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1 April 2015

**BY HAND AND  
BY FAX (2833 9132)**

Dr Hon Elizabeth QUAT, JP  
Chairman  
Panel on Information Technology and Broadcasting  
Legislative Council  
Room 606, Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear *Chairman,*

**Application of  
HK Television Entertainment Company Limited (“HKTVE”) for a  
Domestic Free Television Programme (“free TV”) Service Licence**

Following the approval-in-principle of the above application in October 2013, I write to inform you that at the meeting of the Executive Council on 1 April 2015, the Council advised and the Chief Executive ordered that -

- (a) having regard to the recommendations of the Communications Authority (“CA”) submitted under section 9(2) of the Broadcasting Ordinance (Cap. 562) (“BO”), HKTVE’s Application be **approved**;
- (b) the draft free TV service licence (at **Annex A** to the enclosed Legislative Council brief (“LegCo brief”)) be approved and granted to HKTVE under sections 8(1) and 10(1) of the BO for a term of 12 years from the date of the decision in (a) above;

- (c) the draft gazette notice (at **Annex B** to the LegCo brief) specifying the period of validity of HKTVE's free TV service licence and the period within which its licence shall be subject to review be approved; and
- (d) the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2015 (at **Annex C** to the LegCo brief) be made to include HKTVE in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).

We will hold a press conference later today to announce the CE in Council's decision mentioned above. I enclose at **Enclosure** a bilingual copy of the relevant Legislative Council brief and press release for your reference. Thank you for your attention.

Yours sincerely,



( Miss Susie HO )  
Permanent Secretary  
for Commerce and Economic Development  
(Communications and Technology)

Encls.

c.c. Clerk to Panel (Attn.: Ms Yue Tin-po)  
(Fax: 2840 0269)

Chairman, Communications Authority (Attn.: Mr Ambrose Ho)  
(Fax: 2507 2219)

## LEGISLATIVE COUNCIL BRIEF

Broadcasting Ordinance  
(Chapter 562)

### Application for Domestic Free Television Programme Service Licence of HK Television Entertainment Company Limited

#### INTRODUCTION

At the meeting of the Executive Council on 1 April 2015, the Council ADVISED and the Chief Executive (“CE”) ORDERED that –

- (a) having regard to the recommendations of the Communications Authority (CA) submitted under section 9(2) of the Broadcasting Ordinance (Cap. 562) (BO), HK Television Entertainment Company Limited (HKTVE)’s application for a domestic free television programme (free TV) service licence be **approved**;
- (b) the draft free TV service licence at **Annex A** be **approved** and granted to HKTVE under sections 8(1) and 10(1) of the BO for a term of 12 years from the date of the decision in (a) above;
- (c) the draft gazette notice at **Annex B** specifying the period of validity of HKTVE’s free TV service licence and the period within which its licence shall be subject to review be **approved**; and
- (d) the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2015 at **Annex C** be made to include HKTVE in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).

#### JUSTIFICATIONS

##### Processing of the Application under the Statutory Framework

2. Sections 8 to 10 of the BO set out the licensing regime for the free TV service. In brief, any interested party may apply to the CA for a free TV service licence at any time. Once an application for a free TV service licence is received, the CA shall consider such an application and make recommendations thereon to the CE in Council. Having considered the CA’s recommendations, the CE in Council may grant a free TV service licence to the applicant subject to such conditions as he

thinks fit.

3. HKTVE submitted the Application on 31 March 2010. After considering the Application alongside with two similar ones received from Fantastic Television Limited (Fantastic TV) and Hong Kong Television Network Limited received in January 2010 and December 2009 respectively, the CE in Council decided on 15 October 2013, under the approach to introduce competition into the free TV service market in a gradual and orderly manner, to grant approval-in-principle (AIP) to the Application and another one by Fantastic TV (the applications collectively as “AIP Applications” and the applicants as “AIP Applicants”), but the formal licence grant is subject to the CE in Council’s further review and final determination under the BO at the second stage (Second Stage<sup>1</sup>, the stage before the grant of AIP as the “First Stage”). The CE in Council also directed that –

- (a) the free TV service licence that may be granted to each of the AIP Applicants should be prepared and submitted to the CE in Council for consideration and, if appropriate, approval at the Second Stage, with licensing conditions which should broadly be along the lines set out in **Annex D**; and
- (b) prior to the CE in Council’s further review and determination of the AIP Applications at the Second Stage -
  - (i) the further information as set out in **Annex E** and as appropriate should be sought from the AIP Applicants; and
  - (ii) any other information that is relevant to the AIP Applications should be sought as appropriate.

Since the announcement of the CE in Council’s above decision, the CA proceeded with the consequential follow-up work. The CA examined HKTVE’s updated Application, sought further information and clarifications as necessary from HKTVE, consulted its views on the outstanding issues relating to corporate restructuring, additional commitments ordered by the CE in Council, the proposed licence conditions, and sought HKTVE’s confirmation on the proposed transmission arrangements. The CA submitted to the CE in Council on 19 January 2015 its recommendations on the Application.

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<sup>1</sup> This means the later stage when the CE in Council is invited to consider whether or not to formally grant a free TV service licence under sections 8(1) and 10(1) of the BO to the AIP Applicants.

## CA's Assessments at the Second Stage

4. The CA has considered the following factors in its assessment –
- (a) compliance with statutory requirements under the BO;
  - (b) the assessment criteria set out in Part V of the CA's Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong (Guidance Note);
  - (c) additional commitments ordered by the CE in Council at **Annex E**;
  - (d) public opinions received: these include the unsolicited public views collected since the announcement of the CE in Council's decision to grant an AIP to the Application; and
  - (e) likelihood that HKTVE would comply with the proposed licence conditions to be imposed.

In addition to the above assessment, the CA has also taken into account the relevant policy considerations of government bureaux/departments on the regulatory approach when making recommendations to the CE in Council.

### (A) Compliance with Statutory Requirements under the BO

5. The CA has examined HKTVE's updated Application in respect of its compliance with statutory requirements under the BO. The CA's assessment is as follows –

- (a) *Non-subsidiary requirement (section 8(3) of the BO and section 2 of Schedule 4 to the BO)*

Under section 8(3) of the BO and section 2 of Schedule 4 to the BO, a free TV service licence shall not be granted to or held by a company which is a subsidiary of a corporation (non-subsidiary requirement).

At the First Stage, HKTVE was a subsidiary of PCCW Interactive Media Holdings Limited (PCCW Interactive) and its ultimate parent company was PCCW Limited (PCCW). HKTVE had undertaken that, upon receiving the CE in Council's AIP and prior to the grant of a free TV service licence, it would implement the proposed corporate restructuring so that it would cease to be a subsidiary of a corporation.

On 30 May 2014, HKTVE completed the proposed corporate restructuring, and submitted relevant documents including undertakings, statutory declarations, declarations of trust, trust service agreements and

independent legal opinions for the CA's verifications of its corporate status. After completion of the proposed corporate restructuring, a trust company (i.e. HKTVE (B Class) (PTC) Limited) holds 100% of HKTVE's voting shares while PCCW indirectly holds 50% of the non-voting shares of HKTVE through its subsidiary, PCCW Interactive. Another trust company (i.e. HKTVE (C Class) (PTC) Limited) holds the remaining 50% of the non-voting shares of HKTVE on trust for the benefit of PCCW Interactive.

On the basis of the information provided by HKTVE, the CA is satisfied that HKTVE complies with the non-subsidiary requirement.

(b) *Company registration requirement<sup>2</sup> (sections 8(1) and 8(4)(c) of the BO)*

HKTVE is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 622) and is empowered under its Articles of Association to comply fully with the provisions of the BO and the terms and conditions of its free TV service licence.

(c) *Residence requirement (section 8(4)(a) of the BO)*

HKTVE has submitted that the company and the majority of its directors and principal officers comply with the residence requirement<sup>3</sup>.

(d) *Fit and proper person requirement (section 21 of the BO)*

HKTVE has submitted that HKTVE and all persons exercising control<sup>4</sup> of it meet the criteria for being fit and proper persons<sup>5</sup>.

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<sup>2</sup> Section 8(4)(c) of the BO stipulates that a licensee should be empowered under its articles of association to comply fully with the provisions of the BO and its licence conditions.

<sup>3</sup> Section 8(4)(a) of the BO provides that, to comply with the residence requirement, an applicant has to show that –

- (a) the licensee complies with the definition of “ordinarily resident in Hong Kong” (section 8(4)(a)(i) of the BO). This means that –
  - (i) the majority of its directors (assuming there are over two directors) must be individuals for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years; and
  - (ii) its control and management is bona fide exercised in Hong Kong; and
- (b) the majority of its directors and principal officers, including the principal officer in charge of the selection, production or scheduling of the programmes, are ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years (section 8(4)(a)(iv) of the BO).

“Ordinarily resident in Hong Kong” in respect of an individual means residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years.

<sup>4</sup> In accordance with section 1(6) of Schedule 1 to the BO, a person exercises control of a corporation if he is –

- (e) *Unqualified voting controller (UVC) restrictions*<sup>6</sup> (section 20(1) of Schedule 1 to the BO)

HKTVE has submitted that there is no UVC holding 2% or more of the total voting control of HKTVE under the current shareholding structure which requires the CA's approval<sup>7</sup>.

- (f) *Disqualified persons (DPs) requirement*<sup>8</sup> (sections 3(1), 3(2) and 33(1) of Schedule 1 to the BO)

- 
- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

- <sup>5</sup> Section 21(1) of the BO requires that a licensee and any person exercising control of the licensee shall be and remain a fit and proper person. Section 21(4) of the BO provides that in determining whether a licensee or a person exercising control over the licensee is a fit and proper person, account shall be taken of –

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which if, done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c) above.

- <sup>6</sup> Under section 1(1) of Schedule 1 to the BO, a UVC means a voting controller who is not a “qualified voting controller”. In the case of an individual, a qualified voting controller is one who satisfies the “ordinarily resident in Hong Kong” requirement and who has been so resident for at least one continuous period of not less than seven years. In the case of a corporation, the majority of its directors have to satisfy the “ordinarily resident in Hong Kong” requirement and have been so resident for at least one continuous period of not less than seven years, and the control and management of the corporation is bona fide exercised in Hong Kong. A person may also qualify as a “qualified voting controller” by virtue of holding a position listed in section 1(1) of Schedule 1 to the BO.

- <sup>7</sup> Without the prior approval in writing of the CA, a UVC shall not hold, acquire, or exercise or cause or permit to be exercised, 2% or more, in the aggregate, of the total voting control of a free TV service licensee (section 20 of Schedule 1 to the BO).

- <sup>8</sup> Under Schedule 1 to the BO, DPs are persons or companies engaged in or associated with certain types of businesses who are not allowed to hold a free TV service licence or exercise control of such a licensee unless the CE in Council, on application by the concerned licensee, is satisfied that public interest so requires and approves otherwise. The following DPs are prohibited from exercising control of a domestic free television programme service licensee –

- (a) another television programme service licensee, either in the same or different category of licence (section 4 of Schedule 1 to the BO);
- (b) a sound broadcasting licensee (section 5 of Schedule 1 to the BO);
- (c) an advertising agency (section 6 of Schedule 1 to the BO);
- (d) a proprietor of a newspaper (including magazine) printed or produced in Hong Kong (section 7 of Schedule 1 to the BO);
- (e) persons exercising control of (a) to (d) above (section 8 of Schedule 1 to the BO); and
- (f) the associates of (a) to (e) above (section 8 of Schedule 1 to the BO).

HKTVE has submitted that there are no DPs exercising control of it<sup>9</sup>.

On the basis of the information provided by HKTVE, the CA is satisfied that HKTVE and all persons exercising control of it (including its directors and principal officers) are in compliance with the statutory requirements in (b) to (f) above.

- (g) *Application to the CA for a determination of whether the proposed free TV service primarily targets Hong Kong (section 12(2) of the BO)*

HKTVE has applied for the CA's determination under section 12(2) of the BO that its proposed service would, with reference to the factors set out in section 12(6) of the BO<sup>10</sup>, primarily target Hong Kong for the following reasons –

- (i) service coverage – the proposed service would be delivered via fixed network, which covers Hong Kong;
- (ii) revenue – the sources of its advertising revenue would primarily be based in and derived from Hong Kong;
- (iii) language – the proposed service would be broadcast in Cantonese and English; and
- (iv) marketing – HKTVE would actively market its service to viewers in Hong Kong.

On the basis of the information submitted by HKTVE, the CA is satisfied that the proposed free TV service of HKTVE would primarily target Hong Kong.

## (B) Consideration Based on the Criteria in the CA's Guidance Note

6. Eight broad criteria are specified in the Guidance Note, and the CA's

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<sup>9</sup> Before the corporate restructuring, PCCW was a DP by virtue of its being the person exercising control of PCCW Media Limited, a domestic pay television programme (pay TV) service licensee, and Starbucks (Hong Kong) Limited, a non-domestic television programme service licensee. As submitted by HKTVE, following the restructuring, PCCW would not hold any voting shares in HKTVE and therefore is not a person exercising control of HKTVE within the meaning of "exercise control" under the BO.

<sup>10</sup> In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters –

- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and size of the audiences targeted by the service; and
- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.



assessment of HKTVE's updated Application vis-à-vis each of the criteria is set out below –

(a) *The applicant's financial soundness*

*Financial soundness*

HKTVE has submitted that PCCW, a publicly listed company with a market capitalisation of HK\$39,651 million as at 16 January 2015, would provide full financial support to fund its operations. PCCW has provided to the CA a deed of undertaking confirming that it would support the operations of HKTVE financially.

The CA is satisfied with the financial soundness of HKTVE.

*Amount of investment*

Following the grant of the AIP, HKTVE has proposed to make a cumulative investment of HK\$2,727 million for the first ten years of operations (including HK\$1,383 million for the first six years). Compared to the investment commitment of HK\$2,900 million submitted at the First Stage of its Application, HKTVE has increased its programming and capital investment, and reduced other operating cost (e.g. sales and marketing cost).

The CA considers that HKTVE's investment proposal is commensurate with the scope and scale of its proposed free TV service and is acceptable.

(b) *Commitment to investment*

HKTVE has proposed a performance bond of HK\$23 million which is tied to milestones on service roll-out, premises passed in its transmission network and investment expenditure.

The CA considers that HKTVE's proposed performance bond is acceptable.

(c) *Whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service*

The board of directors and the principal officers of HKTVE include people with extensive experience in the media industry.

The CA considers that they have the necessary technical expertise and management skills to operate HKTVE's proposed free TV service.

(d) *The variety, quantity and quality of programmes to be provided*

HKTVE has submitted the following in respect of the variety and quality of its proposed programmes –

(i) Integrated Cantonese and English channels

HKTVE has committed to providing an integrated Cantonese channel (Cantonese channel) and an integrated English channel (English channel) within 12 months and 24 months respectively after the grant of licence. The Cantonese channel would provide round-the-clock service, while the English channel would broadcast a total of 16 hours of television programmes with two loops of eight hours each.

(ii) Positive programme requirements (PPRs)

HKTVE has agreed to meet the following PPRs –

- (1) news programmes (30 minutes daily on each of the Cantonese and English channels);
- (2) documentary programmes (60 minutes per week on each of the Cantonese and English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin<sup>11</sup>);
- (3) current affairs programmes (60 minutes per week on each of the Cantonese and English channels, of which 30 minutes per week of such programmes on each of the Cantonese and English channels are wholly of Hong Kong origin);
- (4) children's programmes (60 minutes daily on each of the Cantonese and English channels, of which 30 minutes daily of such programmes on the Cantonese channel are wholly of Hong Kong origin; on the English channel, at least two hours of programmes per week with educational values targeting teenagers);
- (5) programmes for young persons (30 minutes per week on the Cantonese channel only);

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<sup>11</sup> "Wholly of Hong Kong origin" means –

- (a) the programme is produced
  - (i) in substance and in form in Hong Kong; or
  - (ii) by the licensee, by any employee of the licensee, by any company which is a subsidiary of the licensee within the meaning of section 2(1) of the BO (Licensee's Subsidiary), or by any employee of the Licensee's Subsidiary, or by any other independent production company engaged by the licensee in or outside Hong Kong; and
- (b) the CA is satisfied that it is produced primarily for the Hong Kong market.

- (6) programmes for senior citizens (60 minutes per week on the Cantonese channel only); and
- (7) arts and culture programmes (60 minutes per week on the Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).

To provide more flexibility for new free TV service licensees, the CA considers that the new licensees should be allowed to gradually increase the broadcast of positive programmes that are to be “wholly of Hong Kong origin” as follows –

- (a) the “wholly of Hong Kong origin” requirement will be applicable to the Cantonese channel within 24 months (as opposed to the original commitment of 12 months) after service commencement; and
  - (b) the “wholly of Hong Kong origin” requirement will be applicable to the English channel within 36 months (as opposed to the original commitment of 24 months) after service commencement.
- (iii) Requirement to carry the programmes of Radio Television Hong Kong (RTHK)<sup>12</sup> and the programmes for schools (ETV programmes)<sup>13</sup>

After considering the views of Secretary for Commerce and Economic Development (SCED) and Education Bureau on the provision of RTHK programmes and ETV programmes, the CA agrees that –

*RTHK programmes*

- (1) the programmes provided by RTHK have been serving as an important complement to commercial broadcasting services. It would be in the public interest for such programmes to reach out to the largest possible audience. Given its use of fixed network for transmission of service and its achievement of territory-wide coverage on a step-by-step basis, HKTVE would not be able to meet such capability in the first few years of operations. Any requirement for HKTVE to carry RTHK programmes in the coming few

<sup>12</sup> Currently, each of the incumbent free TV service licensees is directed by the CA to provide a minimum of 3.5 hours per week of RTHK programmes.

<sup>13</sup> The CA has directed each of the incumbent free TV service licensees to broadcast one hour of ETV programmes for each school day.

years would unlikely provide any significant gain in the household reach capability of RTHK programmes;

- (2) in order to provide the prospective free TV service licensees with more scheduling flexibility, HKTVE should be allowed to choose whether to air RTHK programmes on its platform until the mid-term review of its free TV service licence, if granted, so long as the current broadcasting arrangements with the incumbent free TV service licensees continue<sup>14</sup>;
- (3) HKTVE's broadcast of RTHK programmes, where applicable, could be counted towards its fulfilment of its PPRs; and

*ETV programmes*

- (4) for the same reason as in (1) above, HKTVE should not be directed to broadcast ETV programmes until the mid-term review of its free TV service licence, if granted, subject to the condition that the current broadcasting arrangements with the incumbent free TV service licensees continue. The free TV service licence of HKTVE, however, should reflect that the CA reserves its statutory power to direct HKTVE to broadcast ETV programmes in the future.

HKTVE has taken note of the above views in respect of the provision of RTHK and ETV programmes and has not proposed any broadcasting arrangements in relation to RTHK programmes.

(iv) Subtitling

HKTVE has agreed to provide subtitling service incrementally as proposed by the former Broadcasting Authority (BA) and accepted by the CE in Council, as follows –

- (1) subtitling for all news, current affairs, weather programmes and emergency announcements would be provided within 18 months from service launch of the Cantonese and English channels;
- (2) on the Cantonese channel, Chinese subtitling would be provided for programmes shown between 7:00 p.m. and 11:00 p.m. within 24 months after service launch of the

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<sup>14</sup> The views and comments set out above are given on the premises that the two existing free TV service licensees will have their licences renewed and will maintain the same territory-wide coverage during the renewed term, and that HKTVE, upon the grant of a licence, will use the fixed network to transmit the free TV services according to the agreed roll-out commitments.

channel; and

- (3) on the English channel, two hours per week of English programmes with educational value targeting teenagers would carry English subtitles within six months from service launch of the channel.

(v) High definition (HD) television service

HKTVE has proposed to offer most programmes on its Cantonese channel in HD format.

In view of the above, the CA considers that the proposed free TV service of HKTVE will significantly broaden viewers' choice in terms of the variety, quantity and quality of its proposed programmes.

(e) *The quality and technical viability of the proposed broadcasting service*

(i) Means of delivery

HKTVE has proposed to make use of the transmission capacity of the now TV network of PCCW Media Limited and the fixed broadband network of HKT Limited (HKT) for transmitting its free TV service to viewers.

The CA considers that the delivery of HKTVE's free TV services using the above networks is acceptable.

(ii) Analogue and digital services

HKTVE's free TV signals which are transmitted via in-building coaxial cable distribution systems (IBCCDS) would be presented in analogue I/PAL format or digital terrestrial television (DTT) format conforming to the National Standard GB20600-2006 which is in compliance with the Generic Code of Practice on Television Technical Standards issued by the CA.

(iii) Use of frequency channels in IBCCDS

HKTVE has proposed to offer two programme channels and has submitted that it would only transmit the programme channels in either analogue or digital format in any building. HKTVE has sought the CA's approval for the allocation of two IBCCDS channels in the Ultra High Frequency (UHF) band (470 – 862 MHz).

The CA notes that HKTVE has a genuine need to use two IBCCDS channels for transmission of two programme channels in analogue or digital formats. The CA also notes that at the

moment there should be sufficient spare IBCCDS channels to meet the demand of HKTVE's proposed free TV service. The CA supports HKTVE's Application for the use of IBCCDS channels and will consider allocating the requested IBCCDS channels to HKTVE upon formal licence grant by the CE in Council.

(iv) *Cost of equipment for reception of TV programmes from HKTVE*

now TV customers would be able to use their existing now TV set-top boxes to view HKTVE's free TV service.

Customers of HKT's broadband services would need to purchase set-top boxes supplied by HKTVE's certified agents to view HKTVE's free TV service via HKT's broadband network.

When HKT's fixed broadband network is extended to the buildings concerned, the building management offices (BMOs)/incorporated owners (IOs) may install set-top boxes and modulators to connect HKTVE's free TV service with the buildings' IBCCDS for distributing its analogue free TV signal to residents. Alternatively, when the fibre network of HKT has reached the building, BMOs/IOs may install IP-to-DTT transmodulator to connect HKTVE's free TV service with the buildings' IBCCDS for distributing its digital TV signal to residents.

The CA notes that viewers would be required to bear the cost of IBCCDS ungrading and equipment for reception of HKTVE's digital service (i.e. a DTT decoder) to receive free TV signals, but the total cost to be borne by individual viewers is not high. On the whole, the CA considers that the proposed arrangement is acceptable. Despite the cost involved in procuring the reception equipment, the CA considers that HKTVE's proposed service would still be regarded as a free TV service.

(f) *Speed of service roll-out*

As it is not technically feasible for HKTVE to achieve territory-wide coverage at the initial stage of service roll-out with the use of fixed network, HKTVE should be allowed to achieve territory-wide coverage on a step-by-step basis. For delivery of free TV service via fixed network, HKTVE has committed to complying with the following coverage requirements –

<b>Premises within ten metres of network reach<sup>15</sup></b>	<b>Premises ready for service within 28 days<sup>16</sup></b>
1 <sup>st</sup> year: 80%	1 <sup>st</sup> year: 65%
3 <sup>rd</sup> year: 90%	3 <sup>rd</sup> year: 75%
6 <sup>th</sup> year: 95%	6 <sup>th</sup> year: 80%

The CA notes that the incumbent free TV service licensees, i.e. Asia Television Limited (ATV) and Television Broadcasts Limited (TVB), had been exempted from the territory-wide coverage requirement for their DTT services since late 2007 such that they could roll out their respective DTT networks in phases. Hence, the CA considers that HKTVE's phased approach in achieving territory-wide coverage is acceptable.

- (g) *Whether any construction is to be carried out and the extent of any inconvenience to the public*

HKTVE has proposed to utilise existing infrastructure to transmit its free TV service and has confirmed that large-scale construction works would not be required. The CA notes that as such, any impact on the public should be minimal.

- (h) *The benefits to the local broadcasting industry, the audience and the community as a whole*

As per the public views received prior to the Second Stage, most members of the public support opening up the free TV service market and consider strongly that the grant of new licences would be in the public interest.

The CA notes that the total investment involved in the proposed free TV service of HKTVE amounts to HK\$2,727 million in the first ten years of operation (including HK\$1,383 million for the first six years), which

<sup>15</sup>“Premises within ten metres of network reach” means premises (to be specified by the licensee and accepted by the CA) in a building/estate/village with a main entrance in the external wall thereof not exceeding ten metres, as measured in a straight line (or such other distance as approved by the CA), from the nearest part of the network concerned. In the event of there being more than one entrances in the external walls of a building/estate/village, and upon request from the CA, the licensee shall irrevocably elect by notice in writing to the CA as to which entrance it will treat as the main entrance for the purpose of this definition.

<sup>16</sup> “Premises ready for service within 28 days” means premises (to be specified by the licensee and accepted by the CA) to which the television programme service of the licensee is capable of being provided by the licensee within 28 days after receipt of a request for the licensee’s service in writing from:

- (a) the BMOs/IOs/owners of the relevant building in which the premises so specified are situated; and
- (b) the residents of the premises so specified (where applicable),

in which an agreement for access to the relevant building and premises so specified to carry out any work necessary for the provision or reception of the licensee’s service is obtained from (a) and (b) (where applicable), and in which the equipment necessary for receiving the licensee’s service via delivery means designated by the licensee is made available by (a) or (b).

would bring considerable growth to the local broadcasting industry. The launch of the new free TV service would bring positive gain to the community through increased competition, increase in investment in programming and local content production, and enhanced viewers' choice.

- (i) *The applicant's proposed arrangements to ensure compliance with the provisions of the BO, any other applicable law and the terms and conditions that may be specified in the licence*

HKTVE has proposed to put in place internal monitoring systems to ensure compliance with the regulatory requirements. The CA considers that the proposed mechanisms, which are similar to those adopted by the incumbent free TV service licensees, are acceptable.

(C) Additional Commitments Ordered by the CE in Council at Grant of AIP

7. To follow up the CE in Council's requirements at **Annex E**, the CA has proceeded to –

- (a) obtain confirmation from HKTVE that the proposed free TV service will not be “bundled” with any transmission or television programme service which is available only on a subscription basis (bundling restriction)<sup>17</sup>;
- (b) obtain an undertaking from HKTVE that the existing viewers of the pay TV service provided by an affiliate of HKTVE will be entitled to view its proposed free TV service regardless of whether the viewers continue to subscribe for the pay TV service of that affiliate (entitlement to view requirement)<sup>18</sup>; and
- (c) obtain confirmation that HKTVE will not act as a mere “content provider” supplying programme materials to any of its affiliates who is a pay TV service licensee (no mere content provider requirement)<sup>19</sup>.

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<sup>17</sup> Free TV services play a unique social function in informing, educating and entertaining the community. The authorities should ensure that such services are at all times be available for reception by the public free-of-charge (save for the cost incurred in procuring the reception equipment) and not to be used to attract subscription in a package with other television programme services or transmission network services. The provision of the new free TV services to members of the public should therefore not be “bundled” with, or in other words be pre-conditioned by, any form of subscription to any television programme service or transmission network service. Neither should the reception of the new free TV services be confined to subscribers of certain television programme services or transmission networks.

<sup>18</sup> Given the unique function of free TV services, the authorities have to ensure that the proposed services to be provided are genuinely free TV services under section 2(1) of the BO and hence that the free TV services are at all times be available for reception by the public (including the current or future subscribers to the pay TV service of HKTVE's affiliates) free-of-charge and not to be pre-conditioned by any form of subscription to any television programme service or transmission network services.

<sup>19</sup> The term “mere content provider” in this context refers to the situation that HKTVE acts nothing more than a content provider for its pay TV service affiliate. The Government's broadcasting policy objectives have all along been to broaden programme choices to the benefits of the audience-at-large. Free TV and pay TV services are two distinct television markets catering for different programme needs in the local community.



### Bundling and entitlement to view

8. The CA has had several rounds of correspondence with the two AIP Applicants on the approach to give effect to the bundling restriction and the entitlement to view requirement. Having considered carefully the submissions received, the CA has come to the view that the bundling restriction and entitlement to view requirement are different variants of the same concept, and in both cases, the crux is whether it is possible for members of the public to receive HKTVE's proposed free TV service without having to subscribe to either a pay TV service or a transmission service provided by one of its affiliates, for which a fee is required, if they are living in premises that are ready for the free TV service as per HKTVE's coverage commitments.

9. After taking into account the comments of the two AIP Applicants and the policy views of SCED, the CA considers that it is reasonable to adopt a pragmatic approach to combine the bundling restriction and entitlement to view requirement into a single set of requirements. The CA has sought representations from HKTVE on the revised set of requirements as follows –

- (a) HKTVE shall at all material times ensure that its free TV service is provided to, and is received by, members of the public free of charge;
- (b) there is no pre-condition or technical requirement that in effect requires a person to whom the free TV service is made available in accordance with the licence conditions to be a subscriber<sup>20</sup> to the services provided by the affiliates of the applicants or to pay any fees or charges in return for the provision of the free TV service;
- (c) HKTVE shall provide the free TV service in such a manner so that the quality of the service received by members of the public who are not subscribers to the services provided by the affiliates of HKTVE –
  - (i) will not fall short of the requirements set out in the Generic Code

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There are strong local expectations for more programming initiatives and diversity as the resultant benefits following introduction of more competitions into the free TV service market. The requested confirmation serves to ensure that HKTVE's operations will not be auxiliary to its pay TV service affiliate's by becoming no more than production house for the latter, ending up in an arrangement that all programme materials produced by HKTVE are supplied to its pay TV service affiliate for first-run on the pay TV service platform before they become available on the free TV service channels. This confirmation, in effect, seeks to commit HKTVE to investing into self-production of sufficient and quality programmes primarily and first serving the free TV service audience. The programming investment in HKTVE should be turned into deliverables targeting the free TV services.

<sup>20</sup> A "subscriber" means a member of the public who either has entered into a subscription for, or at any time during the period of validity of the free TV service licence enters into a subscription for, any pay TV service provided by an affiliate of the licensee or any other arrangement according to which an affiliate of the licensee provides a broadband access line or any reception equipment.

of Practice on Television Technical Standards issued by the CA; or

- (ii) to the extent that it is within HKTVE's reasonable control, will not be of such a different standard than that available to subscribers to the services provided by HKTVE's affiliates such that a substantial segment of members of the public would feel obliged to be subscribers in order to receive the same quality of service as that available to subscribers; and
- (d) subject to HKTVE's coverage and rollout commitments, HKTVE shall ensure that the free TV service is made available to specified premises<sup>21</sup> that are readily serviceable by the telecommunications network provided by an affiliate of HKTVE within 28 days of its receipt of a request from any related parties (e.g. occupiers of a premise)<sup>22</sup>.

HKTVE has agreed to provide confirmation for the purpose of implementing the above requirements.

#### No mere content provider

10. After consulting SCED, the CA considers that it is reasonable to require HKTVE to commit to providing a minimum amount of first-run programmes for the purpose of the no mere content provider requirement as follows –

- (a) HKTVE will not act as a mere content provider supplying programme materials for the pay TV service of an affiliate;
- (b) HKTVE shall not be a mere production house for an affiliate so that all programme materials produced by HKTVE are supplied for the pay TV service of an affiliate; and
- (c) HKTVE shall provide at least the following “first run programmes” –
  - (i) seven hours of first-run programmes per week within 12 months from service launch of the Cantonese channel;
  - (ii) 14 hours of first-run programmes per week within 36 months from service launch of the Cantonese channel; and

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<sup>21</sup> “Specified premises” means premises specified by HKTVE and accepted by the CA.

<sup>22</sup> HKTVE shall connect the specified premises to the affiliate's network or install equipment to enable the related parties to receive the free TV service subject to –

- (a) any necessary authorisations required from the related parties;
- (b) one or more of the related parties bearing the reasonable cost of the connection from the affiliate's network up to the specified premises;
- (c) the availability, without charge to the applicant, of suitable IBCCDS channel(s) in the relevant building; and
- (d) the timely and reasonable co-operation of the related parties.

- (iii) 21 hours of first-run programmes per week within 72 months from service launch of the Cantonese channel.

For the purpose of the above, a “first-run programme” refers to a programme which has not been previously carried by the pay TV service affiliate of HKTVE.

HKTVE has agreed to provide confirmation for the purpose of implementing the above requirements.

(D) Public Opinions

11. Since the announcement of the grant of the AIP on 15 October 2013, the CA has received over 400 submissions from members of the public. The major points raised are summarised as follows –

- (a) there are public calls for a greater variety of programmes to be provided by new licensee(s); and
- (b) new operator(s) should be required to provide more local productions or independent local productions in order to foster the development of the creative industry.

12. To address the public’s demand for greater programme variety and choices, HKTVE has agreed to provide local productions<sup>23</sup> on an incremental basis as follows –

- (a) eight hours of local productions per week within 24 months from service launch of the Cantonese channel;
- (b) 12 hours of local productions per week within 48 months from service launch of the Cantonese channel; and
- (c) 18 hours of local productions per week within 72 months from service launch of the Cantonese channel.

In addition, HKTVE submitted that a HK\$300 million fund had been set up for the development and acquisition of independent local productions, which would include drama series, variety shows, talk shows, documentaries and reality shows. HKTVE has also agreed that repeated broadcast of the same programme would not be counted towards the fulfilment of the relevant PPRs. The CA therefore considers that

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<sup>23</sup> For this purpose, “local productions” refer to programmes produced locally and appealing to local viewers, irrespective of whether they are partly or wholly station-produced, commissioned, collaborated, or joint-ventured programmes but shall not include Government-supplied programmes (e.g. RTHK programmes). The “wholly of Hong Kong origin” content in respect of the PPRs can be counted towards the fulfilment of the local production requirement.

HKTVE has satisfactorily addressed the public concerns over the variety and quality of the programmes to be provided by a new licensee.

### **Licence Conditions**

13. Since April 2014, the CA has been discussing with HKTVE the proposed conditions of its draft free TV service licence broadly along the lines at **Annex D**. In the course of its correspondence, the CA clearly indicated to HKTVE that the draft licence conditions were based upon the commitments made by HKTVE in its Application to which HKTVE had agreed at the First Stage. They were the premises upon which the former BA made its original recommendations to the CE in Council, and the same basis upon which the CE in Council granted the AIP in respect of the Application. As such, except for such fine-tuning as is necessary for the purpose of providing flexibility, the CA considers that it is obliged to ensure inter-alia that the prospective licensees will abide by such licensing conditions before making positive recommendations to the CE in Council on the formal grant of licences. That said, the CA has proposed to relax certain programming requirements, such as “wholly of Hong Kong origin” requirement in respect of positive programmes, to facilitate the operations of the prospective licensees as new entrants.

14. During the correspondence at the Second Stage, HKTVE raised the prospect of it being assigned with free TV spectrum in the future and, at some point, requested the CA to relax some licence conditions temporarily until free TV spectrum is obtained and used by HKTVE, so as to facilitate it to compete on a level playing field with the incumbent free TV service licensees. On HKTVE’s request, the CA fully reflected in the CA’s Recommendations all views expressed by HKTVE throughout the Second Stage in relation to the licence conditions.

15. The above notwithstanding, HKTVE confirmed with the CA in late June 2014 that any follow-up work for the Application should continue to proceed on the basis of the original application (i.e. to deliver free TV services via fixed networks). Given the CA’s clear indication that its positive recommendation to the CE in Council on the Application would hinge on HKTVE’s acceptance of the proposed licence conditions, HKTVE has agreed to comply with the proposed licence conditions which are broadly along the lines at **Annex D**. The draft licence of HKTVE with HKTVE’s comments incorporated as appropriate is at **Annex A**.

### **CA’s Recommendations**

16. Having regard to the assessment of HKTVE’s updated Application as set out above, the CA considers that HKTVE has demonstrated its compliance with all the statutory requirements under the BO and the assessment criteria set out in the Guidance Note. HKTVE has also agreed to comply with the additional

commitments and the various conditions set out in the CE in Council's AIP and satisfactorily addressed the public concern over the variety and quality of the programmes to be provided by a new licensee. HKTVE has also agreed to comply with the proposed licence conditions which are broadly along the lines of those ordered by the CE in Council at **Annex D** when AIP was granted to it. On the basis of the above assessment, the CA **recommends** to the CE in Council that a **free TV service licence should be granted to HKTVE**.

### **The CE in Council's Decision**

17. The CE in Council notes that the grant of AIP in 2013 was based on the Application contents at the First Stage, including HKTVE's proposal to deliver its proposed free TV services via fixed network. The CE in Council notes that HKTVE, after rounds of exchanges with the CA at the Second Stage, has agreed to honour its original commitments at the First Stage and to comply with other requirements imposed by the CE in Council at the grant of the AIP. In addition, the CA is satisfied that HKTVE has demonstrated its compliance with all the statutory requirements under the BO, including the non-subsidiary requirement, and with the assessment criteria set out in the Guidance Note, and that HKTVE has satisfactorily addressed the public concern over the variety and quality of the programmes to be provided by a new licensee. The CE in Council also notes that HKTVE has agreed to comply with the additional commitments and the various conditions set out in the CE in Council's AIP, and with the proposed licence conditions which are broadly along the lines of those ordered by the CE in Council when AIP was granted to it. On these bases, the CE in Council **agrees** with the CA's Recommendations and **decides** that the free TV service licence at **Annex A** be granted to HKTVE for 12 years from 1 April 2015, subject to a mid-term review after 1 April 2021.

### **Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2015**

18. Currently, all free TV service licensees under the BO and sound broadcasting licensees (both analogue and digital audio broadcasting) under the TO, which are regarded as being placed in a position of special trust by the Government, have been specified as public bodies under Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) (POBO). Any employee and member of an organisation specified as a public body under Schedule 1 to the POBO is defined as a "public servant" under section 2 of the POBO. Under section 35 of the POBO, the CE in Council may by order published in the Gazette amend the Schedules in the POBO. Following the grant of a free TV service licence to HKTVE, the CE in Council ordered that an amendment be made to Schedule 1 to the POBO to specify HKTVE as a public body thereunder. The draft order titled "Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2015" (with the commencement date on 10 July 2015) is at **Annex C**.

## **IMPLICATIONS OF THE PROPOSAL**

19. The licence grant has economic, financial, civil service and sustainability implications as set out at **Annex F**. It is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or family implications.

## **PUBLIC CONSULTATION**

20. At the time of granting the AIP to the Application, the CE in Council considered all public views received by then, including those collected in the former BA's statutory consultation during July and September 2010 and the unsolicited public views addressed to the CA and/or the Government from time to time during the First Stage of the Application. Since the announcement of the grant of the AIP in October 2013, the CA has received over 400 submissions from members of the public. The CA has duly taken into account these further views in formulating the CA's Recommendations. The unsolicited public views addressed to the Government since October 2013 are largely similar. All the above-mentioned public views were submitted to the CE in Council for consideration.

## **PUBLICITY**

21. The Government will announce the decision by way of a press release and a Legislative Council brief. A spokesman will be made available to answer enquiries from the media and the public.

## **ENQUIRIES**

22. For enquiries, please contact Mr Edward TO, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A at 2810 2708.

Communications and Technology Branch  
Commerce and Economic Development Bureau  
1 April 2015

No. of THREE ORIGINALS

**Domestic Free Television Programme Service Licence**

**Broadcasting Ordinance (Cap.562)**

HK Television Entertainment Company Limited

**[Date of Licence]**

**Department of Justice  
The Hong Kong Special Administrative Region**

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FIRST SCHEDULE

SECOND SCHEDULE - FORM OF PERFORMANCE BOND



In exercise of the powers conferred by sections 8(1) and 10(1) of the Broadcasting Ordinance (Cap.562) and all the powers enabling him in that behalf, the Chief Executive in Council hereby grants a domestic free television programme service licence (“Licence”) to HK Television Entertainment Company Limited (“HKTVE”) (“Licensee”, which expression shall include its lawful successors and assigns), a company formed and registered under the Companies Ordinance (Cap.622), whose registered office is situated at 39<sup>th</sup> Floor, PCCW Tower, Taikoo Place, 979 King’s Road, Quarry Bay, Hong Kong on the conditions under this Licence.

## **Interpretation**

- 1.1 Save where the contrary intention appears expressly or by necessary implication in this Licence, words and expressions used in this Licence shall bear the same meaning, if any, as in the Broadcasting Ordinance and in the Interpretation and General Clauses Ordinance (Cap.1), and in the event of any conflict or inconsistency between their meanings, the meaning in the Broadcasting Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.
- 1.2 The headings and index used in this Licence shall not in any way vary, limit or extend the interpretation of this Licence.
- 1.3 This Licence shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its objects according to its true intent, meaning and spirit.
- 1.4 The Schedule(s) hereto, shall form part of this Licence.
- 1.5.1 Save where the contrary intention appears expressly or by necessary implication in this Licence, the following words and expressions mean:

“auditor”	a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap.50), who is neither an employee of the Licensee or its associate nor a person who is required to devote the whole or substantially the whole of his practice to the affairs of the Licensee or its associate.
“Code of Practice”	a code of practice which bears the same meaning given in section 2(1) of the Broadcasting Ordinance.
“Commencement Date”	the date on which the period of validity of this Licence commences.
“day”	a period of 24 hours beginning at midnight.
“designated integrated channels”	integrated Chinese channel and integrated English channel.
“digital form”	an arrangement of signals transmitted by telecommunications and represented by digits or similar discrete form as may be authorised or approved by the Communications Authority.

“integrated Chinese channel” integrated television programme service channel in the Cantonese dialect provided in accordance with Condition 17.4.1 of this Licence.

“integrated English channel” integrated television programme service channel in the English language provided in accordance with Condition 17.4.1 of this Licence.

“Investment Plan” an investment plan as approved by the Communications Authority regarding the Licensee’s commitment of capital expenditure and operating expenditure (including programming cost) to be spent on the Service for the period from [\*] to [\*](*Note: dates to be provided for each licensee*), which is contained in a letter dated [\*](*Note: date to be provided for each licensee*) from the Licensee to the Communications Authority, and as may be subsequently updated, revised or modified pursuant to the directions or approvals of the Communications Authority from time to time.

“Licensee’s  
Proposal”

all statements and representations (including statements of intention) made to the Communications Authority and the Government by or on behalf of the Licensee in its application for this Licence, including but not limited to its application dated [\*], the letters dated [\*] (*Note: dates to be provided for each licensee, including but not limited to the confirmations provided by the licensee in respect of the bundling restriction, the entitlement to view requirement and the no content provider requirement*), the Investment Plan and the updated application dated [\*].

“period of  
validity”

[\*] to [\*] (*Note: each licence shall, subject to the CE in Council’s final decision, be valid for a period of 12 years from the Commencement Date*) (both dates inclusive), being the period specified by the Chief Executive in Council in a notice in the Gazette issued pursuant to section 4 of Schedule 4 to the Broadcasting Ordinance or such period as may be renewed or extended pursuant to section 11 of the Broadcasting Ordinance.

“Premises  
Ready for  
Service”

premises (to be specified by the Licensee and accepted by the Communications Authority) to which the Service is capable of being provided by the Licensee within 28 days after receipt of a request for the Licensee’s Service in writing from:

- (a) the Building Management Office, Incorporated Owners, or owner of the relevant building in which the specified premises are situated; and
- (b) the resident of the specified premises (where applicable),

in which an agreement is obtained from (a) and (b) (where applicable) above for access to the relevant building and the specified premises to carry out any work necessary for the provision or reception of the Service, and in which the equipment necessary for receiving the Service via delivery means designated by the Licensee is made available by (a) or (b).

“Premises  
within Network  
Reach”

premises (to be specified by the Licensee and accepted by the Communications Authority) in a building, an estate or a village with a main entrance in the external wall thereof not exceeding 10 metres, as measured in a straight line (or such other distance as approved by the Communications Authority), from the nearest part of the network concerned. In the event of there being more than one entrances in the external walls of a building, an estate or a village, and upon request from the Communications Authority, the Licensee shall irrevocably elect by notice in writing to the Communications Authority as to which entrance it will treat as the main entrance for the purpose of this definition.

“relevant Authority”

(a) the Communications Authority in connection with either a condition of this Licence in respect of which the Communications Authority is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval; or

(b) the Secretary for Commerce and Economic Development in connection with either a condition of this Licence in respect of which that Secretary is the regulator or similarly empowered under any law, Ordinance, determination, consent, notice, direction, authorisation or approval.

“Service”

the domestic free television programme service, whether transmitted in analogue form or digital form, which the Licensee is authorised and required to provide during the period of validity in accordance with this Licence and any law or Ordinance.

“week” a continuous period of 7 days beginning on a Monday.

1.5.2 The word “person” bears the same meaning as in section 3 of the Interpretation and General Clauses Ordinance and includes “Government”.

1.5.3 The expressions “telecommunications”, “telecommunications installation”, “telecommunications line” and “telecommunications service” bear the same meaning as in the Telecommunications Ordinance (Cap.106).

1.6 In this Licence, save where the contrary intention appears expressly or by necessary implication, words and expressions:

- (a) which import one gender include the two other genders;
- (b) which import the singular include the plural and vice versa; and
- (c) extend to their grammatical variations and cognate expressions where those words and expressions are defined herein or by reference to any other definition.

1.7 If at any time any condition of this Licence is or becomes illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining conditions shall not in any way be affected or impaired.

1.8 In this Licence, a reference to an Ordinance, whether the word is used by itself or as part of any title to an Ordinance, shall mean the Ordinance for the time being in force as well as any modification or substitution thereof, in whole or in part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made thereunder and for the time being in force.



- 1.9 In forming an opinion or making a determination, direction or decision under this Licence, the relevant Authority shall:
- (a) only do so on reasonable grounds and having regard to relevant considerations; and
  - (b) provide reasons for it in writing.

**Terms of Licence**

- 2.1
- (a) This Licence authorises and requires the Licensee to provide a Service in accordance with this Licence.
  - (b) The Secretary for Commerce and Economic Development may by notice served on the Licensee require the Licensee to provide the Service in digital form in the entirety from a date as specified in the notice, the date being not less than 18 months of the date of the service of the notice.
- 2.2 Unless the Communications Authority otherwise approves or determines, the Licensee shall commence the provision of the Service in accordance with the time schedule specified in its Licensee's Proposal or within 12 months from the Commencement Date, whichever is earlier.

2.3

The Licensee shall, as soon as practicable and in any event not less than 30 days in advance, notify the Communications Authority in writing of the date on which the Licensee will commence the provision of:

- (a) the Service on the integrated Chinese channel as authorised and required in Condition 17.4.1(a);
- (b) the Service on the integrated English channel as authorised and required in Condition 17.4.1(b); and
- (c) the Service on any television programme service channel as authorised and approved by the Communications Authority under this Licence.

2.4

This Licence is granted subject to:

- (a) the provisions from time to time in force of the Broadcasting Ordinance, the Telecommunications Ordinance, the Communications Authority Ordinance (Cap.616), the Broadcasting (Miscellaneous Provisions) Ordinance (Cap.391) and, including without limitation, any other Ordinance, and any Ordinance enacted in place or substitution in whole or in part thereof and all subsidiary legislation, regulations, technical standards, directions and codes of practice made thereunder; and
- (b) the terms and conditions set out in this Licence, and as any of them may be amended from time to time.

**Commencement  
Date and period  
of validity of  
Licence**

- 3.1 Subject to the terms and conditions of this Licence and any law or Ordinance, this Licence shall be valid for the period of validity.
- 3.2 Pursuant to section 4(2)(b) of Schedule 4 to the Broadcasting Ordinance, this Licence shall be subject to review by the Chief Executive in Council during the period from [\*] to the date of expiry of the period of validity (*Note: date to be inserted in accordance with the order in the Gazette Notice*).

**Power to  
amend**

- 4.1 The Chief Executive in Council may, if he considers it is in the public interest to do so, vary this Licence in accordance with the Broadcasting Ordinance.
- 4.2 Without prejudice to the aforesaid, the Chief Executive in Council may vary this Licence with the prior consent in writing of the Licensee at any time and from time to time during the period of validity.

**Saving of rights  
granted**

5. This Licence shall not in any way whatsoever abrogate or interfere with any rights, whether exclusive or otherwise, granted under any law or Ordinance to any person other than the Licensee.

**Publication of  
Licence**

- 6.1 Subject to Condition 6.3, the Licensee shall make available for inspection by members of the general public, free of charge, a certified true copy of this Licence at:
- (a) its registered office and principal place of business; and
  - (b) the principal office of the Office of the Communications Authority.
- 6.2 The Government or the Communications Authority may in its discretion make this Licence publicly available in any manner it thinks fit, in whole or in part.
- 6.3 For the purposes of Condition 6.1 and without prejudice to Condition 6.2, the Licensee's Proposal may be excluded in the Licensee's discretion.

**Notification of  
place of  
business**

7. The Licensee shall promptly notify the Communications Authority of any change in the address of its registered office or principal place of business, as the case may be.

**Prohibition  
against transfer  
of Licence**

8. This Licence or any interest in this Licence shall not in any way be transferred in whole or in part.

**Directions etc. by  
the relevant Authority**

- 9.1 Where any determination, consent, notice, direction, authorisation or approval of or from the relevant Authority is required for the doing of any matter or thing by or on behalf of the Licensee, or a notice or notification is required to be given by or on behalf of the Licensee to the relevant Authority, that determination, consent, notice, direction, authorisation, approval or notification is valid only if given in writing and signed by a person with authority to do so and, subject to Condition 9.2, given before the doing of the said matter or thing in question. If a digital signature is used, it shall be supported by a recognized certificate under the Electronic Transactions Ordinance (Cap.553). For the purpose of this Condition, “digital signature” and “recognized certificate” shall bear the same meaning as in the Electronic Transactions Ordinance.
- 9.2 The relevant Authority may generally or specifically in relation to a particular matter or thing referred to in Condition 9.1 by notice in writing to the Licensee waive the requirement for its or his, as the case may be, determination, consent, notice, direction, authorisation or approval to be given before the doing of the matter or thing in question, provided that no such waiver shall estop the relevant Authority from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the determination, consent, notice, direction, authorisation or approval, as the case may be, be required timeously in relation to other matters or things.
- 9.3 Without any limitation whatsoever on the rights and powers conferred by any law or Ordinance, where a relevant Authority gives any determination, consent, notice, direction, authorisation or approval to the Licensee, the same may be:

- (a) withdrawn, modified or replaced from time to time by the relevant Authority, in the same circumstances, and with the same effect, as if the withdrawal, modification or replacement were the giving of a determination, consent, notice, direction, authorisation or approval and the Licensee shall comply therewith;
- (b) given once or from time to time; and
- (c) made subject to such conditions as the relevant Authority may impose.

9.4 All references in this Licence to the doing of any matter or thing by a relevant Authority include any delegates thereof, or other agents, authorised in that regard by or under any law or Ordinance.

9.5 Unless otherwise provided by any law or Ordinance, any determination, consent, notice, direction, authorisation or approval moving from the relevant Authority to the Licensee shall be deemed validly served or given if:

- (a) it complies with the manner prescribed in section 40 of the Broadcasting Ordinance;
- (b) it is dispatched by facsimile transmission to the designated number of the Licensee; or
- (c) it is delivered by hand to the registered office or principal place of business of the Licensee.

**Licensee to  
comply with  
statements**

- 10.1 Subject to Condition 10.2, the Licensee shall comply at all material times with the Licensee's Proposal, including but not limited to statements and representations regarding the legal and beneficial interest in the voting control and shares in the Licensee. In the event that any part of the Licensee's Proposal is inconsistent with the conditions of this Licence, any law or Ordinance, the conditions of this Licence, the law and Ordinance shall prevail and the Licensee's Proposal shall be construed accordingly.
- 10.2 The Communications Authority may generally or specifically in relation to a particular statement or representation referred to in Condition 10.1 by notice to the Licensee waive the requirement for the Licensee to comply with the said statement or representation and the proviso referred to in Condition 9.2 shall apply thereto mutatis mutandis.
- 10.3 The Licensee represents and warrants that the Licensee has the right to make use of the information and technology described as available to it in the Licensee's Proposal.
- 10.4 Without prejudice to any statutory and other regulatory requirements regarding the legal and beneficial interest in the voting control and shares in the Licensee and without affecting the generality of Condition 10.1, the Licensee shall inform the Communications Authority about any change and series of changes:
- (a) involving 10% or more of the voting shares in the Licensee; and
  - (b) involving 1% or more of the voting shares in the Licensee of any person who holds 10% or more of the voting shares in the Licensee

within 14 days after:

- (i) the change or series of changes, as the case may be, takes place; or;
- (ii) the Licensee becomes aware of the change or series of changes,

whichever is earlier.

## **Waiver**

11.1 Subject to any law or Ordinance and Condition 11.2, the Communications Authority may by notice to the Licensee waive the requirement for the Licensee to observe or perform any of the conditions of this Licence for such period as the Communications Authority sees fit if and so long as the Licensee satisfies the Communications Authority that the failure to observe or perform those conditions is caused by an unforeseen event which:

- (a) renders it impossible for the Licensee to observe or perform the conditions;
- (b) is not caused or contributed to by the Licensee, or any officer, employee or associate of the Licensee or any other person acting for or on behalf of the Licensee; and
- (c) in respect of which the Licensee has taken all actions as may be required, with due diligence and speed, to observe or perform the conditions of this Licence.



11.2 The Communications Authority may, if it considers that the event referred to in Condition 11.1 has ceased to render it impossible for the Licensee to observe or perform the conditions of this Licence, direct by notice that the waiver given under Condition 11.1 shall cease to have any effect from the date specified in the notice notwithstanding that the period specified in the notice given under Condition 11.1 has not expired, and the Licensee shall (and without prejudice to the Licensee's obligations under this Licence), as soon as practicable and with due diligence and speed, take all actions as may be required to observe or perform the conditions of this Licence.

**Liability of  
Licensee for  
contraventions**

12. The Licensee shall ensure that the officers, employees and associates of the Licensee, and any other person acting for or on behalf of the Licensee, shall not act or permit any contravention of:

- (a) any provision of the Broadcasting Ordinance, the Telecommunications Ordinance, the Communications Authority Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance;
- (b) any provision of any Code of Practice; or
- (c) any condition of this Licence,

and shall not be relieved from any liability notwithstanding that the contravention is due to the act or omission of the officers, employees or associates of the Licensee or any other person acting for or on behalf of the Licensee.

## **Indemnity**

13. The Licensee shall indemnify and keep indemnified the Chief Executive, the Government, the Executive Council, the Communications Authority and the Secretary for Commerce and Economic Development against any and all losses, claims, charges, expenses, actions and demands whatsoever which he or it may incur or be subject to, as the case may be, as a result of or in relation to:
- (a) any breach or alleged breach of or failure or alleged failure to observe or perform any condition of this Licence by or on behalf of the Licensee; or
  - (b) any act or omission by or on behalf of the Licensee in the actual or purported operation or performance of the Service or the conditions of this Licence.

## **Licence fee**

- 14.1 The Licensee shall pay to the Communications Authority every year during the period of validity such licence fee in advance as may be prescribed from time to time by regulation made under section 42 of the Broadcasting Ordinance and in accordance with section 13 of Schedule 4 to the Broadcasting Ordinance.
- 14.2 The Licensee shall pay such other fees and charges as may be prescribed from time to time by regulation made under section 42 of the Broadcasting Ordinance and in accordance with section 13 of Schedule 4 to the Broadcasting Ordinance.
- 14.3 In the event of a revocation, surrender or suspension of this Licence, no licence fees or other fees and charges paid or payable by the Licensee before the said revocation, surrender or suspension shall be repaid or cease to be payable, as the case may be.

## Investment

- 15.1 Subject to Condition 15.2 and without affecting the generality of Condition 10.1, the Licensee shall implement the Investment Plan and comply at all material times with the statements (including statements of intention) and representations made by or on its behalf in or with reference to the Investment Plan. In the event that any part of the Investment Plan is inconsistent with the conditions of this Licence, any law or Ordinance, the conditions of this Licence, the law and Ordinance shall prevail and the Investment Plan shall be construed accordingly.
- 15.2 The Communications Authority may generally or specifically in relation to a particular statement or representation referred to in Condition 15.1 by notice to the Licensee waive the requirement for the Licensee to comply with the said statement or representation and the proviso referred to in Condition 9.2 shall apply thereto mutatis mutandis.
- 15.3 The Licensee shall submit for approval by the Communications Authority further information and updated Investment Plan, as may be directed by the Communications Authority from time to time, in relation to the provision of new television programme service channels.

- 15.4 Within 3 months from the last day of each accounting year of the Licensee, the Licensee shall submit to the Communications Authority a management report of the Licensee certifying the capital expenditure and operating expenditure (including programming cost) incurred by the Licensee in providing the Service for the preceding accounting year. The management report shall give a true and fair view of the capital expenditure and operating expenditure (including programming cost) so incurred by the Licensee, and shall be approved by the directors of the Licensee and signed on behalf of the board by the chairman of the meeting at which the management report was approved or by the secretary of the Licensee. The Licensee shall explain to the satisfaction of the Communications Authority if the actual annual expenditure deviates from the Investment Plan.
- 15.5 Unless the Communications Authority otherwise approves or determines, the minimum capital and programming expenditure to be incurred by the Licensee in providing the Service shall be as follows:
- (a) not less than HK\$245 million within 36 months from the Commencement Date; and
  - (b) not less than HK\$440 million within 60 months from the Commencement Date.
- 15.6 Without prejudice to any power that the Communications Authority may have, the Licensee shall, as soon as practicable within 2 months from the expiry of each of the periods specified in Conditions 15.5(a) and 15.5(b), submit a certificate by an auditor certifying that the respective requirements set out in Condition 15.5 have been complied with.

**Submission of reports**

- 16.1 The Licensee shall submit reports to the Communications Authority on or before 31 March each year on the extent to which the programming commitments in the Licensee's Proposal have been complied with in the previous calendar year ending on 31 December.
- 16.2 The Communications Authority may in its discretion make the reports referred to in Condition 16.1 publicly available in any manner as it thinks fit, in whole or in part.

**The provision of a domestic free television programme service**

- 17.1 The Licensee shall:
- (a) entertain, inform and educate; and
  - (b) ensure that its programming is balanced in content and provides an adequate and comprehensive Service which is responsive to the diverse needs and aspirations of the community.
- 17.2
- (a) The Licensee shall at all material times provide the Service in such manner as to enable the Service to be received throughout Hong Kong to the satisfaction of the Communications Authority.
  - (b) The Communications Authority may, by notice to the Licensee, exempt the Licensee from complying with Condition 17.2(a) in relation to any parts of Hong Kong specified in the notice and during any period specified in the notice, and the proviso referred to in Condition 9.2 shall apply thereto *mutatis mutandis*.

17.3 The Licensee shall at all material times provide all television programme service channels in accordance with the First Schedule to this Licence.

17.4.1 Unless the Communications Authority otherwise approves under Condition 17.4.2, the Licensee shall:

(a) within 12 months from the Commencement Date and at all times thereafter, broadcast its Service on one 24-hour integrated Chinese channel each day; and

(b) within 24 months from the Commencement Date and at all times thereafter, broadcast its Service on the designated integrated channels each day, comprising one 24-hour integrated Chinese channel and one 16-hour integrated English channel,

in accordance with this Licence.

17.4.2 Upon application in writing by the Licensee, the Communications Authority may approve arrangements different from those in Condition 17.4.1. Without the prior written approval of the Communications Authority obtained in accordance with this Condition 17.4.2, the Licensee shall not deviate from any of the arrangements set out in Condition 17.4.1.

17.5.1 Unless the Communications Authority otherwise approves or determines, the Licensee shall attain and maintain the following:

- (a) making its Service available for reception by not less than 1.38 million Premises within Network Reach and not less than 1.15 million Premises Ready for Service within 24 months from the Commencement Date;
- (b) making its Service available for reception by not less than 1.725 million Premises within Network Reach and not less than 1.38 million Premises Ready for Service within 36 months from the Commencement Date; and
- (c) making its Service available for reception by not less than 2.07 million Premises within Network Reach and not less than 1.61 million Premises Ready for Service within 48 months from the Commencement Date and at all times thereafter.

17.5.2 The Licensee shall, within 45 days from the expiry of each of the periods specified in Conditions 17.5.1(a), 17.5.1(b) and 17.5.1(c), or such other periods as may otherwise be approved or determined by the Communications Authority, submit to the Communications Authority a certificate by an auditor on the exact number and addresses of Premises within Network Reach and Premises Ready for Service attained and maintained by the Licensee as at the end of the relevant period.

- 17.5.3 The Licensee shall, within 45 days of each anniversary of the Commencement Date, submit to the Communications Authority a certificate by an auditor on the exact number and addresses of Premises within Network Reach and Premises Ready for Service attained and maintained by the Licensee as at each anniversary of the Commencement Date, unless the same has already been submitted for the relevant period as required under Condition 17.5.2.
- 17.5.4 The Licensee shall, on a half-yearly basis from the Commencement Date, publish the exact number and addresses of the Premises Ready for Service. The Licensee shall publish such information, free of charge, in any reasonable form and manner as the Communications Authority thinks fit.
- 17.6 The Licensee shall ensure that each television programme service channel shall have a television programme service channel identification which, in the opinion of the Communications Authority, is not confusingly similar to any existing channel identification of any television programme service licensed or deemed to be licensed under the Broadcasting Ordinance or of any sound broadcasting licensees licensed under the Telecommunications Ordinance.
- 17.7 The Licensee shall ensure that the proprietary set-top boxes necessary for receiving its Service are made amply available to the public at all material times, and shall provide to the Communications Authority, upon request, any information relevant to the channels of availability of such set-top boxes.
- 17.8 The Licensee shall provide the Service to the public in a fair and non-discriminatory manner. The Licensee shall not unduly prefer or discriminate against any person in relation to the provision or reception of the Service, or the supply or use of any ancillary facilities or equipment necessary for the provision or reception of the Service.



17.9 The Licensee shall apply up-to-date technology to perfect the sounds and images that it broadcasts.

**Comments,  
requests and  
complaints**

18.1 The Licensee shall receive and consider any comment or complaint from or on behalf of any person who believes himself to have been treated unjustly or unfairly in any material on the Service, or who comments or complains about the whole or part, in substance or in form, of the content, production, service coverage, provision or reception of the Service, technical aspects, or time of viewing of the Service, including without limitation, the quality of the sounds and images that it provides, the service afforded to the complainant, or customer service. The Licensee shall also receive and consider any request from or on behalf of any person for the provision of signal connections for reception of the Service, or any fault report or complaint from or on behalf of any person in relation to such signal connections.

18.2 The Licensee shall implement a procedure for dealing with comments, requests and complaints from the public as may be required from time to time by the Communications Authority.

18.3 The Licensee shall keep a complete record, in a form and manner approved by the Communications Authority, of comments, requests and complaints received by it and submit the same to the Communications Authority on a regular basis and on demand. The record shall be retained by the Licensee for not less than 2 years.

18.4 The Licensee shall comply with directions as may be given by the Communications Authority to publish, in relation to the Service and within such period as may be specified by the Communications Authority in that direction, a summary of any comment, request or complaint referred to in Condition 18.1. The form and content of such summary shall be subject to approval by the Communications Authority.

18.5 The Licensee shall supply recordings of good quality of all material on the television programme service that it provided during such period, and in such form, as the Communications Authority may direct and require for examination.

**Television programmes, publicity material and announcements in the public interest**

19.1 The Licensee shall include in its Service such:

- (a) publicity material in order to promote knowledge and understanding of the activities and functions of the Communications Authority; and
- (b) television programmes and other material in the public interest including but not limited to weather programmes and weather forecasts provided by the Government,

as the Communications Authority may provide or direct and at such time, within such period, on such channel, within or outside such television programmes and in such language or dialect as the Communications Authority may direct.

19.2 The publicity material referred to in Condition 19.1(a) may be directed to be broadcast twice daily for a total of not more than one minute on each or any of the Licensee's television programme service channels between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week on each channel. This publicity material shall not be treated as counting towards the one minute total in Condition 19.3.

19.3 Notwithstanding Condition 19.1, the Licensee shall broadcast on each or any of the Licensee's television programme service channels such announcements as the Communications Authority shall require to be broadcast provided that such announcements shall not exceed one minute in total in any clock hour on each channel.

19.4 For the avoidance of doubt, the Licensee shall not, in the performance of its obligations under Condition 19, be:

- (a) responsible for the content of the material included in the Service; and
- (b) entitled to charge the Communications Authority or the Government.

**Intellectual  
property rights**

20. The Licensee shall not do, or permit, any act or conduct in relation to the Service which is an infringement of any intellectual property right, including but not limited to any copyright.

**Books and  
accounts to be  
in English or  
Chinese**

21. All of the books and accounts of the Licensee shall be written in either the English or Chinese language.

**Licensee to  
formulate  
general  
guidelines for  
employees and  
agents**

- 22.1 The Licensee shall formulate written guidelines for all its officers, employees and agents concerned with the content of the Service stating the Licensee's principles regarding its responsibilities to the public, with particular reference to its obligations under the Codes of Practice on programme and advertising standards.
- 22.2 The Licensee shall ensure that all its officers, employees and agents are aware, and shall refresh their memory at reasonably regular intervals, of the guidelines referred to in Condition 22.1 and the Codes of Practice.
- 22.3 For the avoidance of doubt, nothing in Condition 22 shall relieve the Licensee from any obligation or liability to comply with the Codes of Practice.

**Discipline and training**

23. The Licensee shall ensure good discipline and training among its staff, officers, consultants and contractors, including script-writers, as regards adherence to the Codes of Practice on programme, advertising and technical standards.

**Codes of Practice**

24. The Licensee shall monitor and ensure strict compliance with the Codes of Practice, and technical standards and directions issued by the Communications Authority.

**Interference with other services**

- 25.1 The Licensee shall not use or operate any apparatus or equipment or permit or cause the same to be used or operated in any manner which causes interference with any authorised broadcasting or telecommunications services or apparatus operating in or outside Hong Kong.
- 25.2 In case of any such interference, the Licensee shall comply with all instructions given to it by the Communications Authority in respect of the use and operation of the apparatus and equipment.

**Information to be provided**

- 26.1 The Licensee shall provide the relevant Authority within the period specified such information as the relevant Authority may properly require.

26.2 Without prejudice to the power of the Communications Authority under Condition 26.1, the Licensee shall submit to the Communications Authority not later than 30 April in each year or upon request by the Communications Authority a certified true copy of the latest annual audited accounts of the Licensee prepared by an auditor. The audited accounts to be submitted for an accounting year shall include, without limitation, a reconciliation statement as at the end of the accounting year on the management report submitted by the Licensee under Condition 15.4 during the accounting year and other financial information contained in the audited accounts.

**Provision of testing facilities and Service for regulatory purposes**

27.1 Without prejudice to section 38 of the Broadcasting Ordinance, the Communications Authority may, for the purpose of exercising its functions under this Licence, require the Licensee to demonstrate to it that in establishing, providing or operating any means of telecommunications, telecommunications installation, telecommunications line or telecommunications service, if any, or any equipment, in relation to the Service, the Licensee is not in breach of any law, Ordinance, codes of practice, directions or conditions of this Licence.

27.2 For the purpose of Condition 27.1, the Licensee shall provide adequate testing instruments and operating staff.

27.3 The relevant Authority may give notice to the Licensee requesting the Licensee to provide within 21 days thereof the Service to the person making the request in order that that person may monitor and regulate the Service, and the Licensee shall comply with the request.

27.4 Where the Service is made available to the relevant Authority under Condition 27.3, no restriction on the lawful use or application that the relevant Authority may have in relation to the material provided on the Service shall be imposed on the relevant Authority or the Government.

**Standby  
equipment and  
spare parts**

28. The Licensee shall provide and maintain adequate standby equipment (including but not limited to spare parts) and staff to ensure that any interruption to the Service under this Licence is avoided or minimised, and that necessary repairs or replacements are made or provided promptly.

**Use of  
frequency  
channels in in-  
building coaxial  
cable  
distribution  
systems**

29.1 The Licensee shall seek approval from the Communications Authority for the allocation of frequency channels in any in-building coaxial cable distribution system ("IBCCDS") and shall comply with technical standards and directions issued by the Communications Authority.

- 29.2 Unless otherwise directed or approved by the Communications Authority, the number of frequency channels that the Licensee may apply for use in any IBCCDS pursuant to Condition 29.1 shall not exceed [\*] (*Note: The number of IBCCDS channels to be allocated to HKTVE is subject to the approval of the CA*). The number of frequency channels that the Licensee may use in any IBCCDS for the Service shall be subject to the approval of the Communications Authority required under Condition 29.1, the limit stipulated in this Condition 29.2, the availability of vacant channels in any IBCCDS, and the choice of the building residents concerned.

#### **Transmission of Service**

30. Save where the contrary intention appears expressly or by necessary implication in this Licence, including the requirement by the Secretary for Commerce and Economic Development to provide the Service in digital form in the entirety under Condition 2.1(b), the Licensee shall employ the means of transmission and the transmission arrangements for the Service as stated in the Licensee's Proposal. The Licensee shall apply to the Communications Authority for approval for any substantial change in the means of transmission or transmission arrangements.

#### **Management of Licensee**

31. The Licensee shall ensure that the management of the Licensee shall not be performed by persons other than the directors and principal officers of the Licensee and persons duly authorised by the Licensee.



**Performance  
bond**

- 32.1 Not later than 1 month from the Commencement Date, the Licensee shall submit to the Communications Authority a duly issued performance bond in favour of the Government in the sum of HK\$23 million (“Bonded Sum”) in the form and amount specified in a notice in writing of the Chief Executive in Council given pursuant to section 2(3) of the Broadcasting Ordinance, which form is reproduced in the Second Schedule to this Licence, to secure the compliance by the Licensee with certain conditions set out in this Licence and referred to as “Milestones” and “Deadlines for Compliance” in the Annex to the Second Schedule.
- 32.2 If after submission of the duly issued performance bond under Condition 32.1, the Licensee wishes to replace that performance bond with one issued by a different bank, the Licensee shall submit full written details of the proposed replacement bank and replacement performance bond to the Secretary for Commerce and Economic Development on behalf of the Government for approval not less than 14 days before the date the change becomes effective.

32.3

Notwithstanding any other conditions of this Licence (including but not limited to the terms and conditions of the performance bond):

- (a) if the Licensee fails to provide or maintain a performance bond in accordance with any provisions in this Condition 32 or the performance bond, or fails to provide to the Communications Authority a certificate by an auditor in accordance with Condition 32.5, this Licence may be revoked notwithstanding that the Licensee may have embarked on its preparation and performance; and no licence fees or other fees and charges paid or payable by the Licensee before cessation in accordance with this Condition shall be refunded or cease to be payable, as the case may be;
- (b) all rights, powers and remedies of and claims by the Government under the performance bond lodged by the Licensee pursuant to this Condition 32, including any replacement thereof, shall be without prejudice to the other rights, powers and remedies of and claims by the Government and to the rights, powers and remedies of and claims by the Chief Executive in Council, the Chief Executive, the Communications Authority and, without limitation, any other person under any laws or Ordinance; and

- (c) any replacement performance bond referred to in Condition 32.2 shall be in the form of the performance bond appearing in the Second Schedule save for:
  - (i) the change in particulars of the replacement bank; and
  - (ii) the omission therefrom of any Milestones and Deadlines for Compliance in respect of which liability has ceased by reason of either the payment in full of all calls on the performance bond prior to the date the said change of bank becomes effective or the issue of any certificate of completion by the Government in respect of the said Milestones and Deadlines for Compliance.

32.4

The Licensee shall ensure that the Surety referred to in the performance bond, including any replacement performance bond, shall be and remain irrevocably and unconditionally bound to the Government and liable for payment of the Bonded Sum and each of the Bonded Sums Payable.

32.5

Without prejudice to any power that the Communications Authority may have, the Licensee shall, within 2 months upon completion of each or all of (as the case may be) the Milestones, submit to the Communications Authority a certificate by an auditor to evidence and certify completion of each or all of (as the case may be) the Milestones by the relevant Deadline(s) for Compliance. Once the Communications Authority is satisfied that the Licensee has complied with its obligations in respect of any or all of (as the case may be) the Milestones and Deadline(s) for Compliance set out in the performance bond issued in favour of the Government, the Secretary for Commerce and Economic Development on behalf of the Government shall, as soon as practicable thereafter but no more than 30 days and in response to a request in writing to that effect from the Licensee, issue in respect thereof a certificate of completion to the Licensee and to the Surety referred to in the performance bond or the replacement bank that has been approved by the Secretary for Commerce and Economic Development on behalf of the Government in accordance with Condition 32.2 (where applicable).

**Other requirements**

33.

For the avoidance of doubt, the Licensee shall apply for such other licences, permissions, approvals, agreements or grants as may be required under any law or Ordinance if any such licence, permission, approval, agreement or grant is or becomes necessary for or in connection with the provision of the Service.

Granted on [\*](*Note: date to be provided later.*)

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Clerk to the Executive Council

COUNCIL CHAMBER

Accepted by :

Signature :

Capacity :

Date :

## **FIRST SCHEDULE**

**THIS SCHEDULE GOVERNS THE DESIGNATED INTEGRATED CHANNELS OF THE LICENSEE'S SERVICE. IT SHALL FORM AND BE READ AS AN INTEGRAL PART OF THIS LICENCE.**

### **General Provisions**

1. Save where the contrary intention appears expressly or by necessary implication in this Schedule, the programme types described in this Schedule shall bear the same meaning, if any, as in the Code of Practice on programme standards and any directions issued by the Communications Authority from time to time, and in the event of any conflict or inconsistency between their meanings, the meaning in the Code of Practice on programme standards shall prevail.

### **Language of Broadcast**

- 2.1 The Licensee shall provide its Service on the designated integrated channels in accordance with Condition 17.4.1 of the Licence.
- 2.2 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, provide the whole or any part of its Service on the designated integrated channels in any other language(s) or dialect(s).
- 2.3 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, provide the whole or part of its Service on the designated integrated channels using one or more accompanying sound channels in one or more language(s) or dialect(s).

## **Subtitling**

- 3.1 The Licensee shall provide subtitling for its Service, as may be directed in writing by the Communications Authority from time to time after consultation with the Licensee.
- 3.2 The Licensee may, with the prior approval in writing of the Communications Authority and subject to such conditions as may be imposed by it, deviate from the requirements in Condition 3.1 of this Schedule.

## **News Programmes**

- 4.1 The Licensee shall provide on each of the designated integrated channels a minimum of two comprehensive news bulletins, each of not less than 15 minutes duration, each evening between the hours of 6:00 p.m. and 12:00 midnight.
- 4.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting news bulletins referred to in Condition 4.1 of this Schedule.

## **Documentary Programmes**

- 5.1 The Licensee shall provide a minimum of 60 minutes of documentary programmes each week on each of the designated integrated channels between the hours of 6:00 p.m. and 12:00 midnight, of which not less than 30 minutes on the integrated Chinese channel are to be wholly of Hong Kong origin.
- 5.2 For the purposes of this Schedule, "wholly of Hong Kong origin" means programmes:
- (a) produced
    - (i) in substance and in form in Hong Kong; or

(ii) by the Licensee, by any employee of the Licensee, by any company which is a subsidiary of the Licensee within the meaning of section 2(1) of the Broadcasting Ordinance (“Licensee’s Subsidiary”), or by any employee of the Licensee’s Subsidiary, or by any other independent production company engaged by the Licensee in or outside Hong Kong; and

(b) the Communications Authority is satisfied that it is produced primarily for the Hong Kong market.

5.3 For the purposes of Condition 5.1 of this Schedule, programmes other than travelogues and such other subjects as the Communications Authority may determine, may be “documentary” if they are factual and consist wholly or substantially of real events.

5.4 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting documentary programmes referred to in Condition 5.1 of this Schedule.

### **Current Affairs Programmes**

6.1 The Licensee shall provide a minimum of 60 minutes of current affairs programmes each week on each of the designated integrated channels between the hours of 6:00 p.m. and 12:00 midnight, of which not less than 30 minutes on each of the designated integrated channels are to be wholly of Hong Kong origin.



6.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting current affairs programmes referred to in Condition 6.1 of this Schedule.

### **Children's Programmes**

7.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide:

- (a) two blocks of programmes intended and suitable for children of different age groups in Hong Kong up to and including the age of 15 years ("children's programmes") of a minimum period of:
  - (i) 30 minutes daily on each of the designated integrated channels between the hours of 4:00 p.m. and 7:00 p.m., of which not less than 30 minutes on the integrated Chinese channel are to be wholly of Hong Kong origin; and
  - (ii) 30 minutes daily on each of the designated integrated channels between the hours of 9:00 a.m. and 7:00 p.m.; and

(b) a minimum of 2 hours of children's programmes with educational values targeting teenagers each week on the integrated English channel between the hours of 5:00 p.m. and 7:00 p.m., which shall count towards the block of children's programmes referred to in Condition 7.1(a)(i) above. Notwithstanding any other provisions in this Licence, English subtitles shall be provided for programmes provided pursuant to this Condition within 6 months from the date of service launch of the integrated English channel and at all times thereafter.

7.2 Upon application in writing by the Licensee, the Communications Authority may by a direction waive or modify the requirements specified in Condition 7.1 of this Schedule in accordance with the terms of the direction.

7.3 Without prejudice to the requirements in Condition 7.2 of this Schedule, the Licensee shall repeat the provision of any or all of the children's programmes referred to in Condition 7.1(a) of this Schedule at such time as may be directed by the Communications Authority from time to time.

7.4 Apart from the repetitions referred to in Condition 7.3 of this Schedule, children's programmes shall not be repeated more frequently than as may be specified in the Code of Practice or directed by the Communications Authority from time to time.

7.5 The Licensee shall inform the Communications Authority in writing of the programme types and transmission schedules for children's programmes 1 week in advance of broadcasting. The Communications Authority may waive the requirement of notification.

## **Programmes for Young Persons**

- 8.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide a minimum of 30 minutes of programmes for young persons each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive).
- 8.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting programmes for young persons referred to in Condition 8.1 of this Schedule.

## **Programmes for Senior Citizens**

- 9.1 Subject to the requirements regarding family viewing hours stipulated in the Code of Practice on programme standards and to any directions issued by the Communications Authority, the Licensee shall provide a minimum of 60 minutes of programmes for senior citizens each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for the particular requirements of senior citizens in Hong Kong over the age of 60 years in relation (but not necessarily limited) to their well-being.
- 9.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting programmes for senior citizens referred to in Condition 9.1 of this Schedule.

## **Arts and Culture Programmes**

10.1 The Licensee shall provide a minimum of 60 minutes of arts and culture programmes each week on the integrated Chinese channel between the hours of 8:00 a.m. and 12:00 midnight, which are intended and suitable for promoting the development and appreciation of the literary, performing and visual arts or other topics or activities of cultural value, of which not less than 15 minutes are to be wholly of Hong Kong origin.

10.2 Upon application in writing by the Licensee, the Communications Authority may approve alternative arrangements for broadcasting arts and culture programmes referred to in Condition 10.1 of this Schedule.

#### **Annual Reports**

11.1 The Licensee shall submit reports to the Communications Authority on or before 31 March each year on the extent to which the programmes provided in the previous calendar year ending on 31 December pursuant to Conditions 7, 8, 9 and 10 of this Schedule have been able to achieve the respective objectives as set out in the aforesaid Conditions, provided that the Licensee shall not be required to submit any such reports for the year [\*]. *(Note: This is to exclude the year the licence is granted.)*

11.2 The Communications Authority may in its discretion make the reports referred to in Condition 11.1 of this Schedule publicly available in any manner as it thinks fit, in whole or in part.

#### **Obligations of Licensee**

12. Unless otherwise expressly stated in this Licence or directed by the Communications Authority upon application in writing by the Licensee, the obligations and requirements imposed upon the Licensee to provide certain programmes at certain times and for certain periods pursuant to Conditions 4, 5, 6, 7, 8, 9 and 10 of this Schedule shall not be discharged or satisfied to the extent the programmes so provided comprise or include television programmes, publicity material or announcements produced, commissioned or supplied by the Government or the Communications Authority.

12.2 Unless otherwise directed by the Communications Authority upon application in writing by the Licensee, the obligations and requirements imposed upon the Licensee to provide certain programmes at certain times and for certain periods pursuant to Conditions 5, 6, 7, 8, 9 and 10 of this Schedule shall be fulfilled only by first-run programmes.

12.3 For the purposes of this Schedule, "first-run programme" means a programme that has not previously been broadcast or provided in substantially the same form and content on any of the television programme service channel(s) of the Service.

### **Programmes for Schools**

13.1 Pursuant to section 19 of the Broadcasting Ordinance, the Licensee shall include in the Service such programmes for schools supplied by the Government as may be required by the Communications Authority.

13.2 The programmes required under Condition 13.1 of this Schedule:

- (a) shall not exceed 4 hours each day unless the Communications Authority otherwise requires by serving upon the Licensee a notice in writing of not less than 30 days; and
- (b) may be provided as part of the Service on the integrated English channel unless the Communications Authority otherwise requires by serving upon the Licensee a notice in writing of not less than 30 days.

## SECOND SCHEDULE

(Section 2(3) of the Broadcasting Ordinance  
and Condition 32 of the Licence)

### FORM OF PERFORMANCE BOND

**THIS SCHEDULE TOGETHER WITH ITS ANNEX SHALL FORM AND BE READ AS AN INTEGRAL PART OF THE LICENCE GRANTED TO THE LICENSEE TO PROVIDE A DOMESTIC FREE TELEVISION PROGRAMME SERVICE IN HONG KONG.**

BY THIS BOND dated the [ ] day of [month] and [year] (“this Bond”)

We, HKTVE, whose registered office is at [\*address of Licensee] (“Licensee”), and [\*details to be provided by the Licensee], holder of a valid banking licence issued under the Banking Ordinance (Cap.155), whose [\*registered office/principal place of business] is at [\*address] (“Surety”) are irrevocably and unconditionally bound to the Government of the Hong Kong Special Administrative Region (together with his successors and assigns, “Government”) up to the sum of HK\$23 million (“Bonded Sum”) subject to the terms and conditions of this Bond and in accordance with the Milestones set out in the Annex hereto (“Annex”) for payment of which sum the Licensee and the Surety bind themselves, their successors and assigns, jointly and severally, in accordance with the provisions of this Bond.

#### WHEREAS

Pursuant to the terms of the Licence, the Licensee agreed to obtain a surety to be bound unto the Government for the due performance of the Licence by the Licensee.

NOW THE TERMS AND CONDITIONS of this Bond are:

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Licence.
2. If, in respect of any Milestone set out in the Annex, the Licensee fails to achieve that Milestone by the Deadline for Compliance set out opposite to that Milestone in the Annex, the Surety shall upon demand made by the Government in writing and without proof or conditions satisfy and discharge the relevant amount of the Bonded Sum Payable set out opposite to that Milestone in the Annex provided that the aggregate liability of the Surety under this Bond in respect of that failure shall not exceed the Bonded Sum Payable set out opposite to the Milestone in the Annex.

3. The liability of the Surety under this Bond shall not be affected or discharged in any way by (and the Surety hereby waives any requirement to give notice in respect of):
  - (a) any suspension of the Licence, variation to or amendment of the Licence (including but without limitation to extensions of time for performance) or any concession or waiver by the Communications Authority in respect of the Licensee's obligations under the Licence. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified of any such suspension, variation, amendment, concession or waiver;
  - (b) the cancellation or revocation of the Licence;
  - (c) any forbearance or waiver of any right or remedy that the Government, the Chief Executive in Council, the Chief Executive, the Communications Authority or, without limitation, any other person, may have against the Licensee;
  - (d) any act or omission of the Licensee pursuant to any other arrangement with any of the persons referred to in clause 3(c) above or with the Surety; and
  - (e) subject to clause 4 below, the issue of any certificate of completion by the Secretary for Commerce and Economic Development in respect of any Milestone set out in the Annex.
4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs:
  - (a) payment by the Surety of the Bonded Sum in full to the Government; or
  - (b) issue of a certificate of completion by the Secretary for Commerce and Economic Development in respect of all of the Milestones set out in the Annex.
- 5.1 This Bond shall remain valid from the date of this Bond until the liability of the Surety under this Bond ceases pursuant to clause 4 above.
- 5.2 In the event that the Licensee wishes to replace this Bond with one issued by a different bank, and the Licensee fails to provide to the satisfaction of the Secretary for Commerce and Economic Development on behalf of the Government a replacement performance bond in the form appearing in the Second Schedule to the Licence by not later than 14 days prior to the proposed date on which the replacement bond becomes effective, the Government shall be entitled, without limitation to any rights it may have under the Licence or any law or Ordinance, to call this Bond up to a maximum amount of the Bonded Sums Payable in respect of the Milestones which have not been performed by submitting its claim in writing at the Surety's counters prior to the proposed date on which the replacement bond becomes effective, and the Surety shall forthwith pay the amount thereof to the Government.



- 5.3 For the avoidance of doubt, the Milestones and Deadlines for Compliance with the Milestones are treated as not having been performed, unless and until a certificate of completion has been issued by the Secretary for Commerce and Economic Development in respect of the respective Milestones and Deadlines for Compliance.
6. The Government shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Licensee being required. Without prejudice to the foregoing and purely on a 'for information basis', the Surety will be notified by the Communications Authority within a reasonable period after any such assignment.
7. All documents arising out of or in connection with this Bond shall be served:
- (a) upon the Government at: Commerce and Economic Development Bureau, 22/F, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong and marked for the attention of "Secretary for Commerce and Economic Development"
  - (b) upon the Communications Authority at: 20th floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong and marked for the attention of "Assistant Director (Broadcasting)"
  - (c) upon the Surety at: *[Note 1]*
8. The Government, the Communications Authority and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by 7 days' prior written notice to each other. All demands and notices must be in writing.
9. This Bond shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region. The Licensee and the Surety agree to submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

IN WITNESS whereof this Bond has been executed as a deed on the date first above written.

THE COMMON SEAL OF [                    ) )  
 Name of the Surety] was hereunto    ) )  
 affixed in the presence of:            ) )

\_\_\_\_\_  
 Witness

Signed, sealed and delivered<sup>1/Note 2/</sup> )  
by as attorney )  
and agent for and on behalf )  
of [Name of the Surety] )  
pursuant to a Power of Attorney )  
dated given )  
by [Name of the Surety] )  
under its Common Seal )

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Authorised Signatory:

Signature No.:

THE COMMON SEAL OF )  
[( ) Limited]<sup>1/Note 3/</sup> )  
was hereunto affixed )  
in the presence of: ]

Witness

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Signed, sealed and delivered<sup>1/Note 2/</sup> )  
by as attorney )  
and agent for and on behalf )  
of [Name of the Licensee] )  
pursuant to a Power of Attorney )  
dated given )  
by [Name of the Licensee] )  
under its Common Seal )

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Authorised Signatory:

Signature No.:

**Notes : [for preparation of but not inclusion in the engrossment of this performance bond]**

- 1. The address for service shall be in Hong Kong.**
- 2. For use where the Licensee or the Surety, whether a firm or limited company, executes through an attorney.**
- 3. The Licensee as well as the Surety must execute the bond.**

**Annex to the Second Schedule**

	<u>Milestones</u>	<u>Deadlines for Compliance</u>	<u>Bonded Sums Payable</u>
<u>Required roll-out of the Service (Condition 17.4.1 of the Licence)</u>			
1(a)	The Licensee shall broadcast its Service on one 24-hour integrated Chinese channel each day.	Unless the Communications Authority otherwise approves or determines, within 12 months from the Commencement Date	HK\$7 million
1(b)	The Licensee shall broadcast its Service on the designated integrated channels each day, comprising one 24-hour integrated Chinese channel and one 16-hour integrated English channel.	Unless the Communications Authority otherwise approves or determines, within 24 months from the Commencement Date	HK\$2 million
<u>Required Premises within Network Reach and Premises Ready for Service (Condition 17.5.1 of the Licence)</u>			
2(a)	The Service shall be made available for reception by not less than 1.38 million Premises within Network Reach and not less than 1.15 million Premises Ready for Service.	Unless the Communications Authority otherwise approves or determines, within 24 months from the Commencement Date	HK\$3 million
2(b)	The Service shall be made available for reception by not less than 1.725 million Premises within Network Reach and not less than 1.38 million Premises Ready for Service.	Unless the Communications Authority otherwise approves or determines, within 36 months from the Commencement Date	HK\$3 million
2(c)	The Service shall be made available for reception by not less than 2.07 million Premises within Network Reach and not less than 1.61 million Premises Ready for Service.	Unless the Communications Authority otherwise approves or determines, within 48 months from the Commencement Date	HK\$1 million

<u>Milestones</u>	<u>Deadlines for Compliance</u>	<u>Bonded Sums Payable</u>
<u>Required capital and programming expenditure (Condition 15.5 of the Licence)</u>		
3(a) The Licensee shall incur not less than HK\$245 million as the capital and programming expenditure for providing the Service.	Unless the Communications Authority otherwise approves or determines, within 36 months from the Commencement Date	HK\$3 million
3(b) The Licensee shall incur not less than HK\$440 million as the cumulative capital and programming expenditure for providing the Service.	Unless the Communications Authority otherwise approves or determines, within 60 months from the Commencement Date	HK\$4 million

This Annex shall be read in conjunction with the terms and conditions of the Licence.

G.N.

BROADCASTING ORDINANCE (Chapter 562)

Pursuant to section 4(1)(a) of Schedule 4 to the Broadcasting Ordinance, notice is hereby given that the Chief Executive in Council has decided that a domestic free television programme service licence be granted to HK Television Entertainment Limited on 1 April 2015 and the period of validity of such a licence shall be 12 years from 1 April 2015 to 31 March 2027 (both dates inclusive) (“Period of Validity”). The Chief Executive in Council hereby also orders that pursuant to section 4(1)(b) of Schedule 4 to the Broadcasting Ordinance, such a licence shall be subject to review during the period from 1 April 2021 to the date of expiry of the Period of Validity.

Council Chamber  
[\*] 2015

WONG Kit-ye, *Kinnie Clerk to the Executive Council*

第 號公告

《廣播條例》（第 562 章）

現依據《廣播條例》附表 4 第 4 (1) (a) 條公布，行政長官會同行政會議已作出決定，於 2015 年 4 月 1 日向香港電視娛樂有限公司批給本地免費電視節目服務牌照，而該牌照的有效期為 12 年，由 2015 年 4 月 1 日起至 2027 年[3]月[31]日止（包括首尾兩日）。行政長官會同行政會議現亦依據《廣播條例》附表 4 第 4 (1) (b) 條命令，該牌照須在 2021 年 4 月 1 日後的有效期內予以覆核。

行政會議廳  
2015 年[\*]月[\*]日

行政會議秘書黃潔怡

**Prevention of Bribery Ordinance (Amendment of  
Schedule 1) Order 2015**

(Made by the Chief Executive in Council under section 35 of the Prevention  
of Bribery Ordinance (Cap. 201))

**1. Commencement**

This Order comes into operation on 10 July 2015.

**2. Prevention of Bribery Ordinance amended**

The Prevention of Bribery Ordinance (Cap. 201) is amended as set  
out in section 3.

**3. Schedule 1 amended (public bodies)**

Schedule 1—

Add

“125. HK Television Entertainment Company Limited.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

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**Explanatory Note**

This Order amends Schedule 1 to the Prevention of Bribery  
Ordinance (Cap. 201) to specify “HK Television Entertainment  
Company Limited” as a public body for the purposes of the  
Ordinance.

**Proposed Licence Conditions for Fantastic TV and HKTVE  
(Subject to fine-tuning upon further discussions with  
Fantastic TV and HKTVE)**

(1) *Requirements applicable to domestic free television programme services*

Most of the requirements imposed on existing licensees for domestic free television programme services would be extended to Fantastic TV and HKTVE. These relate to the need for a mid-term review of licences after six years; the imposition of licence fees; provision of service free of charge; programme diversity; language of broadcast; broadcast of announcements in the public interest and weather programmes / announcements provided by the Government and publicity materials of the Authority; and compliance with the accepted proposals of the new licensee.

(2) *Provisions of Service and Investment Expenditure*

Fantastic TV and HKTVE shall roll out its service in accordance with the six-year investment plans provided in its application.

(3) *Performance Bond*

Fantastic TV and HKTVE should submit a duly issued performance bond in favour of the Government on the commencement date of the licence to secure the performance of the licence conditions. Certain requirements in relation to the provision of a broadcasting service, i.e. roll-out of the service, premises passed and investment expenditure as committed in the relevant application will be set out as milestones. The performance bond will be discharged once the relevant milestones referred to in the performance bond have been fulfilled to the satisfaction of the Authority.

Fantastic TV and HKTVE should also submit an auditor's certificate certifying fulfilment of the milestones set out in the performance bond, including but not limited to, the



premises passed and the addresses thereof on a yearly basis, and make available the addresses of the updated premises that are ready for service (in any form and manner as the Authority thinks fit) for public inspection, free of charge, on a half-yearly basis.

(4) *Positive programme requirements*

Fantastic TV and HKTVE are required to broadcast a minimum amount of the following –

- (a) news programmes (30 minutes daily on each of the integrated Cantonese and integrated English channels);
- (b) documentary programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on the Cantonese channel are wholly of Hong Kong origin);
- (c) current affairs programmes (60 minutes per week on each of the integrated Cantonese and integrated English channels, of which 30 minutes per week of such programmes on each of the Cantonese and English channels are wholly of Hong Kong origin);
- (d) children's programmes (60 minutes daily on each of the integrated Cantonese and integrated English channels, of which 30 minutes daily of such programmes on the integrated Cantonese channel are wholly of Hong Kong origin; on the integrated English channel, at least two hours of programmes per week with educational values targeting teenagers);
- (e) programmes for young people (30 minutes per week on the integrated Cantonese channel only);
- (f) programmes for senior citizens (60 minutes per week on the integrated Cantonese channel only); and
- (g) arts and culture programmes (60 minutes per week on the integrated Cantonese channel only, of which 15 minutes per week of such programmes are wholly of Hong Kong origin).

(5) *English language channel*

Fantastic TV and HKTVE are required to roll out an integrated English channel within 24 months after the grant of licence, with the flexibility of providing up to 20% of the programme materials in other languages (except Cantonese) outside the hours of 7:00 p.m. to 11:30 p.m. and a window of two continuous hours from 7:00 p.m. to 11:30 p.m. one day per week in other languages (except Cantonese) with English subtitles.

(6) *Subtitling*

In light of public demand of subtitling service, Fantastic TV and HKTVE are required to provide the subtitling service incrementally as follows –

- (a) subtitling for all news, current affairs, weather programmes and emergency announcements should be provided within 18 months from service launch of the integrated Cantonese and English channels;
- (b) on the integrated Cantonese channel, Chinese subtitling should be provided for programmes shown between 7:00 p.m. – 11:00 p.m. within 24 months after service launch of the channel; and
- (c) on the integrated English channel, two hours per week of English programmes with educational value targeting teenagers should carry English subtitles within 6 months from service launch of the channel.

(7) *In-building Coaxial Cable Distribution System (IBCCDS) channel*

On the capacity constraint of the IBCCDS, the then Telecommunications Authority (now the Authority<sup>1</sup>) has advised that the total number of free IBCCDS channels will

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<sup>1</sup> The Telecommunications Authority was dissolved on 1 April 2012 and its functions have since been taken up by the Communications Authority established on the same day.

vary depending on the actual channel utilisation and other constraints applicable to a particular building and that there should be sufficient spare IBCCDS channels to be allocated to the applicants for the time being. To ensure more effective utilization of the IBCCDS channels, the number of IBCCDS channels to be allocated to Fantastic TV and HKTVE will be subject to the approval of the Authority.

(8) *Analogue and digital services*

Similar to the incumbent licensees, Fantastic TV and HKTVE will be required to provide its service in digital form in the entirety by notice served on it by the Government not less than 18 months of the date of service of the notice.

(9) *Means of delivery and speed of service roll-out*

Fantastic TV and HKTVE are required to roll out its service in accordance with the proposed means of delivery and the planned coverage of its network in its application.

(10) *Management of the licensee*

Fantastic TV and HKTVE are required to adopt effective management and control in order to ensure compliance with all the statutory and regulatory requirements. The management of the licensee shall not be performed by persons other than the directors, principal officers<sup>2</sup> and persons duly authorised by the licensee.

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<sup>2</sup> Under the BO, “principal officer”, in relation to a corporation, means –

- (a) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation.

**Issues Requiring Submission of Further Information  
By Fantastic TV and HKTVE**

Prior to the formal grant of free TV licence, we will require Fantastic TV and HKTVE to submit the following to the Government and the Authority -

- (a) an updated free TV licence application reflecting changes agreed since the first submission;
- (b) further information, including statutory declarations, undertakings and legal opinions, for the purpose of verifying the corporate status of Fantastic TV and HKTVE after the proposed corporate restructuring;
- (c) confirmation that the proposed free TV services will not be “bundled” with any transmission or television programme service which is available only on a subscription basis;
- (d) undertaking that the existing users or viewers of the domestic pay television programme service provided by an affiliate of Fantastic TV and HKTVE will be entitled to view their respective proposed free TV service regardless of whether the viewers continue to subscribe for the domestic pay television programme service of that affiliate; and
- (e) confirmation that Fantastic TV and HKTVE will not act as mere “content providers” supplying programme materials to any of its affiliates who is a domestic pay television programme service licensee.

## **ECONOMIC IMPLICATIONS**

Through bringing in additional investment in programming and local content production and increasing competition, the entry of HKTVE into the free TV market would help the further development of the broadcasting and creative industries. The community will also benefit from a wider choice of high quality programmes as well as better services.

## **FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

2. HKTVE, if a free TV service licence is granted to it, will have to pay to the CA an annual licence fee at the prevailing rates stipulated in Schedule 1 to the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. leg. A). In addition, the CA may also collect additional variable carrier licence fees from existing carrier licensees for new customer connections as appropriate in accordance with Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) as HKTVE will use the existing licensed fixed telecommunications networks provided by existing carrier licensees for the delivery of free TV services to viewers.
3. There will be additional workload arising from the administration of the new licence and handling of relevant complaints. The workload will be absorbed within existing resources of the OFCA.

## **SUSTAINABILITY IMPLICATIONS**

4. HKTVE's entry as a new player will bring about positive gain to the broadcasting industry of Hong Kong by promoting competition and increasing programme choices for viewers. It is conducive to the sustainability principle of achieving a competitive and prosperous market-led economy to meet the aspirations of the public.

## Chief Executive in Council's decisions on free TV licence applications of ATV and HKTVE

The Government announced today (April 1) the Chief Executive (CE) in Council's decisions on Asia Television Limited (ATV)'s application for renewal of the domestic free television programme service (free TV) licence and HK Television Entertainment Company Limited (HKTVE)'s application for a new free TV licence .

Speaking at a press conference, the Secretary for Commerce and Economic Development, Mr Gregory So, said: "Having considered the recommendations of the Communications Authority (CA), relevant representations and all relevant latest developments, the CE in Council decided not to renew ATV's free TV licence under section 11(5) of the Broadcasting Ordinance."

The notice of non-renewal was served on ATV this afternoon.

ATV's free TV licence is due to expire on November 30, 2015. Under the Broadcasting Ordinance, a notice in writing of the CE in Council's non-renewal decision has to be served on ATV at least 12 months before expiry of its licence. For the purpose of complying with the statutory requirement as to the length of notice, ATV will have its licence extended to April 1, 2016.

Mr So noted that this is the first time in the local broadcasting history that an incumbent's broadcasting licence is not renewed.

"The Government will set up a task force, to be chaired by the Permanent Secretary for Commerce and Economic Development (Communications and Technology), comprising representatives from bureaux and departments concerned, to see to the speedy resolution of various issues that might arise from the non-renewal of ATV's licence. The task force will coordinate implementation of necessary contingency measures during the transitional period to minimise any adverse impact that might occur," he said.

Amongst others, the task force will liaise closely with Labour Department on necessary measures to assist ATV's displaced staff, including arranging briefing to the affected staff on their employment rights under the law and providing points of contact for those who may need Government's assistance.

Mr So reiterated that it remains incumbent on the management of ATV to comply at all times with all relevant statutory requirements and the provisions in its free TV licence in the next 12 months until expiry of its licence. ATV is also required to make proper arrangement for its staff.

In processing the renewal application by ATV, the CA carried out a comprehensive assessment on its performance and conducted a public consultation exercise from February 4 to April 3, 2014 to gauge public views on ATV's service. The CA submitted its recommendation to the CE in Council in November last year.

The CA considers that the overall performance of ATV is unsatisfactory. Its performance in various aspects has clearly deteriorated after the mid-term review of its licence. The CA has serious doubts as to whether ATV would be capable of making the necessary improvements, and whether it has the financial capability to deliver its investment plans, and indeed to continue its business as a going concern.

At the press conference today, Mr So also announced that the CE in Council had decided to formally grant a free TV licence to HKTVE, following the grant of approval-in-principle back in October 2013.

HKTVE's licence will be valid from today for 12 years until March 31, 2027, subject to a mid-term review in 2021.

"We hope that HKTVE's entry into the free TV market will benefit our audience-at-large with more quality programming choices," Mr So said.

HKTVE's new free TV service will be delivered via fixed network. Its integrated Cantonese channel and integrated English channel will commence within 12 months and 24 months respectively after the grant of licence. The Cantonese channel will provide round-the-clock service, while the English channel will broadcast a total of 16 hours of television programmes with two loops of eight hours each.

Viewers served by In-building Coaxial Cable Distribution System (IBCCDS), after upgrading the IBCCDS, may receive HKTVE's free TV signals with Integrated Digital Television sets or digital terrestrial television decoders (DTT decoders). HKTVE has committed to extend its network coverage from 65 per cent of the households in the first year to 80 per cent in the sixth years.

Since the grant of approval-in-principle in October 2013, the CA proceeded with the consequential follow-up work, including further review of HKTVE's application, sought further information and clarifications as necessary from HKTVE and discussed with the company the proposed licence conditions.

The CA considers that HKTVE has complied with the statutory requirements under the Broadcasting Ordinance, committed to meet various programming requirements, and is satisfied with its investment proposal. The CA submitted a recommendation that a free TV licence should be formally granted to HKTVE to CE in Council in January this year.

Ends/