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Legislative Council

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Panel on Information Technology and Broadcasting

Special meeting on 2 December 2013

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

Purpose

This paper provides background information on the applications for domestic free television programme service licences and also a summary of 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 domestic free television programme 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 domestic free television programme service 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 domestic free television programme service licence, subject to such conditions as he 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. 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

Panel on Information Technology and Broadcasting

4. The Panel on Information Technology and Broadcasting ("the Panel") has been following up closely on the progress of the Administration's processing of applications for domestic free TV programme service licences. At the special Panel meeting on 22 July 2010, members noted that the former Broadcasting Authority ("BA") (replaced by the CA on 1 April 2012) received domestic free television programme service licence applications from Hong Kong Television Network Limited² ("HKTV"), Fantastic Television Limited ("Fantastic TV") and HK Television Entertainment Company Limited ("HKTVE") on 31 December 2009, 15 January 2010 and 31 March 2010 respectively. Members were concerned about the lack of progress by the Administration in processing the applications.

² City Telecom (HK) Limited has been renamed as Hong Kong Television Network Limited ("HKTV") with effect from 10 January 2013.

5. At the Panel meeting on 11 June 2012, members noted that it had been almost 30 months since the submissions by the applicants, and over 12 months since the recommendations on the applications submitted by the former BA. Members considered the delay unreasonable, both from the perspectives of the public and the commercial operators. They urged the CE in Council to make a final decision on the applications as soon as possible. The Administration advised that the Government had been processing the recommendations submitted by the former BA expeditiously and prudently in accordance with the statutory requirements and established procedures. The outcome would be announced as soon as the CE in Council made a decision.

6. At the special meeting on 25 January 2013, the Panel followed up the issues relating to the applications for domestic free television programme service licences. The Panel also met with representatives of relevant stakeholders to gauge their views on the subject. The free TV licence applicants (namely HKTV, Fantastic TV and HKTVE) attending the meeting urged the Government to issue the new free TV licences as soon as possible, whereas the existing two free TV licensees (namely ATV and TVB) objected to the processing of the applications by the CE in Council. The Panel strongly condemned the Government for ignoring the public's right to know and their interests by unreasonably delaying the issuance of such licences, and passed a motion to this effect.

Council meetings

7. Members have expressed grave concern about the progress of processing of the applications by the Administration at different forums. At the Council meetings on 11 January, 2 May, 30 May, 17 October, 7 November 2012, 17 July and 9 October 2013, Hon LEUNG Yiu-chung, Hon Starry LEE, Hon LEE Wing-tat, Hon Charles Peter MOK, Hon Frederick FUNG and Hon Claudia MO raised questions on the subject.

8. A motion was passed at the Council meeting on 28 November 2012 urging the Administration to issue the new domestic free television programme service licences before the end of March 2013.

Recent developments

9. On 15 October 2013, the Administration announced that the CE in Council had approved in principle the applications of Fantastic TV and

HKTVE for a free TV licence, whereas the application submitted by HKTV had been rejected. The letter from the Administration on the subject was circulated to Panel members vide LC Paper No. CB(4)39/13-14 on 16 October 2013.

10. At the Council meeting on 17 October 2013 (the CE's Question and Answer Session), some Members expressed dissatisfaction that the CE had refused to give an account of the justifications for not granting a domestic free television programme service licence to HKTV due to the Executive Council's confidentiality rules. The CE advised that under the established system of confidentiality which must be adhered to, the deliberation of the Executive Council meetings on any subject matter was not made public.

11. Having regard to the strong public demand for the Administration to clearly explain its decision to reject the application of HKTV for a domestic free TV licence, as reflected in the huge turnout for the public procession on 20 October 2013, Hon Charles Peter MOK and eight other Members put forward at the House Committee ("HC") meeting on 25 October 2013 a proposal for the HC Chairman to move at the Council meeting on 30 October 2013 a motion seeking the Legislative Council's authorization to empower the Panel to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap.382) ("LCPPO") to order the Secretary for Commerce and Economic Development ("SCED") to attend before the Panel, and to produce information 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 matter"). The proposal was negated.

12. At the Council meeting on 30 October 2013, Dr Hon Lam Tai-fai raised a written question on, inter alia, whether the authorities would review afresh the applications for domestic free television programme service licences. The Administration advised that the CE in Council, having regard to all relevant factors and representations and responses in relation to the three applications, had 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.

13. At the Council meeting of 6 November 2013, Hon Charles Peter MOK moved a motion under the 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 SCED to attend before the Panel to produce all relevant papers, books, records or documents involved in "the matter". The motion was negatived.

14. At the Council meeting of 6 November 2013, Hon James TO moved a motion urging the CE to explain to the public the details of "the matter", and to consider issuing a domestic free television programme service licence to HKTV. The motion was negatived.

15. At the Panel meeting on 8 November 2013, members noted that the former BA had recommended that three free TV licences be granted to the three applicants. As the recommendation was not adopted by the CE in Council, some members considered that the CE in Council should have referred the applications back to the former BA or the CA for reconsideration, especially when the 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. Eight members jointly moved a motion proposing that the Panel be authorized under the LCPPO to order Mr Ricky WONG, Chairman of HKTV and/or his authorized representatives to attend before the Panel to produce all relevant papers, books, records or documents involved in "the matter". The motion was negatived.

16. At the House Committee meeting on 15 November 2013, Hon Claudia MO put forward a proposal to seek the Council's authorization for the appointment of a select committee to inquire into "the matter", and that the select committee be authorized to summon the Chairman of HKTV to attend before the committee to give evidence and produce all relevant information. The proposal was negatived.

17. Hon Claudia MO will move a motion at the Council meeting on 4 December 2013 urging the Council to appoint a select committee to inquire into whether the HKSARG has 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. The wording of the relevant motion is in the **Appendix**.

Latest position

18. As the Chairman of the CA had declined the Panel's invitation to attend the meeting on 8 November 2013, the Panel has scheduled another special meeting to be held on 2 December 2013 to continue to follow up issues relating to the applications for domestic free television programme service licences and requested the Chairman of the CA to attend the meeting to answer members' questions pertaining to the issues.

Relevant papers

19. 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

Council Business Division 4
Legislative Council Secretariat
29 November 2013

**Motion under the
Legislative Council (Powers and Privileges) Ordinance
to be moved by Hon Claudia MO
at the Council meeting of 4 December 2013**

Appendix

Wording of the Motion

That this Council appoints a select committee to inquire into whether the Hong Kong Special Administrative Region Government has violated the fundamental principle of free market with fair competition of the free television broadcasting policy; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance to order Mr Ricky WONG Wai-kay, Chairman of the Hong Kong Television Network Limited, or his authorized representative and Mr Ambrose HO, Chairman of the Communications Authority, or his authorized representative to attend before the committee to give evidence and to produce in their possession all relevant papers, books, records or documents involved in the processes of vetting and approval of domestic free television programme service licence applications (including but not limited to all relevant documents and reports submitted by the former Broadcasting Authority to the Hong Kong Special Administrative Region Government).