

立法會
Legislative Council

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Panel on Information Technology and Broadcasting

Meeting on 22 July 2014

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

Purpose

This paper provides background information on applications for domestic free television programme service ("free TV") licences, the views and concerns expressed by Members in previous discussions.

Background

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

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

3. According to the Administration, it has been the Government's established broadcasting policy to promote the sustainable development of the local broadcasting industry and encourage fair competition, investment and the adoption of innovative technologies by the industry, thereby leading to the provision of more choices of quality programmes to the public. It is the Administration's position that the Government's broadcasting policy has remained unchanged. Under the BO, there is no pre-set limit on the number of free television programme service licences to be issued. Any interested and eligible organizations may make applications to the CA for such licences. The CA will assess all applications in accordance with the BO and established procedures as set out in the Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong, and then submit its recommendations to the CE in Council. The assessment criteria set out in the Guidance Note include the applicant's financial soundness and commitment to investment, the applicant's managerial and technical expertise, the variety, quantity and quality of programmes to be provided, the technical soundness and quality of the proposed service, the speed of service roll-out, the impact on members of the public by any construction works associated with the proposed service, the benefit to the local broadcasting industry and the economy as a whole, as well as the applicant's internal quality monitoring mechanism.

Previous discussions

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4. The Panel on Information Technology and Broadcasting ("the Panel") followed up closely the Administration's processing of the three applications for free TV programme service licences and the CE in Council's decision in this regard since 2010.

5. On 15 October 2013, the Administration announced that having considered holistically all relevant factors and the overall development of the local free TV market, the CE in Council decided that a gradual and orderly approach should be adopted in introducing competition into the market. On this basis, the CE in Council approved in principle the applications of Fantastic Television Limited ("Fantastic TV") and HK Television Entertainment Company Limited ("HKTVE") for a free TV licence. However, the application submitted by Hong Kong Television Network Limited ("HKTV") had been rejected.

6. At the Panel's special meetings on 8 November and 2 December 2013, members noted that the recommendation of the former Broadcasting Authority ("BA") (replaced by the CA on 1 April 2012) to grant free TV licences to the three applicants was not adopted by the CE in Council. Some Panel members considered that the CE in Council should have referred the applications back to the former BA or the CA for reconsideration, in particular when CE in Council had made a change in policy by adopting the gradual and orderly approach in considering the free TV licence applications subsequent to the former BA's recommendations. These members also considered that procedural justice had been compromised in the CE in Council's handling of the applications. Some other members expressed concern that the Administration had not been able to explain clearly with strong grounds the CE in Council's decision to adopt the gradual and orderly approach and select only two out of the three applicants for granting of approvals-in-principle ("AIPs"). These members also opined that the CE in Council's decision was contradictory to the stated policy of introducing more competition to the free TV market.

7. The Administration advised that based on the business plans and estimation submitted by the applicants, the consultant's findings indicated that the local free TV market could hardly sustain a total of five players, including Asia Television Limited and Television Broadcasts Limited. In considering public interest, the CE in Council was of the view that a gradual and orderly approach should be adopted in introducing competition, lest an adverse impact be brought about by a sharp increase in the number of free TV operators. Having considered the three free TV licence applications against 11 factors and four assessment criteria as explained in its press releases, the CE in Council had formed the view that Fantastic TV and HKTVE outperformed HKTV in overall terms, and on this basis decided to grant AIPs to Fantastic TV's and HKTVE's applications. The Administration considered that the decision was prudent and in line with the gradual and orderly principle, and that the requirement of procedural fairness was strictly adhered to throughout the process.

Council meetings

8. Members have expressed concern about the CE in Council's decision not to grant a free TV licence to HKTV at different forums. At the Council meetings on 30 October, 13 November, 4 December, 11 December 2013, Dr Hon LAM Tai-fai, Hon Charles Peter MOK, Hon Frederick FUNG and Hon Claudia MO raised questions on the subject.

9. At the Council meeting of 6 November 2013, Hon Charles Peter MOK moved a motion under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("LCPPO") seeking the Legislative Council's authorization to empower the Panel to exercise the powers under section 9(1) of the LCPPO to order the Secretary for Commerce and Economic Development to attend before the Panel to produce all relevant papers, books, records or documents relating to the vetting and approval by the Hong Kong Special Administrative Region Government ("HKSARG") of the domestic free television programme service licence applications. The motion was negatived. Hon James TO also moved a motion with no legislative effect urging the CE to explain to the public the details involved in the vetting and approval by the HKSARG of the domestic free television programme service licence applications, and to consider issuing a free TV licence to HKTV. The motion was negatived.

10. At the Council meeting of 4 December 2013, Hon Claudia MO moved a motion seeking the Council's authorization for the appointment of a select committee to inquire into whether the HKSARG had violated the principle of free market of the free TV broadcasting policy; and that the committee be authorized to exercise the powers under section 9(1) of the LCPPO to order Mr Ricky WONG, Chairman of HKTV, and Mr Ambrose HO, Chairman of the CA, to attend before the committee to give evidence and produce all relevant information relating to the vetting and approval by the HKSARG of the domestic free television programme service licence applications. The motion was negatived.

Finance Committee

11. At the special meeting of the Finance Committee on 2 April 2014, some members enquired about the progress in completing the remaining work relating to the two applications for free TV licences and the timetable for completion of the work. Some other members enquired whether the application by HKTV for judicial review against the CE in Council's decision on its licence application would hinder the progress of granting new free TV licences to the other two applicants.

12. The Administration advised that the CA had requested the two other free TV licence applicants to submit the necessary additional information. The CA would review the information submitted in due course with a view to submitting to the CE in Council recommendations on whether free TV licences should be formally granted to the two applicants. After reviewing the recommendations, the CE in Council would make a decision as soon as

possible. The Administration assured members that the follow up work relating to the granting of two new free TV licences would not be affected by HKTV's application for judicial review.

Latest position

13. On 6 June 2014, the CA published a notice to invite public views on an application for free TV licence submitted by HKTV on 11 April 2014. The details of HKTV's application are set out in Annex B of the Administration's paper (LC Paper No. CB(4)826/13-14(03)). The CA would brief the Panel on 22 July 2014 on the public consultation on the latest application for a free TV licence by HKTV.

Relevant papers

14. A list of the relevant papers with their hyperlinks is at:

http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb_aa.htm#yr1314

<http://www.legco.gov.hk/yr13-14/english/counmtg/hansard/cm1106-translate-e.pdf>

<http://www.legco.gov.hk/yr13-14/english/counmtg/hansard/cm1204-translate-e.pdf>

<http://www.legco.gov.hk/yr13-14/english/fc/fc/agenda/fc20140331.htm>

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