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Government further explains CE in Council's decision on free TV licence applications

The Chief Executive (CE) in Council decided on October 15 that a gradual and orderly approach should be adopted in introducing competition into the domestic free television programme service (free TV) market, and on this basis approved in principle the applications of Fantastic Television Limited (Fantastic TV) and Hong Kong Television Entertainment Company Limited (HKTVE) for a free TV licence.

A spokesman for the Commerce and Economic Development Bureau said today (November 5) that the Government would hope to bring in healthy competition through issuing additional free TV licences, with a view to providing more choices and better quality programmes for the public as well as increased career opportunities for workers in the related performance, creative, production and media fields.

It is the first time in nearly four decades that the Government will grant more free TV licences. The number of licensees will be doubled from two to four, with an addition of four more free TV channels.

The spokesman said that after the announcement of the decision, the Government had explained as far as permitted by the system the assessment criteria and the reasoning leading to the CE in Council's decision.

However, the Government notes that since the decision was announced three weeks ago, there are still public concerns and misunderstandings on the CE in Council's decision. On the conditions for preserving the Executive Council system and not disclosing commercially sensitive information about the three applicants and the two existing licensees, the Government would like to take this opportunity to further explain the decision to the community.

Policy on television market liberalisation

The Government decided in 1998 the policy to open up the television market (1998 Policy), without setting a ceiling on the number of licences to be issued. This, however, cannot be interpreted as that any applicant meeting certain basic requirements must be granted a licence. Whether a licence is granted is subject to the recommendation by the Communications Authority (formerly the Broadcasting Authority) (the Authority) and then consideration by the CE in Council against all relevant factors, including the sustainability of the free TV market as a whole, before a decision is made.

The 1998 Policy has been in place for 15 years and remains unchanged.

There are some views in the community querying why, even when the market cannot support three new free TV operators, the Government did not grant licences to all three applicants in view of their willingness to bear the risk of losing money.

First, the CE in Council has to consider public interest in processing the applications for new licences, including the impact of the new licences on the sustainability of the TV industry. That is to consider whether the number of new licences will lead to over-competition or vicious competition, including the possible dilution of advertising revenue in a way that all or most of the TV stations will not have adequate revenue during the 12-year licence period to support the consistent and quality programme production.

Gradual and orderly approach in introducing competition

Based on the business plans and estimations submitted by the applicants, the consultant's findings indicated that the market would be able to sustain the operation of three operators (including the two existing licensees), and perhaps four operators under a favourable market condition. The consultant considered that the local free TV market could hardly sustain a total of five players.

In considering public interest, the CE in Council was of the view that the sustainable and steady development of the free TV market was an important consideration. Therefore, 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, for example a decline in programme quality as a result of the cut-throat competition. This would eventually make the public suffer more than they gain.

Accordingly, the CE in Council decided to approve two of the three applications at this juncture (but not precluding the possibility of granting more free TV licence(s) in light of market development).

Before making its decision, the CE in Council considered legal advice in respect of the above interpretations of the relevant statutory requirements and the policy, and formally informed the three applicants of the inclination to adopt the gradual and orderly approach. The applicants were invited to submit representations thereon before the CE in Council made a decision. The relevant representations by the three applicants were also submitted to the CE in Council for consideration.

Law and system

According to the law, the CE in Council is the ultimate decision-making body on the grant of the free TV licences. The CE in Council has all along strictly adhered to the confidentiality system. The Government must act in accordance with the prevailing law and system and should not deviate from the system for any individual incident. If anyone, including existing licensees and new licence applicants, is aggrieved by the decision, he has the right under our system to resort to judicial actions to review such a decision, which will be handled by the Court fairly and impartially.

It is unnecessary to invoke the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to intervene in the matter. It will politicise the matter but offer no help in resolving it.

Considerations for granting licences and assessment criteria on competitiveness

There are views saying that Hong Kong Television Network Limited (HKTVN) has produced popular drama series, and the other two applicants seem to be less proactive because of their not having showcased any drama production before the grant of the licences; and that the Government should therefore grant a licence to HKTVN. The CE in Council has considered the three free TV licence applications against 11 factors and four assessment criteria. In particular, in considering public interest, the CE in Council took into account the sustainability of the free TV market.

The 11 factors are:

- (1) the three applications;
- (2) the recommendation submitted by the Authority;

- (3) the applicable statutory requirements under the Broadcasting Ordinance (Cap.562) (BO);
- (4) the assessment criteria in the Authority's "Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong";
- (5) sustainability of the free TV market in the broad sense;
- (6) the consultant's reports on the impact of introducing new competitors on the competition environment of the free TV market (including the consultant's assessment of the relative competitiveness of each applicant) (the Consultant's Reports);
- (7) all representations/responses by relevant parties, all relevant documents;
- (8) all relevant latest developments;
- (9) all public views received;
- (10) the Government's prevailing broadcasting policy; and
- (11) public interest.

The consultant proposed four assessment criteria to assess the proposals submitted by the applicants, all of which were disclosed to all applicants for making representations before the CE in Council was to make a decision. These criteria include:

- (a) financial capability;
- (b) programming investment;
- (c) programming strategy and capability; and
- (d) technical soundness.

Based on the four criteria, the CE in Council assessed the applicants' proposals against specific conditions listed below:

- (a) financial capability:

including the three applicants' or their parent companies' market capitalisation and profitability, cash flows, asset-to-liability ratio and financial support to be rendered to each applicant;

- (b) programming investment:

including the three applicants' programming investment, self-produced first-run programming investment and non-programming operating cost;

- (d) programming strategy and capability:

including programme diversity, the mass appeal of the programmes, experience in operating paid TV service, capability in content production and audience ratio of the parent companies. This criterion covers all types of programmes and is not limited to dramas; and

- (d) technical soundness:

including the transmission arrangement proposed by the applicants, expected service coverage and progress, and technology supporting high definition and interactive television.

Overall assessment

Against the four assessment criteria, the CE in Council considered various relevant factors including the consultant's

relevant assessment and the representations submitted by the applicants on the Consultant's Reports.

The assessment made by the CE in Council reflects a judgment in overall terms. It has formed the view that Fantastic TV and HKTVE outperform HKTVM in overall terms, and on this basis decided to grant approval-in-principle to Fantastic TV's and HKTVE's applications. This decision is prudent and in line with the gradual and orderly principle.

Can the TV advertising market be enlarged?

The CE in Council noted the different views expressed on the TV advertising market. Some have pointed out that operators will benefit from a larger market with the issuance of additional licences. Others hold the opposite view that the time spent watching TV by each individual is limited and the TV advertising market is unlikely to keep growing indefinitely.

It is necessary to point out that the TV advertising market could be affected by various market factors and it would be difficult to make an accurate prediction of future development. Under unforeseeable circumstances, the CE in Council has adopted a prudent approach in making the decision.

Processing the applications is time-intensive

This is the first time in 40 years that competition will be introduced into the free TV market. The task of processing such applications is unprecedented and difficult. Since the Authority submitted their recommendations to the previous-term government, the previous and current-term CE in Council have since January 2012 discussed the free TV licence application issues in a total of 11 meetings. In the process, legal advice from the Department of Justice and the outside counsel has been sought from time to time. It is to ensure that the entire process would strictly adhere to the requirements of the system, legislation, policy and procedural fairness. During the process new developments emerged, such as Asia Television Limited (ATV)'s attempt to appeal to the CE in Council by way of petition against the Authority's recommendation and the subsequent judicial review against the CE in Council's relevant decision by Television Broadcasts Limited (TVB). It takes time to handle all these matters.

Procedural fairness

In processing the applications, the CE in Council has sought further information/ representations from the relevant parties (including the applicants and the existing licensees) as and when the evolving circumstances require. Before making its determination, the CE in Council disclosed to all applicants the four Consultant's Reports (including the consultant's relevant assessment of the applications against the four assessment criteria). On the basis of legal advice from London Queen's Counsel, the applicants have been given sufficient time and opportunities to submit rounds of responses and representations on these matters. The requirement of procedural fairness was strictly adhered to throughout the process.

Why were applicants not allowed to modify their applications when making representations?

First, the gradual and orderly approach conforms to the 1998 Policy. All applicants have been given sufficient opportunities to respond in respect of the inclination to adopt the gradual and orderly approach, the Consultant's Reports as well as the assessment criteria, and their relevant representations have also been submitted to the CE in Council for consideration. The CE in Council has adequate information for consideration before making its decision.

If applicants were to be allowed to alter their proposals at any time when their applications were being processed, there might then be new factors/developments necessitating the CE in Council's re-consideration of the matters already considered. The entire processing would then become endless. There is no question of fairness as all applicants have been subject to the same "no alternation" requirement.

Means of delivery and speed of service roll-out

Fantastic TV and HKTVE propose to hire the Hybrid Fibre-coaxial Cable network operated by i-CABLE and the fixed broadband network of PCCW-HKT Limited respectively for transmission of the proposed services. As it is unlikely to be technically feasible for a new licensee to achieve territory-wide coverage in the initial stage of service roll-out with its proposed means of delivery (i.e. fixed telecommunication network), the Authority recommended and the CE in Council accepted that the new licensee should be allowed to achieve territory-wide coverage on a step-by-step basis.

In fact, when ATV and TVB rolled out their digital terrestrial television (DTT) service at end 2007, they were exempted from the territory-wide coverage requirement such that they may roll out their respective DTT networks by phases. Hence, it is considered that the phased approach of Fantastic TV and HKTVE in achieving territory-wide coverage is acceptable.

Next step

In line with established practice, the Authority and the Government will seek further information as necessary from Fantastic TV and HKTVE, and discuss with them the proposed conditions of the licence that may be granted if the CE in Council decides to approve the free TV licence applications in due course. The Authority will also review the further information submitted by Fantastic TV and HKTVE and their free TV licence applications, and submit to the CE in Council recommendations on whether a free TV licence should be formally granted to Fantastic TV and HKTVE.


After the Authority has submitted the recommendations, the CE in Council will be invited to consider whether or not to formally grant a licence to each of Fantastic TV and HKTVE under sections 8(1) and 10(1) of the BO. At this Second Stage, the CE in Council will further review and take a final view on Fantastic TV's and HKTVE's abilities to meet the licensing criteria as well as each and every relevant aspect of their free TV licence applications.

During the process, further information will be sought from Fantastic TV and HKTVE covering various issues including the undertakings of no de facto control for verifying their "non-subsidiary" status. All further information will be submitted to the CE in Council when it further reviews and makes a final determination on Fantastic TV's and HKTVE's abilities to meet all the statutory requirements and administrative licensing criteria at the Second Stage.

The CE in Council will continue to complete the outstanding work relating to the free TV licence applications in a fair and prudent manner with a view to formally granting the two licences as soon as possible for the provision of more and better programming choices to the public.

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