound broadcasting licence to be issued under Part IIIA of the TO, and regulated under the TO and Part IV of the Broadcasting Authority Ordinance (Cap. 391). It will also be subject to the relevant radio codes of practice, as in the case of existing sound broadcasting services.

¹ For an incumbent carrier, it may opt to merge its existing carrier licence(s) with the new unified carrier licence.

² A provider of mobile TV services that are not primarily targetting Hong Kong will need a non-domestic television programme service licence under the BO.

(E) Access to Hilltop Broadcasting Sites

Sharing of existing hilltop broadcasting site facilities is supported and will be subject to commercial agreement while the TA could intervene and adjudicate if mutual agreement cannot be reached.

(F) Geographical Coverage

As prospective mobile TV service operators will be able to set up transmitting stations by sharing the hilltop broadcasting sites and facilities of terrestrial television broadcasters, provision of coverage for 50% of the population within 18 months from the grant of unified carrier licence should be set out as a licence obligation for the operators.

Coverage in tunnels as well as the mass transit railway network will not be mandatory. Mobile TV service operators may negotiate with the railway company and tunnel operators for coverage based on commercial consideration.

(G) Technical Standards

We should adopt a market-led and technology-neutral approach by leaving the market to select the technical standards for broadcast-type mobile TV services.

(H) Timetable

We aim to auction the frequency spectrum and license local broadcast-type mobile TV services in 2009.

Public Version to the Press
(with views expressed by HKMTV removed)

**Notes of Meetings between
Office of the Communications Authority (“OFCA”) and
Hong Kong Mobile Television Network Limited (“HKMTV”)
on 24 January 2014**

First Meeting

Time: 9:30 am to 10:45 am

Venue: Room 2956, Wu Chung House

Participants:

- OFCA –
Danny Lau, DD(T)
Chaucer Leung, AD(R)
Helen Lai, HR3
Raymond Ho, SRAM(R31)
Michael Chan, RAM(R31)3
- HKMTV – Four representatives

Second Meeting

Time: 4:15 pm to 5:45 pm

Venue: Room 2909, Wu Chung House

Participants:

- OFCA –
Danny Lau, DD(T)
Chaucer Leung, AD(R)
- HKMTV – One representative

Summary of Discussion

1. Sharing of Use of TVB's Hilltop Sites

1.1 ✂

1.2 OFCA pointed out that under section 36AA(4) of the Telecommunications Ordinance (“TO”), the licensees concerned had the obligation to endeavour to come to an agreement on the conditions of sharing of facilities. OFCA encouraged HKMTV to take a more proactive role in the negotiations with TVB. In case both parties failed to reach commercial agreement within a reasonable time despite their endeavours, either party might request the CA to intervene. The CA would consider, in accordance with section 36AA, offering mediation or taking appropriate regulatory actions, including the issue of a direction to relevant licensees requiring the sharing of use of the facility and/or the determination of the terms and conditions for the shared use of the facility.

2. Building New Rooftop Sites

2.1 ✂

2.2 OFCA encouraged HKMTV to reach commercial agreements with the landlords and building management offices soonest possible and suggested that HKMTV should submit the Schedule 3 information to OFCA once the details of the base stations were available. To expedite the approval process, HKMTV might consider submitting the information by batches. HKMTV should make reference to the “Guidance Note for Submission of Applications by Public Telecommunications Operators for the Installation of Radio Base Stations for Public Telecommunications Services in Buildings and on Rooftops” in making the submission of base station information to OFCA.

2.3 OFCA pointed out that the use of the proposed radio base stations should not pose any unacceptable non-ionization radiation hazards to personnel or residents, and the mobile TV signals emitted therefrom should not cause harmful interference to other

telecommunications services and systems. As the mobile TV service and the terrestrial TV service were operating in the same frequency band, communal aerial broadcast distribution systems in the vicinity of the mobile TV base stations would easily be interfered if the antennas of the latter were not properly located/oriented. OFCA would conduct sample inspections and site tests in processing the applications from HKMTV for using mobile TV base stations at the proposed locations.

3. Change of Transmission Standard

3.1 ✂

3.2 OFCA reminded HKMTV that the DTMB standard had been chosen as the transmission standard for digital terrestrial television services in Hong Kong. The adoption of the same standard by HKMTV would render HKMTV's mobile television services available for reception by more than 5 000 specified premises and thereby triggered the licensing requirement under the Broadcasting Ordinance ("BO") in respect of a domestic free television programme service. In this regard, should HKMTV's decision be to adopt the DTMB standard, it should take effective technical measures to ensure that it would not be de facto providing a domestic free television programme service as stipulated in the BO. Alternatively, HKMTV might consider other broadcast-type mobile TV standards such as DVB-H which was mature and widely deployed in Europe.

3.3 ✂

3.4 OFCA said that it would be a positive obligation of HKMTV, as a carrier licensee, to ensure its broadcast-type mobile TV services would comply with the laws in Hong Kong. In reviewing the base station information submitted by HKMTV for inclusion in Schedule 3, OFCA, as the enforcement agency of the BO, would consider the measures adopted by HKMTV so as to ensure that its service would not be caught by the BO.

3.5 ✂

3.6 OFCA explained that in formulating the “Framework for Development of Broadcast-type Mobile TV Services in Hong Kong”, it was the Government’s conscious consideration that the BO did not regulate television programme services for mobile reception (i.e. reception on the move not related to any specified premises). This was the reason mobile TV programme (for not reception at any specified premises), as compared to the domestic free TV programme, was subject to a more relaxed regulatory regime and governed by general laws only. The qualification exercise undertaken by the former TA to which HKMTV referred was arranged in context of qualifying operators to take part in the auction of the mobile TV spectrum. The provision of the broadcast-type mobile TV services by the successful bidder was subject to the conditions of the unified carrier licence (“UCL”). Any service to be provided beyond the scope of services specified in the UCL would be subject to licensing under other relevant ordinances in Hong Kong.

3.7 ✂

3.8 ✂ OFCA suggested that HKMTV should provide the details of such temporary suspension in submitting the Schedule 3 information to OFCA.

4. Regular Meetings between OFCA and HKMTV

4.1 As HKMTV targeted to launch its service in early July 2014, OFCA offered to hold more regular meetings with HKMTV for it to update OFCA on the progress made, and to thrash out other operational issues in the forthcoming months. ✂ OFCA said it would be pleased to arrange more frequent meetings with HKMTV if HKMTV so wished.

Office of the Communications Authority
6 February 2014

**Key Points of Argument of
Messages Released by Mr Ricky Wong as Reported by the Media and
Responses from the CA/OFCO**

11 March 2014 (Tuesday)

Mr Ricky Wong convened a press conference on 11 March 2014. As reported by the media, Mr Wong's main arguments at the conference included:

- HKMTV would not be able to provide Mobile TV Service on 1 July this year as scheduled.
- On the day of press conference, CA sent HKMTV a legal letter, stating that if HKMTV was to adopt DTMB, it would need to apply for a FTV licence or a PTV licence under the BO. Mr Wong criticised the Government for deliberately hindering his television business.
- There have been many Government documents indicating that that the BO would not regulate Mobile TV Service. Mr Wong questioned the sudden change in the regulatory regime after the acquisition of China Mobile by HKTV and alleged that the Government enforced the legislation inconsistently.
- HKMTV proposed to adopt DTMB standard and in fact City Telecom (Hong Kong) Limited, the predecessor of HKTV, already indicated in its tender application for the auction of radio spectrum for the provision of Mobile TV Service in 2010, that it would adopt this standard, and the standard has been approved by the former Office of the Telecommunications Authority (OFTA). Technically speaking, it was impossible for Mobile TV Service to achieve the service coverage requirement of at least 50% of the population while the service was not available for reception by more than 5,000 households.
- HKMTV had repeatedly written to the CA to enquire which standard it could adopt, but the CA had yet to respond.

The response and clarifications made in the press statement issued by OFCA in the evening of 11 March are as follows:

- HKMTV currently holds a UCL issued under the TO, authorising it to provide Mobile TV Service. The consequence of the proposed change of transmission standard by HKMTV from the previous CMMB (adopted since the launch of Mobile TV Service in 2012) to DTMB (i.e. the same standard adopted for the provision of digital terrestrial television services in Hong Kong) would render HKMTV's Mobile TV Service directly available for reception by an audience of more than 5,000 specified premises in Hong Kong, thereby triggering the requirement for a FTV licence or a PTV licence under the BO. As such, if HKMTV decided to adopt DTMB and could not ensure that its television service would not be available for reception by an audience of more than 5,000 specified premises, HKMTV must take steps to obtain the required licence under the BO.
- As to the alleged approval by the former OFTA for the adoption of the DTMB proposed by then City Telecom (H.K.) Limited, OFCA believed that HKMTV was referring to the qualification exercise conducted by the then OFTA in February 2010 in relation to the auction of radio spectrum for the provision of mobile TV services. The objective of the qualification exercise was to finalize the bidders qualified to take part in the spectrum auction. No assessment was made, let alone approval was given by the former OFTA as to the services/transmission standards proposed by the applicants wishing to take part in the bidding exercise.
- The Mobile TV Service operator is required under its carrier licence to provide coverage for at least 50% of the population at moving locations, but not households nor specified premises under the BO.

12 March 2014 (Wednesday)

Mr Wong attended radio programme interviews. As reported by the media, apart from repeating his arguments made at the press conference on 11 March, Mr Wong also raised the following points of argument:

- Mr Wong said that he did not have any intention of providing Mobile TV Service for reception by audience of specified premises, and reiterated that HKMTV was in full compliance with the requirements of the licence for provision of Mobile TV Service and did not exploit legal loopholes.
- There were already more than 5,000 households receiving the television signal from China Mobile, and he considered this as insufficient law enforcement by the CA.
- Letters had been sent to the CA since 20 February 2014 enquiring about the feasible technology, but there was yet any response as at 11 March 2014.

The response and clarifications made at the press conference convened by the CA Chairman, Mr Ambrose Ho, with the Director-General of Communications, Miss Eliza Lee, and the Deputy Director-General of Communications, Mr Danny Lau, at noon on 12 March 2014, as well as those made by Mr Danny Lau in radio programme interviews on that morning are summarised below:

- It was not true that OFCA suddenly gave HKTV a notice three months after its acquisition of mobile TV business that the proposed standard by HKMTV might constitute a contravention of the BO. OFCA wrote to HKMTV as early as on 17 January 2014 requesting the company to provide information in relation to its Mobile TV Service, including its transmission standard, in one week's time. Two meetings were held with HKMTV on 24 January 2014, i.e. the day after OFCA received the information from HKMTV, to discuss the relevant issues. As clearly stated in the notes of the meetings, OFCA had already reminded HKMTV at the meetings that the adoption of DTMB might lead to the contravention of the BO, and suggested HKMTV to consider other mobile TV standards (e.g. DVB-H) and technically feasible measures to prevent its Mobile TV Service from breaching the BO. However, Mr Wong expressed that he had no intention of changing to other standards.
- It was reiterated that DTMB was the same standard adopted by Television Broadcasts Limited and Asia Television Limited for the provision of the digital terrestrial television services in

Hong Kong. If HKMTV adopted this standard, nearly 80% of the households in Hong Kong (i.e. around 2 millions households) would be able to receive its Mobile TV Service, hence triggering the requirement for a FTV licence or PTV licence under the BO.

- For the four letters issued by HKMTV via its solicitor to OFCA on 20, 21, 28 February 2004 and 4 March 2014, OFCA has already replied via its solicitor on 11 March 2014.
- OFCA enforced the established legislations which have been put in place for many years and was not targeting against any organisation or any person.

Clarifications and arguments made by Mr Danny Lau and the Assistant Director of OFCA, Mr Chaucer Leung, at the background briefing for the media in the afternoon on the same day are summarised below:

- It was reiterated that Mobile TV Service and broadcasting services were regulated under two separate statutes, i.e. the TO and the BO respectively. There was no conflict between the two legislations.
- CMMB supported better reception via mobile devices but the resolution was lower and required less bandwidth. On the other hand, DTMB provided better picture quality but the reception would become poorer when on the move. As such, if the DTMB standard was adopted, it might not be able to comply with the requirement of the licence condition of satisfactory provision of Mobile TV Service to at least 50% of the population.
- OFCA reiterated that as long as the consequence of HKMTV's adoption of transmission standard would render its service available for reception by an audience of 5,000 specified premises, it shall be required to obtain a FTV licence or a PTV licence under the BO.

Mr. Wong convened press conference in the evening of the same day. As reported by the media, the key points of argument raised by Mr Wong included:

- He admitted that he had met with OFCA in January 2014 and learned that the adoption of the DTMB standard might violate the law. However, although HKMTV sent a total of four letters to OFCA to enquire if there were any other standards which would not render its service available for reception by an audience of more than 5,000 specified premises as the technology developed, OFCA had yet to reply.
- Mr Wong criticised OFCA for not taking effective enforcement, hence resulting in about 10% of the buildings in Hong Kong failing to install filters at their in-building coaxial cable distribution system and hence able to receive its Mobile TV signal illegally. Had OFCA take effective enforcement, the concerned households would not be able to receive HKMTV's Mobile TV signal.
- While he admitted that OFCA had suggested to him DVB-H and indicated he would consider using DVB-H, he requested CA to assure that HKMTV would not be required to obtain a licence under the BO or change the standard in the remaining 11 years of its licence duration if the television sets in the future were to be equipped with DVB-H receiver, rendering its Mobile TV Service available for reception by an audience of more than 5,000 specified premises.

13 March 2014 (Thursday)

Mr. Wong attended radio programme interviews. As reported by the media, the key points of argument raised by Mr Wong included:

- He stated that HKMTV would not be able to launch its Mobile TV Service until OFCA could provide a technically feasible to ensure that its service would be exempt from the BO. OFCA suggested DVB-H to HKMTV at the meeting on 24 January 2014, and yet told the media at a background briefing on 12 March 2014 that OFCA would take enforcement actions if the said standard became popular. He criticised OFCA for setting a trap for him. He considered that the issue was not related to standards, but the inconsistency of the Government.

- It was feasible for in-building coaxial cable distribution systems buildings to avoid reception of HKMTV's signals by installing filters, and HKMTV was willing to provide funding to buildings for installation of filters.
- Currently, there was no standard that was able to fully comply with the legal requirements.

Response and clarifications of OFCA at the background briefing for the media convened on the same day were summarised below:

- Regarding Mr. Wong's allegation that the CA had not taken enforcement actions, allowing buildings to illegally receive its Mobile TV signal via the in-building coaxial cable distribution systems, OFCA pointed out that at present there were around 130,000 residential buildings in Hong Kong, of which 40,000 were high-rise buildings installed with the in-building coaxial cable distribution systems and were regulated under the class licence under the TO and were required to install filters block reception of Mobile TV signal. However, the remaining 90,000 buildings, such as cottages/bungalows, old buildings, and village houses, did not have any in-building coaxial cable distribution systems and made use of standalone antennas for reception of television programme services. These buildings were not subject to the class licence and were not required to install filters. OFCA was of the view that it would be incumbent upon HKMTV as a licensee to use a standard that complied with the requirements of the licence for the provision of its service, instead of shifting the responsibility to the hundreds of thousands of households to install filters to block reception of its Mobile TV signal.
- As regards Mr Wong's request for an assurance from the CA that it would not take any enforcement action after HKMTV's adoption of DVB-H even if television sets in the future were to be equipped with DVB-H receivers, rendering its service available fore reception by an audience of more than 5,000 households, OFCA considered that it would be incumbent upon the licensee to ensure that its standard complied with the legal requirement. The relevant legislations and the licensing and regulatory regime of Broadcast-type Mobile TV Service remained unchanged and OFCA would act in accordance with

the law. OFCA had previously made enquiries with four major television set manufacturers, and three of them confirmed they did not have plans to manufacture television sets equipped with DVB-H receivers.

- As for Mr. Wong's allegation against OFCA for being unwilling to engage in dialogue with him, OFCA clarified that it had always been willing to meet with HKMTV to discuss about its Mobile TV Service and it was Mr Wong who chose to respond to OFCA through press conferences and interviews with the electronic/printed media.

14 March 2014 (Friday)

Mr Wong attended an interview on ATV's programme. As reported by the media, the points of argument raised by Mr Wong included:

- It was the original intention of the Government that the Mobile TV Service was not regulated under the BO. However, since he acquired the mobile TV business, the Government immediately changed its stance and policy. HKMTV was required under its licence to ensure that its service would cover at least 50% of the population, but at the same time the BO required that its service shall not be received by no more than 5,000 specified premises. The contradiction between the two regimes made it impossible for HKMTV to launch its Mobile TV Service.
- He criticised that OFCA had admitted in the background briefing for the media on 12 March 2014 that if the standard of HKMTV became popular in the future, HKMTV would still violate the law. He had not requested HKMTV's signal to be received via in-building coaxial cable distribution systems or rooftop standalone antennas, as this would be unfair to the two incumbent FTV providers which were being regulated. He simply requested that users could watch its Mobile TV Service using mobile devices both indoors and outdoors.
- Due to ineffective enforcement by OFCA, buildings would be able to illegally receive Mobile TV signal, leading to HKMTV's violation of the law.

15 March 2014 (Saturday)

The responses and clarifications made to the media by Miss Eliza Lee, accompanied by a number of CA members after attending the Panel meeting, are summarised as follows:

- She reiterated that the CA as an independent regulator must act in accordance with the law and did not want the CA to be accused of not observing the law or enforcing the law in an unfair manner. As far as law enforcement was concerned, the CA would make no compromise. The suggestion to review whether the BO and TO keep abreast of technological developments was very reasonable and the public could participate in the discussion. However, the CA, as a regulator, shall act in accordance with the law before amendments to the law were to be made.
- As regards the allegation that OFCA had not made any suggestions in response to HKTV's enquiries about standards, the fact was that after OFCA had received the written notice from HKMTV on 23 January, informing OFCA of its future change of broadcasting standard from the previous CMMB to DTMB, OFCA quickly held meetings with HKMTV on 24 January to remind it of the consequence of its change to DTMB would render its service available for reception by over 5,000 specified premises, thereby triggering the requirement under the BO to acquire a broadcasting licence. Since then, HKMTV had kept asking for suggestions from OFCA as to which broadcasting standard it could adopt to ensure legal compliance by HKMTV without the need of acquiring a licence under the BO. OFCA had suggested to HKMTV other standards or viable measures.
- However, under the existing regulatory framework, it would be incumbent upon the licensee to submit its proposal of transmission standard for approval by the regulator, instead of asking OFCA to make suggestions on standards for ensuring legal compliance and then rejecting the suggestions one by one, just like what HKMTV had been doing.
- Mr Wong had indicated earlier that he would not consider DVB-H. However, he later said that he would consider and

further requested assurance from the CA that it would not take any enforcement action prior to the expiry of HKMTV's licence even if the adoption of this standard would render its service available for reception by more 5,000 households, hence triggering the licence requirement under the BO.

- Mr Wong alleged that OFCA's enforcement was ineffective, which led to 90,000 village houses or standalone buildings failing to have installed filters, and hence being able to illegally receive the Mobile TV signal. The fact was that under the existing law, residents of the 90,000 village houses or standalone buildings were allowed to receive television programme signal by using standalone antennas. As these residents have not breached the law, the accusation against OFCA for ineffective law enforcement was unwarranted.

17 March 2014 (Monday)

Mr Wong convened a press conference. As reported by the media, the key points of argument raised by Mr Wong included:

- The Fixed Carrier Licence held by TVB and ATV provided that the licensee shall not infringe upon the exclusive interests of other licensees, and that it could only provide services to fixed locations. However, signals from the two broadcasters have all along been receivable on mobile devices. OFCA has not enforced the provisions of the TO or the terms and conditions of the Fixed Carrier Licence against the two broadcasters, showing that OFCA's inconsistent law enforcement standards. Now that OFCA has exercised discretion to allow TVB and ATV to broadcast their programmes using the mobile standard, it hoped that HKMTV would be treated in the same way.
- He was dissatisfied with OFCA's disclosure of HKMTV's proposed adoption of 64QAM modulation parameter for provision of Mobile TV Service as this was commercially sensitive information. He considered that even if the information was to be disclosed, OFCA should disclose in full instead of just a small part of the information.

- HKTV issued a total of four letters through its solicitors on 20, 21, 28 February and 4 March, requesting for clarifications on the legal and technical issues in relation to the provision of Mobile TV Service. In a meeting with OFCA in January 2014, HKTV suggested the installation of filters for buildings to prevent signal from being received by specified premises, hence triggering the BO. However, there had been no response from OFCA regarding the four letters. HKTV had been seeking the clarification of all legal issues and would like to understand the Government's stance so as not to inadvertently breach the law, instead of asking OFCA for solutions.

The responses and clarifications made by OFCA in the two press statements issued that evening are as follows:

- OFCA would like to draw HKMTV's attention to paragraph 14 of the Legislative Council Brief submitted by the Government in 2008, which read: *"In relation to programming, the BO currently does not regulate television programme services for mobile reception (i.e. reception on the **move not related to any specified premises**) in Hong Kong unless the services are not primarily targeting Hong Kong."* A logical reading of the above statement was that the BO did not regulate television programme services for reception by mobile devices. However, this was not applicable when the reception related to any specified premises.
- In 2007, the former OFTA amended the fixed carrier licences issued to the two FTV broadcasters under the TO to enable them to provide DTT services. According to the licence conditions, the two broadcasters were not permitted to provide Mobile TV Service. Since the launch of DTT service, there was no evidence showing that the two FTV broadcasters provided Mobile TV Service. The allegation against OFCA for not enforcing the provisions of the TO or the terms and conditions of the fixed carrier licences held by TVB and ATV were ungrounded. There was also no question of any discretion being exercised by the CA on TVB and ATV.
- Given 64QAM was one of the common modulation parameters available in digital television broadcasting standard, OFCA did not agree that such technical setting constituted any

commercial information as claimed by HKTV. OFCA noted that when HKMTV submitted the relevant information to OFCA on 23 January 2014, it did not classify such information as confidential or commercially sensitive.

- OFCA responded to HKMTV through its solicitor on 11 March 2014 regarding its stance on the issues raised in the four letters of HKMTV's solicitor. Even if HKMTV did not agree with the stance of OFCA, it could not allege that OFCA had not responded to the issues raised.

18 March 2014 (Tuesday)

Mr Wong attended radio programme interview. As reported by the media, the key points of argument raised by Mr Wong included:

- One could watch the television programmes of TVB and ATV on mobile devices. Automobile parts stores supplied such devices which allowed drivers to install them in their cars for watching the television programmes. DTMB was able to transmit clear images in most parts of the New Territories and broad highways, and Mr Wong questioned whether OFCA had conducted similar tests. If it was proved that outdoor reception of TVB and ATV programmes was available, it would be unreasonable for the CA to request Mobile TV Service to be received by less than 5,000 households. The Government should exercise discretion to waive certain conditions for Mobile TV Service.
- The use of the 16QAM modulation parameters of the DTMB standard was mentioned in the technical proposal submitted to OFCA on 23 January 2014.
- If the CA insisted its unreasonable requests, refused to have direct dialogue with him and maintained the view that all standards were not feasible, HKTV would seek judicial review.

The responses made by OFCA in its press statement to the complaint against TVB allegedly providing Mobile TV Service are as follows:

- Under the TO, section 8(1)(aa) stipulated that save under and in accordance with a licence granted there under, no person shall in Hong Kong offer in the course of business a telecommunications service.
- The mere fact that the television signal of a FTV licensee might be received by portable devices did not automatically constitute an offer of Mobile TV Service by the FTV licensee in the course of business. DTT signal of the FTV licensees had wide coverage over the majority of the territory of Hong Kong and hence it would be possible for the DTT signal to be receivable by portable devices. This did not automatically constitute provision of Mobile TV Service by the FTV licensees.
- On the other hand, section 5 of the BO stipulated that a person shall not provide a broadcasting service except under and in accordance with a licence. This regulatory regime aimed at regulating the broadcasting content for reception by television sets of specified premises with a view to protecting children and teenagers.
- The BO further specified that FTV/PTV mean a television programme service which, amongst other matters, was intended or available for reception by an audience of more than 5,000 specified premises in Hong Kong. As such, the mere fact that a company holding a unified carrier licence under the TO did not exempt it from the need to comply with further licensing requirements under the BO if the service it intended to provide triggered those licensing requirements.

19 March 2014 (Wednesday)

Mr Wong demonstrated to the media the testing of mobile reception of television programme services of TVB and ATV on a bus and a vessel. As reported by the media, the key points of argument raised by Mr Wong included:

- He criticised OFCA for adopting double standards in law enforcement and would submit the test results to the CA, but emphasized that he was not complaining against the two FTV

licensees of contravening the law. He just requested OFCA to explain why it turned a blind eye to the two FTV licensees but took strict enforcement on HKMTV, and suggested that they should be treated equally.

The responses and clarifications made by OFCA in its press release are as follows:

- Section 8(1)(aa) of the TO stipulated that save under and in accordance with a licence granted there under, no person shall in Hong Kong offer in the course of business a telecommunications service.
- Under section 8(1A) of the TO, for the purpose of subsection (1)(aa), “a person is to be regarded as offering a telecommunications service if he makes an offer which, if accepted, would give rise to an agreement, arrangement or understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service”.
- The mere fact that the television signal of a FTV licensee might be received by portable devices did not automatically constitute an offer of Mobile TV Service by the FTV licensee in the course of business. DTT signal of the FTV licensees had wide coverage over the majority of the territory of Hong Kong and hence it would be possible for the DTT signal to be receivable by portable devices. This did not automatically constitute provision of Mobile TV Service by the FTV licensees.
- The allegations against the CA for not enforcing the TO, enforcing the law selectively, or adopting double standards in law enforcement were due to misunderstanding of the relevant legislations and were therefore unfounded.