

**For information on
14 July 2014**

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

**Application for a Domestic Free Television
Programme Service Licence**

Purpose

The Communications Authority (“CA”) is conducting a public consultation exercise on the application for a domestic free television programme service licence (“free TV licence”) submitted by Hong Kong Television Network Limited (“HKTV”) in April 2014. The paper briefs Members on the mechanism for and factors to consider in handling the free TV licence application.

Statutory Requirements

2. Sections 9 and 10 of the Broadcasting Ordinance (Cap. 562) (“BO”) set out the licensing regime for free TV licences. Sections 9(1) and (2) of the BO stipulate that a free TV licence application shall be submitted to the CA in the specified form and that the CA shall consider the application and make recommendations thereon to the Chief Executive in Council (“CE in C”)¹. Section 10(1) provides that after considering recommendations made by the CA, the CE in C may grant a free TV licence.

3. Pursuant to Section 9(3) of the BO, the CA shall consult the public on the application by publishing a notice in the Gazette stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the CA thinks fit². Interested members of the

¹ The CA has issued a guidance note and a specified form for applications for free TV licences (OFCA SF0007 (12)).

² According to the CA’s public consultation guidelines, in addition to publishing the application in the Gazette, it will also be published in two newspapers (one English and one Chinese) as well as on the CA’s website. Moreover, the CA has promulgated a specified form (OFCA SF0011 (12)) setting out the detailed information to be provided for the purpose of consultation. This includes corporate information, programming information, technical information and other relevant information of the application.

public may submit their comments or views on the application to the CA by a date specified in the notice, being a date not less than 21 days after the notice is published. The CA shall consider the comments or views received. Extracts of the relevant provisions are at **Annex A**.

Application from HKTV and the Public Consultation

4. The CA received an application for free TV licence from HKTV on 11 April 2014.

5. The application contains commercially sensitive information. The CA has consulted HKTV and sought its agreement on the details of the application to be published in the notice for public consultation. The notice at **Annex B** sets out the particulars of HKTV's application including the information on the company, proposed investment commitment, programming arrangements and transmission means, etc.

6. The particulars of the application in the notice are provided and confirmed by the applicant. By issuing the notice, the CA and the Government are not to be treated as confirming the veracity of the particulars of the application nor are they to be treated as, in any way, accepting, approving, permitting or providing consent to the application. Nothing in the notice shall affect or prejudice any powers, duties, discretion and rights of the CA or the Government.

7. The BO stipulates that the consultation for licence application should last for not less than 21 days. Taking into account the need for transparency and to allow a reasonable period to collect public views and to process the application in a timely manner, the CA has decided to carry out a six-week consultation which commenced on 6 June 2014.

8. Pursuant to the BO and the CA's consultation guidelines, the CA published the notice on 6 June 2014 in the Gazette, one Chinese newspaper and one English newspaper, and uploaded it onto the CA's website. Members of the public are invited to submit their views on the application to the CA by 17 July 2014.

Factors to Consider in Assessing the Application

9. The CA is processing HKTV's free TV licence application in

accordance with the BO and the established procedures, and will take the following factors into account in assessing the application –

- (a) its compliance with the statutory requirements under the BO;
- (b) the assessment criteria set out in the CA's guidance note for applications for free TV licences, which include the applicant's financial soundness and commitment to investment; the applicant's managerial and technical expertise; the variety, quantity and quality of programmes; the technical soundness and quality of the proposed service; the speed of the applicant's service roll-out; the impact of any construction work associated with the applicant's proposed service on members of the public; the benefit to the local broadcasting industry, viewers and the economy as a whole; and the effectiveness of the applicant's internal quality control and compliance;
- (c) public opinions received;
- (d) likelihood of prospective licensee complying with the proposed licence conditions to be imposed; and
- (e) the potential impact of a new free TV licensee on the local television market.

The Way Forward

10. Although the BO does not impose any statutory deadline on the CA for making recommendations to the CE in C on licence applications, the CA will assess the application prudently and submit its recommendations to the CE in C as soon as practicable.

**Excerpts of Relevant Provisions on
Applications for Free TV Licences in
Broadcasting Ordinance (Cap. 562)**

9. Recommendations by the Authority on applications for licences

- (1) An application for the purposes of section 8(1) or (2) shall be submitted to the Authority in the specified form.
- (2) The Authority shall consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and make recommendations thereon to the Chief Executive in Council.
- (3) Where an application is submitted to the Authority, it shall –
 - (a) cause a notice to be published in the Gazette as soon as is practicable –
 - (i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Authority thinks fit; and
 - (ii) stating that members of the public who are interested may make representations on the application to the Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and
 - (b) consider the representations, if any, received by the date.

10. Grant of licence

- (1) The Chief Executive in Council may, after considering recommendations made pursuant to section 9(2), grant a licence under section 8(1) subject to such conditions as he thinks fit specified in the licence.

**Broadcasting Ordinance
(Chapter 562)**

Notice is hereby given that the Communications Authority has received an application from Hong Kong Television Network Limited (“HKTV”), a company duly incorporated in Hong Kong whose registered office is situated at 13th Floor, Trans Asia Centre, 18 Kin Hong Street, Kwai Chung, New Territories, for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by HKTV. By issuing this Notice, the Communications Authority and the Government are not to be treated as confirming the veracity of the particulars of the application nor are they to be treated as, in any way, accepting, approving, permitting or providing consent to the application. Nothing in this notice shall affect or prejudice any powers, duties, discretion and rights of the Communications Authority or the Government.

1. COMPANY INFORMATION

Principal shareholders

HKTV is a publicly listed company in Hong Kong on the Hong Kong Stock Exchange (Stock Code: 1137) and the U.S. on NASDAQ (Ticker Symbol: HKTV). As at 28 February 2014, the company’s shares are held by Top Group International Limited (42.00%) and other shareholders including Mr Ricky Wong Wai Kay (1.88%), Mr Paul Cheung Chi Kin (3.15%), Worship Limited (3.08%) and general public (49.87%).

Compliance with statutory requirements

- (a) HKTV submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 622) in 1992.
- (b) HKTV submits that it is not a subsidiary of a corporation¹.

¹ Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

- (c) HKTV submits that the company and all persons exercising control of the company will be and remain fit and proper persons².
- (d) HKTV submits that all the directors and principal officers of HKTV, including the principal officer in charge of the selection, production or scheduling of television programmes, are ordinarily residents in Hong Kong and have been so residents for at least one continuous period of not less than 7 years³.
- (e) HKTV submits that the control and management of HKTV will be bona fide exercised in Hong Kong, and the majority of its directors described in (d) will actively participate in the direction of the company⁴.
- (f) HKTV submits that there are no disqualified persons⁵ exercising control of HKTV or vice versa.

² Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the Memorandum and Articles of Association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

³ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Communications Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁴ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of "ordinarily resident in Hong Kong" in section 2(1);
- (ii) the majority of the directors required under section 8(4)(a)(iv) actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁵ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

- (g) HKTV submits that there are no unqualified voting controllers⁶ holding, acquiring or exercising or causing or permitting to be exercised 2% or more of the total voting control of HKTV⁷.
- (h) HKTV submits that HKTV will be empowered under its Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

HKTV submits that the programming expenditure, capital expenditure and operating expenditure in its first six years of operation are projected to be \$3,447 million in aggregate. HKTV plans to invest \$2,403 million on programming expenditure, \$440 million on capital expenditure and \$604 million on operating expenditure in the initial six years.

HKTV submits that the funding requirement of the proposed service will be supported by the HKTV group. HKTV is a listed company in Hong Kong with a market capitalisation of \$2,500 million as at 28 February 2014. As at 28 February 2014, HKTV had a net liquid position of approximately \$1,954.6 million⁸. According to HKTV's submission, its strong liquid asset position demonstrates sufficient financial capacity to operate the proposed service.

⁶ Under section 1 of Schedule 1 to the Broadcasting Ordinance, "unqualified voting controller" means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who –

- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

"Ordinarily resident in Hong Kong" means –

- (a) in relation to an individual, residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
 - (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁷ Under section 20(1) of Schedule 1 to the BO, an unqualified voting controller shall not without the prior approval of the Communications Authority hold or acquire 2% or more of the total voting control of a domestic free television programme service licensee.

⁸ Net liquid position comprising net cash at bank and in hand and term deposits of approximately \$630.7 million and investment in available-for-sale securities of approximately \$2,017.1 million, net of bank loans of \$693.2 million.

Managerial and technical expertise

HKTV submits that its management team has managerial experience and technical expertise, comprising businessmen, professionals, executives and experts with experience in both telecommunications and broadcasting. It has also acquired substantive experience in television programme production since mid-2011.

HKTV submits that all members of the Board of Directors are nominated and appointed by shareholders at the Annual General Meeting or Extraordinary General Meeting and the total number of Directors shall not be less than three. Currently, the Board comprises four Executive Directors, namely Mr Ricky Wong Wai Kay, Mr Paul Cheung Chi Kin, Ms To Wai Bing and Ms Alice Wong Nga Lai; one Non-Executive Director, namely, Dr Moses Cheng Mo Chi; and three Independent Non-Executive Directors, namely, Mr John Lee Hon Ying, Mr Jefferson Peh Tun Lu and Mr Alvin Mak Wing Sum.

Ms To Wai Bing is the Chief Executive Officer responsible for HKTV's operations and business development under the direction of the Board of Directors.

Quality control and compliance

HKTV submits that a designated operation manager will be responsible for overseeing the day-to-day operation of the broadcasting centre, on a round-the-clock basis, to ensure that the proposed service will meet the availability level of not less than 99.98%.

HKTV submits that it will set up a Standards and Practice Team to ensure compliance of all the programme contents of HKTV with applicable laws, licence conditions, codes of practice and directions or orders issued or made by the Communications Authority. The Standards and Practice Team will be responsible for checking and vetting the programme and advertising content, in particular programmes that are targeting at children, by strictly adhering to the codes of practice issued by the Communications Authority. It will also work closely with the scheduling team taking into account the likely viewership during the relevant hours of the day, in particular during the family viewing hours.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature, and number of channels and extent of local production

HKTV submits that it plans to operate a three-channel (Cantonese, English and news) domestic free television programme service transmitted in digital format.

HKTV submits that the Cantonese and English channels will carry a variety of self-produced and acquired programmes. The Cantonese channel will be a general entertainment channel comprising news and finance programmes, lifestyle programmes, self-produced dramas, variety shows, documentary and current affairs programmes, programmes for young persons and the elderly, children's programmes as well as overseas dramas and movies. The English channel will feature programmes acquired from overseas which are similar to those carried on the Cantonese channel.

HKTV submits that it plans to provide, on the Cantonese channel, high definition television programmes and, on the English channel and news channel, standard definition television programmes.

Compliance with programming requirements

HKTV submits that it will carry positive programmes⁹, Communications Authority publicity materials, announcements in the public interest and television programmes (including RTHK programmes and educational programmes for schools) supplied by the Government as currently required for domestic free television programme service licensees.

HKTV submits that it plans to provide subtitling service as currently required for domestic free television programme service licensees¹⁰.

The daily operating hours of the service

HKTV submits that it plans to provide, on its Cantonese and English channels, 18-hour daily broadcasting and, on its news channel, 24-hours daily broadcasting¹¹.

⁹ The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes and programmes for children to be broadcast on each of the licensee's service, and programmes for young persons, senior citizens and art and cultures, to be broadcast on the licensee's Cantonese language service.

¹⁰ The domestic free television programme service licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on its analogue/simulcast digital channels. In addition, on the Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00pm and 11:00pm and drama programmes. On the English channels, all programmes shown on 8:00 p.m. to 11:30 p.m. and educational programmes for teenagers (two hours per week) shall carry English subtitles.

¹¹ Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

3. TECHNICAL INFORMATION

Transmission mode to be employed

HKTV submits that it plans to use the fibre network of Hong Kong Broadband Network Limited (“HKBN”)¹² to transmit the proposed service to buildings. Television signals will be transmitted over one in-building coaxial cable distribution system (“IBCCDS”) channel to reach domestic households covered by the IBCCDS.

HKTV submits that it will also use the mobile television network operated by its subsidiary, Hong Kong Mobile Television Limited (“HKMTV”)¹³ to transmit the proposed service for extension of coverage. Television signals will be transmitted over the same IBCCDS channel as mentioned above to reach domestic households covered by the IBCCDS.

HKTV submits that it will deploy the National Standard “GB20600-2006: Framing Structure, Channel Coding and Modulation for Digital Television Terrestrial Broadcasting System” promulgated by the Standardization Administration of the People’s Republic of China in August 2006 for transmission of its proposed service. In addition, HKTV is committed to comply with the relevant requirements in the Generic Code of Practice on Television Technical Standards issued by the Communications Authority.

Geographic coverage and service roll-out

HKTV submits that the HKBN network currently reaches approximately 2.2 million households (or 92% households in Hong Kong). With the help of the HKBN network and HKMTV’s mobile TV platform, HKTV considers that the realistic target is to roll out the proposed service within 9 months after the grant of licence, and to achieve territory-wide coverage within 6 years after launch.

HKTV submits that HKBN will extend its fibre coverage to (a) the buildings that are currently not within its network (including remote village houses and tenement buildings) or (b) the demarcation point within 10 metres from such buildings if no building access approval from the Building Management Offices (“BMOs”)/Incorporated Owners (“IOs”) can be obtained.

¹² HKTV has a 20-year indefeasible rights of use agreement with HKBN, a local fixed carrier, to use HKBN’s optical fibre network for the transmission of HKTV’s proposed service until May 2032.

¹³ According to HKTV’s submission, HKMTV will provide bandwidth operating in the frequency range of 678 – 686 MHz (i.e. ultra high frequency channel 47 (“UHF Channel 47”) for the transmission of HKTV’s proposed service.

HKTv submits that, for buildings with an IBCCDS, HKBN will, subject to the approval of BMOs/IOs, extend its fibre optic network to the telecommunications and broadcasting equipment room of an individual building where the head-end of the IBCCDS usually resides. HKTv will bear the necessary labour and equipment costs for procuring and installing the relevant network equipment for interconnecting the proposed service with IBCCDS (but not to upgrade a building's IBCCDS to accommodate more channels or to support digital terrestrial television format). At the same time, BMOs/IOs can choose to receive HKTv's television signal via its off-air antenna by upgrading their IBCCDS for reception of UHF Channel 47 (i.e. 678 – 686 MHz) of HKMTV's mobile platform.

HKTv submits that, for buildings without IBCCDS (as in the usual case with tenement buildings and village houses), HKTv will either deliver the proposed service via the "bbTV" platform of the HKBN network or the mobile TV platform of HKMTV. In this context, for the proposed service delivery via the HKBN network, HKTv will bear the necessary labour and equipment cost of procuring and installing the relevant network termination equipment and a proprietary set-top box of HKBN at the respective user households for which it will convert HKTv's free television signal as conveyed by the HKBN network into either analogue or digital format for displaying on a compatible television set.

HKTv submits that BMOs/IOs and viewers will not own such network equipment and set-top box provided by HKTv/HKBN and that it will provide normal and corrective maintenance service and technical support to the relevant equipment.

Proposed service coverage milestones

HKTv commits to pass: –

- (a) not less than 2,200,000¹⁴ domestic households within 12 months after service commencement;
- (b) not less than 2,250,000 domestic households within 24 months after service commencement; and
- (c) not less than 2,300,000 domestic households within 36 months after service commencement.

Equipment and facilities required at the customer end

HKTv submits that, for reception of its proposed service, viewers will not require additional equipment and they can make use of their existing integrated digital television set or digital terrestrial television set-top box in this regard.

¹⁴ According to the Census and Statistics Department, there are 2.4 million domestic households in Hong Kong as of December 2013.

4. OTHER INFORMATION

Commencement of service

HKTV submits that it plans to commence the Cantonese channel within 9 months and, the English channel and news channel, within 24 months after the grant of licence.

Construction work required and its impact on the public, if any

HKTV submits that riding on the existing network infrastructure already built by HKBN and HKMTV, there is no need to carry out large-scale civil works for rolling out the proposed service. However, certain upgrading works (such as installation of an equipment rack) inside some buildings are required to connect HKBN's fibre network to the IBCCDS. The actual time spent for each upgrade work in a typical building will be less than half a day. Due to environmental constraints, upgrade work in tenement buildings and building without appropriate connecting space will be determined on a case-by-case basis.

The benefit brought by the implementation of the proposal to the local industry, audience/customers and the economy as a whole

HKTV submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Bringing more programming choice for viewers* – HKTV submits that it will adopt an innovative programming strategy with a view to bringing a wider choice of programmes to viewers, promoting fair and balanced views on social and public affairs, and broadening the reach of Hong Kong people to the Mainland and the world.
- (b) *Fostering competition in the free television market* – HKTV submits that the current state of domestic free television market can improve if more competitors are present in the market. HKTV is prepared to be a new competitor. HKTV envisages that it can introduce a new model in domestic free television programme service in Hong Kong.
- (c) *Promoting the development of local television industry* – HKTV believes that a domestic free television programme service licensee should provide opportunities to different producers so that they can access the audience equally. The proposed service platform of HKTV will serve as a catalyst to stimulate development of the local television industry, thus facilitating the development of creative industries and rectifying the distorted situation of the television industry in Hong Kong.

- (d) *Creating job opportunities and maintaining Hong Kong's position at the forefront of broadcasting technology* – HKTV submits that the substantial capital investments of HKTV in building the free television service infrastructure will create job opportunities and help Hong Kong maintain its leading position as one of the most advanced network infrastructures in the world.

Members of the public may provide comments on HKTV's application to the Communications Authority by **17 July 2014** by mail, fax or e-mail as follows: –

Office of the Communications Authority
20th Floor, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

Fax Number: 2507 2219

E-mail: consultation-hktv@ofca.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

6 June 2014
Secretary, Communications Authority