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By Email and By Post

7 November 2013

Ms Yue Tin-po
Clerk to Panel on
Information Technology and Broadcasting
Legislative Council
1 Legislative Council Road
Central, Hong Kong

Dear Ms Yue,

**Panel on Information Technology and Broadcasting (“the Panel”)
Special Meeting on 8 November 2013**

I refer to the invitation by the Panel to the Chairman of the Communications Authority to attend the Panel’s discussion on “Issues relating to the applications for domestic free television programme service licences” at the special meeting to be held on 8 November 2013.

By way of background, section 9(2) of the Broadcasting Ordinance (Cap. 562) (“BO”) provides that the Communications Authority (formerly Broadcasting Authority, collectively referred to as the “Authority” hereafter) shall consider applications for a domestic free television programme service licence (“free TV licence”) and make recommendations thereon to the Chief Executive in Council (“CE in C”). The Authority has duly processed the applications for free TV licence from Hong Kong Television Network Limited, Fantastic Television Limited and HK Television Entertainment Company Limited in accordance with the BO, the guidance notes promulgated by the Authority for processing free TV licence applications and established procedures, and submitted its recommendations to the CE in C on 13 July 2011.

A note setting out the manner in which the Authority has processed the three applications is attached for the information of Panel members. As the Authority has nothing further to add to the issues to be

discussed by the Panel, we regret that the Authority will not be represented at the Panel meeting on 8 November 2013.

Yours sincerely,



(Miss Katy Fong)
Secretary,
Communications Authority

Encl.

c.c. Hon Wong Yuk-man
Chairman, Panel on Information Technology and Broadcasting

Miss Susie Ho, JP
Permanent Secretary for Commerce and Economic Development
(Communications and Technology)

APPLICATIONS FOR DOMESTIC FREE TELEVISION PROGRAMME SERVICE LICENCES

PURPOSE

Section 9(2) of the Broadcasting Ordinance (Cap. 562) (“BO”) provides that the Communications Authority¹ (formerly Broadcasting Authority, collectively referred to as the “Authority” hereafter) shall consider applications for a domestic free television programme service licence (“free TV licence”) and make recommendations thereon to the Chief Executive in Council (“CE in C”). This note sets out the manner in which the Authority has processed the three applications for free TV licence from Hong Kong Television Network Limited (“HKTVN”), Fantastic Television Limited (“Fantastic TV”) and HK Television Entertainment Company Limited (“HKTVE”) – hereinafter referred to as collectively “the three applications”, in accordance with the statutory requirements and established procedures.

BACKGROUND

Licensing Framework under the BO and the Established Procedures

2. The Authority notes the Government’s broadcasting policy objectives to widen the programme choices for the community, encourage investment and innovation in the broadcasting industry, promote fair and effective competition and enhance Hong Kong’s position as a regional broadcasting hub. Upon completion of a comprehensive review of television policy in 1998, the Government announced its decision to open up the television market. In line with the published policy, the BO enacted in July 2000 has established a technology-neutral licensing regime and has not specified any limit on the number of free TV licences to be issued.

¹ Since 1 April 2012, the Broadcasting Authority has been disbanded and its statutory functions have been taken over by the Communications Authority, which is a unified regulatory body tasked with overseeing the broadcasting and telecommunications sectors.

3. Interested parties may submit applications for free TV licences at any time. To facilitate any interested party to apply for a free TV licence, the Authority has since 2002 promulgated a “Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong” (“Guidance Note”).

4. Section 9(3) of the BO provides that the Authority 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 Authority thinks fit, and shall consider the representations received. Having processed the applications for licences, the CA will then submit its recommendation to the CE in C for approval.

PROCESSING OF THE APPLICATIONS

5. The Authority received the applications for free TV licence from –

- (a) HKTVN² on 31 December 2009;
- (b) Fantastic TV³ on 15 January 2010; and
- (c) HKTVE⁴ on 31 March 2010.

6. The Authority assessed the three applications following the statutory requirements under the BO and established procedures. During the assessment process, the Authority had heavily engaged the applicants and written to them for a number of times to seek additional information and clarifications, as well as to consult them on the Authority’s comments on the programming, corporate structure, service coverage and various other aspects of their individual applications.

² The name of the applicant was changed from “City Telecom (Hong Kong) Limited” to “Hong Kong Television Network Limited” in January 2013.

³ The name of the applicant was changed from “First Gear Limited” to “Fantastic Television Limited” in June 2010.

⁴ The name of the applicant was changed from “Festa Holdings Limited” to “HK Television Entertainment Company Limited” in May 2010.

7. Pursuant to the requirement under section 9(3) of the BO, the Authority also conducted a public consultation between July and September 2010 to collect the public's views on the three applications⁵.

THE AUTHORITY'S ASSESSMENT AND RECOMMENDATIONS

8. In line with the BO and established procedures, the Authority's assessment of the three applications was based on the following factors –

- (a) compliance with the statutory requirements under the BO (these are also applicable to the incumbent licensees);
- (b) the assessment criteria set out in the Guidance Note⁶;
- (c) public opinions received. These include the views collected as part of the public consultation exercise conducted by the Authority (please see paragraph 7 above) and other views collected subsequent to the exercise and before the submission of the Authority's recommendations to the CE in C;
- (d) likelihood of prospective licensee(s) complying with the proposed licence conditions to be imposed; and
- (e) the potential impact of new free TV licensee(s) on the local television market.

Salient points of the Authority's assessment are set out below.

⁵ Pursuant to the BO and its consultation guide, the Authority published notices on the three applications on 9 July 2010 in the Gazette, one Chinese newspaper and one English newspaper, and uploaded them onto its website. By the end of the two-month consultation on 8 September 2010, the Authority received a total of 256 submissions.

⁶ The assessment criteria set out in the Guidance Note include the applicant's financial soundness and commitment to investment, the applicant's proven managerial and technical expertise, the variety, quantity and quality of programmes to be provided by the applicant, the technical soundness and quality of the applicant's proposed service, the speed of the applicant's service roll-out, the impact on members of the public of any construction works associated with the applicant's proposed service, the benefit to the local broadcasting industry, audience and the economy as a whole, and the effectiveness of the applicant's internal quality control and compliance mechanisms.

9. The Authority considered that the three applications were in compliance with the statutory requirements under the BO, including those relating to company registration, residence in Hong Kong, “fit and proper person”, non-subsidiary, unqualified voting controllers and disqualified persons.

10. In respect of the criteria set out in the Authority’s Guidance Note, taking into account the submissions made by the applicants, the Authority was satisfied that all three applicants had demonstrated the requisite financial soundness and commitment to invest; had proven managerial and technical expertise; and had demonstrated commitment to provide quality television programme services to the public. On technical soundness, the Authority noted that all three applicants proposed to deliver their free TV services via fixed network and considered the proposed arrangements acceptable. As regards the speed of the applicants’ service roll-out, the Authority noted that it was unlikely for a new licensee to achieve territory-wide coverage in the initial stage of service roll-out and that they should be allowed to achieve territory-wide coverage on a step-by-step basis. The Authority also considered that the total investment involved in the proposed service of the three applicants would bring significant growth to the local broadcasting industry.

11. The Authority invited public views on the three applications between 9 July 2010 and 8 September 2010 and received 256 submissions. Eight more submissions were received after the consultation period and before the submission of the Authority’s recommendations. Most respondents supported the applications on the grounds that more free TV operators would provide more choices to the audience and enhance competition in the broadcasting market. The Authority has submitted all public views gathered to the CE in C for consideration.

12. On competition implications of the applicants’ proposals, the Authority commissioned an independent consultant to conduct a two-stage study⁷ in 2010. The purpose of the consultancy study was to

⁷ As the consultant’s assessment was carried out in 2010, we understand that the Government invited the same consultant to update its assessment in early 2012.

give the Authority a view of the competitive landscape of the free TV market in Hong Kong, having regard to the overall development and possible impact on the market by possible new entrant(s).

13. In relation to the sustainability of the free television market, the Authority noted the consultant's findings that the market might not be able to sustain a total of five players (two incumbents and three new applicants) based on the business plans submitted by the applicants. The Authority, however, believed that the applicants themselves with their experience and expertise should be in the best position to evaluate the market potential and the economic viability of their proposed services. While the consultant questioned the sustainability of two of the applicants, the Authority noted that the consultant's analysis was based on the static information provided by the applicants in their applications, and did not take into account the dynamic competitive environment where operators would respond to market conditions and adjust their business strategies and operations accordingly. In view of the dynamic competitive environment and evolving business strategies of individual applicants, the Authority was of the view that the sustainability of individual applicants should not be a primary consideration in deciding as to whether a licence should be granted or not.

14. The Authority was mindful of the potential impact of new entrants on the incumbent operators, i.e. Asia Television Limited and Television Broadcasts Limited. While the entry of new players might adversely affect the operating environment of the two incumbents, the Authority did not consider that it had a duty to protect their interests by maintaining the status quo or limiting entry into the market. More importantly, the Authority was of the view that it should promote programme choice and diversity through competition and enhance Hong Kong's position as a regional broadcasting hub for the benefit of the local broadcasting industry, the audience and the community as a whole. The Authority considered that new entrants in the free television market would enhance competition, increase investment in programming and local content production, and substantially enhance viewers' choice. The Authority noted that most of the public views received were in support of opening up the free TV market and was convinced that the grant of new licences would be in the public interest.

15. In light of the above, the Authority considered it best in the public interest to recommend the grant of licences to those which met the relevant requirements. On the whole, the Authority considered that all three applicants had demonstrated their compliance with all the statutory requirements. It was satisfied that all three applicants had the requisite financial capability, expertise, transmission infrastructure and commitment to provide quality television programme services to the public. Therefore, on 13 July 2011, the Authority recommended to the CE in C that approval-in-principle should be given for the grant of free TV licences to each of the applicants. The Authority had not considered it necessary or appropriate to rank the three applications and no such ranking had been undertaken by the Authority.

16. Following the submission of the Authority's Recommendations in July 2011, during the year between February 2012 and February 2013, the Authority has been invited by the CE in C on various occasions to consider and respond to the issues arising from additional information and new developments of the applicants, as well as representations submitted by the interested parties to the CE in C.

17. Having carefully considered the relevant issues and representations, the Authority has confirmed to the CE in C on each occasion that there was no cause for a revision of its recommendations made to the CE in C in respect of the three applications.

18. The Authority has duly assessed the three applications in accordance with the provisions in the BO, the Guidance Note and established procedures and submitted its recommendations to the CE in C.

19. Since early February 2013, the Authority has not received further request from the CE in C to submit views or comments on the three applications or to reconsider the Authority's recommendations. The Authority has not been asked by the CE in C to consider the "Gradual and Orderly Approach" nor the ranking of the three applications.

WAY FORWARD

20. Following the CE in C's decision to grant approval-in-principle for the applications of Fantastic TV and HKTVE, the Authority is in the process of seeking further information as necessary from the two applicants, and would discuss with them the proposed licence conditions if the CE in C decides to approve the two applications in due course. The Authority will also review the further information submitted by Fantastic TV and HKTVE and their applications, and submit to the CE in C recommendations on whether free TV licences should be formally granted to Fantastic TV and HKTVE respectively.

Office of the Communications Authority
November 2013