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Press Releases**Communications Authority Releases Findings of the Investigation into the Alleged Violations of the Competition Provisions of the Broadcasting Ordinance by Television Broadcasts Limited**

The Communications Authority (formerly Broadcasting Authority, collectively referred to as "the Authority" hereafter) today (19 September 2013) announced the findings of the investigation into the complaint lodged by Asia Television Limited ("ATV") against the alleged violations of the competition provisions of the Broadcasting Ordinance ("BO") by Television Broadcasts Limited ("TVB"), a domestic free television programme service licensee. Based on the evidence collected, the Authority finds that some of the allegations are substantiated and that TVB has abused its dominant position by engaging in anti-competitive practices in contravention of sections 13 and 14 of the BO.

The investigation was initiated by a formal complaint from ATV against TVB on 10 December 2009, alleging that certain clauses in TVB's contracts with its artistes and singers and certain informal policies and practices pursued by TVB had the purpose or effect of preventing, distorting and substantially restricting competition, thereby violating sections 13 and 14 of the BO. The Authority decided on 28 August 2010 to launch a full investigation into some of the contractual clauses and policies alleged in ATV's complaint.

The Authority has completed its investigation into the complaint. After considering the evidence collected and the representations received (including information and representations submitted by TVB and other licensees, record companies and singers), the Authority concludes that the following four allegations are substantiated -

- (a) exclusive occasional use artiste and singer¹ contracts with harsh and unreasonable terms;
- (b) artistes on serial-based² and one-show contracts³ with TVB are prohibited from having their original voices when performing in other television ("TV") stations' programmes (no original voice policy);
- (c) artistes on serial-based and one-show contracts with TVB are prohibited from attending promotional activities of the productions of other TV stations which also featured the artistes concerned (no promotion policy); and
- (d) artistes on contracts with TVB are prevented from speaking Cantonese in the programmes of other TV stations in Hong Kong (no Cantonese policy).

The Authority finds that -

(a) Supply and Demand of Artistes

The evidence reviewed by the Authority indicates that during 2007 – 2010, TVB contracted with a significant proportion of all the artistes on contract with the main Hong Kong broadcasters. Information gathered from record companies also suggests that approximately 90% of singers entered into contracts with TVB. Apart from full-time contracts, TVB entered into three types of occasional use contracts with artistes and singers, including one-show contracts, serial-based contracts and singer contracts.

(b) Relevant Markets and Assessment of Market Power

On the basis of the analytical framework set out in the Competition Investigation Procedures and the Guidelines to Application of the Competition Provisions of the BO, the Authority finds that there are two relevant economic markets: all TV viewing market and TV advertising market. TVB possesses a dominant position in both markets.

(c) TVB's Conduct

(i) Exclusive Contracts

In the one-show and serial-based contracts, TVB has inserted provisions that require the artiste either to obtain consent from TVB before engaging in outside work, or to be totally exclusive to TVB during the contractual period subject to TVB consenting otherwise. A small number of one-show contracts require the artistes concerned to notify TVB prior to undertaking outside work. As for singers, they are either required to obtain consent from TVB before engaging in outside work or give TVB prior notification before engaging in outside work. In addition, all occasional use contracts contain a clause that TVB is not under an obligation to use the contracted artistes.

The data provided by TVB suggests that there are a significant number of artistes under one-show, serial-based and singer contracts who are not fully engaged by TVB during the contractual period and are fully capable of rendering their services to rival local TV stations, yet are still subject to the exclusivity terms. Even though it is theoretically possible for TVB artistes and singers to obtain consent from TVB or give TVB prior notice to appear on rival local stations, in reality, the consent clauses in the artiste and singer contracts impose de facto exclusivity. For example, between 2007 and 2010, TVB approved very few applications from artistes for performing outside work and none of the applications approved by TVB involved artistes working for TVB's rival TV stations in Hong Kong. In addition, TVB has only received very few notifications from singers to appear on other TV broadcasters.

The clauses artificially impair rivals' ability to produce high-quality TV productions to compete with TVB and have also raised rivals' costs by making it more expensive for them to produce or acquire TV programmes featuring artistes. When these clauses are used in conjunction with the no-obligation-to-use clause, it allows TVB to warehouse artistes at minimal cost.

TVB has not provided any reasonable objective justifications for these clauses. The Authority is of the view that the "exclusive clauses" have the purpose and effect of foreclosing rival's access to artistes and singers.

(ii) No Original Voice and No Promotion Policies

The no original voice and no promotion policies are encapsulated in a significant proportion of TVB's one-show contracts and serial-based contracts. The Authority is of the view that the likely objective economic purpose of these policies is to impair rivals' ability to compete with TVB and to raise their costs. Where rivals wish to broadcast programmes which feature a TVB contracted artiste, they will face higher costs, and the perceived quality and attractiveness of the programming will likely be reduced. They will also be constrained in their promotional activities. There is no acceptable objective justification offered by TVB for these policies.

(iii) No Cantonese Policy

While the no Cantonese policy is not explicitly imposed through a contractual clause, the Authority is of the opinion that the amount of evidence examined by the Authority (including records of artistes' interviews on Cable TV and evidence submitted by other licensees, singers and record companies) shows that it is actively practised amongst singers as a result of TVB's policy. This policy affected a very large proportion of singers and some proportion of artistes. The likely plausible objective economic purpose of this policy is to impair rivals' ability to compete with TVB. None of the reasons offered by TVB could objectively justify the policy. The no Cantonese policy has both the capability for reducing the quality of interviews of singers in rival TV stations and making it more difficult for viewers to understand, thus impairing rivals' ability to compete with TVB.

Given the above, the Authority decides –

- (a) to impose a fine of \$900,000 on TVB;
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- (b) to direct TVB under section 16 of the BO to forthwith bring to an end the infringement concerned, and refrain from repeating or engaging in any act or conduct which has an equivalent purpose or effect to the infringing clauses and policies;
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- (c) that TVB shall, within three months (i.e. on or before 18 December 2013), communicate to all artistes and singers who have current serial-based, one-show or singer contracts with TVB that TVB abandons the infringing contractual clauses and policies; issue a public statement within two weeks

(i.e. on or before 2 October 2013) explaining and declaring that TVB will not require singers and artistes which it engages to refrain from speaking Cantonese on other TV stations in Hong Kong; and

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- (d) that TVB shall provide a full written report to the Authority within four months (i.e. on or before 18 January 2014) describing the steps taken by TVB to comply with this direction.
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As regards ATV's complaint about the "one station buy" policy⁴ allegedly practised by TVB, although the Authority finds no evidence to substantiate the allegation, the Authority is of the view that the one station buy policy has the capability to be exclusionary and undermine other broadcasters' ability to compete. The Authority would like to make clear that, provisionally, the one station buy policy will not generally be acceptable and should not be practised by licensees in dominant positions or with market power.

The [full investigation report](#) is published on the Authority's website. An executive summary of the investigation report is at [Annex](#).

Communications Authority
Secretariat

19 September 2013

Notes:

- (1) For singer contracts, singers are engaged on a show-by-show basis. TVB and the singers agree that the singers will appear in TVB's shows if the need arises at agree-upon rates.

 - (2) Serial-based contracts refer to contracts between TVB and its artistes in which the parties agree to a rate for a drama series of varying lengths.

 - (3) One-show contracts refer to contracts between TVB and its artistes in which the artistes are only signed for a minimum one-show commitment. TVB and the artistes agree that they will appear in TVB's shows if the need arises at agreed-upon rates.

 - (4) ATV complained that TVB had allegedly implemented this policy, whereby TVB offered higher discount rates to advertisers which undertook not to place advertisements with ATV.
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