

Press Releases

LCQ17: Applications for domestic free television programme service licences

Following is a question by the Dr Hon Lam Tai-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Gregory So, at the Legislative Council meeting today (October 30):

Question:

Earlier, the Government announced the results of the applications for domestic free television programme service licences (free TV licences). Among the three applicants, the applications of Fantastic Television Limited and HK Television Entertainment Company Limited were granted approval-in-principle (AIP) whilst the application of Hong Kong Television Network Limited (HKTVN) was rejected. This has aroused public concern and caused a large number of people to take to the streets to protest. In this connection, will the Government inform this Council:

(a) given that a large number of people have taken to the streets to protest against the Government's decision on granting free TV licences and that public interest is one of the considerations for vetting and approving licence applications, whether the authorities will review afresh the applications concerned; if they will, of the details; if not, the reasons for that;

(b) given that the Chairman of HKTVN has stated clearly that he will initiate legal proceedings regarding the Government's decision on granting free TV licences, whether the Government has assessed (i) the impact of such action on the two applicants whose applications were granted AIP, and (ii) whether it will affect the procedure for issuing formal licences; if the assessment outcome is in the affirmative, of the details; if the assessment outcome is in the negative, the reasons for that;

(c) given that the Chief Executive (CE) indicated at the Question and Answer (Q&A) Session of this Council on October 17, 2013 that the Government had received an application for judicial review of the decision on granting free TV licences and it was therefore inappropriate to make further comments, of the person/organisation that has submitted such an application; and the reasons why the Commerce and Economic Development Bureau (CEDB) has, after the aforesaid Q&A Session, still repeatedly made comments to the media on the decision on granting free TV licences (e.g. in response to media enquiries, a CEDB spokesman said on October 20 that the Government considered that if AIP of three additional free TV licences was to be granted, the healthy and orderly development of the market would be compromised);

(d) given that the two existing licensees of free TV licences will submit their licence renewal applications on or before November 30 this year, when the Government will make a decision on such applications, and of the assessment criteria for licence renewal;

(e) whether the Government will take the initiative to arrange a closed meeting with the Chairman of HKTVN to explain the reasons

for not granting HKTVN a free TV licence; if it will, when such a meeting will be held; if not, of the reasons for that;

(f) given that on the 20th of this month, the Convenor of the Executive Council (ExCo) said in response to media enquiries that ExCo Members, who played an advisory role as stipulated under the Basic Law, had already tried their best to express their views on the issuance of free TV licences to CE, and some ExCo Members also said that the Bureau and the senior officials of the SAR Government should, as far as possible, seize the opportunities to expound to the public the considerations involved in issuing free TV licences, and they requested the Government to disclose more the reasons for not granting a free TV licence to the applicant concerned, whether the Government will consider further disclosing more details to the public; if it will, when such details will be disclosed; if not, of the reasons for that; and

(g) given that the Secretary for Commerce and Economic Development stated clearly at the press conference on the 15th of this month that there was no appeal mechanism for vetting and approving free TV licence applications, why the authorities have not set up an appeal mechanism; whether such an arrangement has been adopted all along; and whether any organisation has ever lodged an appeal in the past against the rejection of its application?

Reply:

President,

Hong Kong Television Network Limited (HKTVN), Fantastic Television Limited (Fantastic TV) and HK Television Entertainment Company Limited (HKTVE) each submitted an application for a domestic free television programme service (free TV) licence under the Broadcasting Ordinance (Cap. 562) (BO) between December 2009 and March 2010 (collectively as the "three Applications"). On October 15, 2013, the Government announced that, under the gradual and orderly approach in introducing competition into the free TV market, the Chief Executive (CE) in Council has decided to grant approval-in-principle (AIP) to Fantastic TV's and HKTVE's free TV licence applications, whereas HKTVN's application is rejected (the Decision).

My reply to the various parts of the question is as follows:

(a), (b), (c), (e) and (f) The Government has recently on different public occasions explained the assessment criteria and the reasoning leading to the Decision. The CE in Council, having regard to all relevant factors and representations and responses in relation to the three Applications, has decided that it would be in the public interest to adopt a gradual and orderly approach in introducing competition into the free TV market, i.e. not approving all the three Applications at this stage, while not precluding the possibility of allowing more free TV operator(s) as and when appropriate. This will not only reap the benefits of introducing competition into the free TV market, but also minimise any possible adverse impact on the free TV market as a whole.

Under the gradual and orderly approach in introducing competition into the free TV market, the CE in Council has assessed the three Applications against various criteria. These include financial capability, programming investment, programming strategy and production capability and technical soundness of the

proposed service. Having regard to these criteria and all relevant factors (including representations/responses from the applicants, etc.), the CE in Council has formed the view that Fantastic TV and HKTVE outperform HKTVN, and on this basis decided to grant AIP to Fantastic TV's and HKTVE's applications.

The Decision is in line with the Government's policy announced in 1998 to open up the television market. The policy, notwithstanding no prescribed ceiling on the number of licences to be issued, does not entail a blanket approval of each and every received free TV licence application that satisfies the basic criteria. Every such application has to be subject to the recommendations made by the Communications Authority (CA) and followed by vetting by the CE in Council according to all relevant factors.

In deciding whether to grant AIP to the three Applications, the CE in Council has processed all three Applications in accordance with statutory requirements and established procedures. It has holistically considered all relevant factors and been guided by the public interest. The CE in Council as the licensing authority has granted AIP to Fantastic TV's and HKTVE's applications while HKTVN's application is rejected. The CE in Council will further review Fantastic TV's and HKTVE's applications and make a final determination thereon at a later stage. The Government emphasises that within the confine of the Executive Council's (ExCo) confidentiality system, it has on different occasions and as far as possible explained to the applicant concerned and the public the assessment criteria and the reasoning leading to the Decision.

As for other details of processing the three Applications, according to the ExCo's system of confidentiality, the deliberation of the ExCo meetings on any subject matter is not made public. Moreover, the details on the processing of the three Applications inevitably involve commercially sensitive information or even commercial secrets of the three applicants; and disclosure of which may cause damage to the three applicants and may even give rise to legal disputes.

The Government was notified on October 16, 2013 that a member of the public had filed an application for judicial review in respect of the Decision. A notice of discontinuance was subsequently filed to the Court on October 28. Before such discontinuance, the Commerce and Economic Development Bureau has handled the relevant media enquiries on the basis that our responses would not affect the Government's position in dealing with the litigation concerned.

(d) The free TV licences of the two existing licensees will expire on November 30, 2015. The BO provides that the two existing licensees shall submit their applications to the CA by November 30, 2013 if they decide to apply for extension or renewal of their licences (the Applications). Under the BO, the CA shall, as soon as is practicable after the receipt of an application and, in any case, not later than 12 months before the expiry of the period of validity of the licence, submit recommendations to the CE in Council in relation to the extension or non-extension or renewal or non-renewal of the licence, and where appropriate, the conditions subject to which the licence may be extended or renewed. Where recommendations on the application are made by the CA, the CE in Council shall consider them and as soon as is practicable extend or renew the licence to which they relate subject to such conditions as he thinks fit

specified in the licence, or decide not to extend or renew the licence.

As far as we know, the CA has not yet received the Applications. The CA has already indicated that it will process the Applications, upon receipt, in accordance with the law and established procedures, which include holding relevant public consultation to gauge public views on the performance of the licensees concerned before making recommendations to the CE in Council. We believe that the CA will consider all relevant factors when processing the Applications, including the licensees' operational, financial, technical and programming arrangements, future commitments, public opinions, and will fully assess the past performance of the licensees concerned in relation to their compliance with the statutory requirements, licence conditions and codes of practice.

(g) The Administration has to process the three Applications in accordance with the statutory requirements. The BO does not provide for any statutory channel to appeal against the CE in Council's licensing decision.

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