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通訊及創意產業科

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COMMUNICATIONS AND
CREATIVE INDUSTRIES BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU

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BY FAX AND BY HAND

11 October 2016

Mr. Daniel SIN
Clerk to Panel,
Panel on Information Technology and Broadcasting
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear *Daniel*,

**Application by Digital Broadcasting Corporation Hong Kong Limited
for Termination of Sound Broadcasting Licence**

Digital Broadcasting Corporation Hong Kong Limited (DBC) was granted a sound broadcasting licence (the Licence) by the Chief Executive in Council on 22 March 2011 to provide digital audio broadcasting (DAB) services. On 8 August 2016, DBC wrote to the Secretary for Commerce and Economic Development, stating that DBC was seeking the approval of the Chief Executive in Council for the termination of the Licence.

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I write to inform you that, at the meeting of the Executive Council on 11 October 2016, the Council advised and the Chief Executive ordered that the termination of the Licence should be approved with effect from 15 October 2016. I enclose at Annex a bilingual copy of the relevant Legislative Council brief and press release for the reference of the Chairman to be elected and new Members of the Panel. Thank you for your attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Susie Ho".

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

Encls.

c.c. Chairman, Communications Authority

LEGISLATIVE COUNCIL BRIEF

Application by Digital Broadcasting Corporation Hong Kong Limited for Termination of Sound Broadcasting Licence

INTRODUCTION

At the meeting of the Executive Council held on 11 October 2016, the Council ADVISED and the Chief Executive ORDERED that-

- (a) the termination of the Digital Broadcasting Corporation Hong Kong Limited (DBC)'s sound broadcasting licence (Licence) be approved with effect from 15 October 2016 by varying the period of validity of the Licence from 22 March 2011 to 21 March 2023 to 22 March 2011 to 14 October 2016; and
- (b) pursuant to Condition 11.1 of the Licence and notwithstanding Condition 11.4 of the Licence, the amount of licence fee for the licence year 2016/2017 be revised, by notice in writing to DBC, on the basis of recovery of the reasonable costs and expenses incurred by or on behalf of the Government in relation to the Licence up to 14 October 2016, to \$758,365

JUSTIFICATIONS

Digital Audio Broadcasting Service

2. Following the Chief Executive in Council's approval in December 2009 of the development framework for the provision of digital audio broadcasting (DAB) services in Hong Kong, and upon invitation for applications in the following year, the Chief Executive in Council granted on 22 March 2011 sound broadcasting licences to provide DAB services to DBC, Metro Broadcast Corporation Limited (Metro), and Phoenix U Radio Limited (Phoenix U Radio) (collectively, DAB licensees) for a period of validity of 12 years under section 13C(2) of the Telecommunications Ordinance. The DAB licensees and Radio Television Hong Kong (RTHK) formally launched their service, by phases, starting from 2012.

Request for Termination of Licence by DBC

3. DBC commenced provision of DAB service on 21 September 2012 (the Service Commencement Date). On 8 August 2016, DBC wrote to the Secretary for Commerce and Economic Development (SCED) to seek the

approval of the Chief Executive in Council for the surrender of the Licence. DBC submitted that it found that there was no prospect of making the business model commercially viable. On 11 August 2016, DBC also applied for the Communications Authority (CA)'s approval under the Licence for it to deviate from the programming requirements under the relevant conditions of the Licence from 8 September 2016 until the termination of the Licence took effect. The CA subsequently granted approval to DBC on 26 August 2016 for it to deviate from the programming requirements under the Licence.

Authority for Termination of Licence

4. Under section 46 of the Interpretation and General Clauses Ordinance, where an Ordinance confers upon a person a power to grant a licence, that person also has the power to, among other things, amend or withdraw the licence. In this case, any premature termination of the Licence, otherwise than by way of revocation in accordance with Condition 13 of the Licence and section 21 of the Broadcasting (Miscellaneous Provisions) Ordinance, can be made by the Chief Executive in Council on terms and conditions prescribed or accepted by him. This can be achieved by way of amending the Licence to shorten the period of validity of the Licence.

DBC's Obligations and Liabilities under the Licence

5. Before the Chief Executive in Council approves the termination of the Licence, we should ensure that DBC has performed its obligations and discharged its liabilities that have accrued under the Licence. To this end, we have sought the views of the CA on the obligations and liabilities accrued by DBC under the Licence in terms of (a) outstanding financial penalty; (b) outstanding licence fee; (c) compliance with the milestones in the performance bonds; (d) compliance with programming requirements; and (e) compliance with the Six-year Investment Plan. The CA's assessment is that apart from the licence fee for the licence year 2016/2017, DBC has no outstanding obligations and liabilities accrued under the Licence, as summarised in the ensuing paragraphs.

(A) Outstanding Financial Penalty

6. DBC has settled all the financial penalties imposed on it. There is no outstanding financial penalty that is required to be paid by DBC under the Licence.

(B) Outstanding Licence Fee

7. Condition 11.1 of the Licence provides that DBC shall pay to the CA a licence fee for the first year beginning with the soft launch date or the Service Commencement Date, whichever is earlier (Due Date), and for each subsequent year beginning on the anniversary of the Due Date, which falls on 15 August. As such, the licence fee payable by DBC for the licence year 2016/2017 covering the period from 15 August 2016 to 14 August 2017 in the amount of \$4,537,760 fell due on 15 August 2016 (Licence Fee).

DBC's Licence Fee Request and CA's Views on the Licence Fee Request

8. On 11 August 2016, DBC submitted to the CA a request that the payment of the Licence Fee be made by monthly instalments and on a pro rata basis, i.e. from the commencement of the licence year 2016/2017 until the date on which the termination of the Licence (if so approved by the Chief Executive in Council) took effect (Licence Fee Request). The CA supports the Licence Fee Request of DBC.

SCED's Views on the Licence Fee Request

Policy Consideration

9. From SCED's policy angle, we consider it not reasonable in the circumstances to charge DBC the full amount of the Licence Fee, and agree with the CA that the Licence Fee Request of DBC should be supported, based on the following considerations –

- (a) the rationale for levying licence fees on an operator is to cover the costs and expenses incurred by the Office of the Communications Authority (OFCA) in administering the Licence, and such is charged at the beginning of a licence year. In this particular case, DBC has applied for licence termination before the new licence year begins. It would be unreasonable if the Government charges the annual Licence Fee but knowing full well that DBC has decided to leave the market; and
- (b) whilst it is ultimately a business decision for DBC and it is for DBC to bear its own commercial risks, as a reasonable Government, we should not create additional hurdle for operator(s) who had experienced genuine difficulties in running the new DAB service to exit the market.

Authority for Revising Licence Fee

10. Pursuant to Condition 11.1 of the Licence, the full amount of the Licence Fee for the licence year 2016/2017 has already accrued and become payable on 15 August 2016. Condition 11.4 of the Licence provides that no licence fees paid or payable shall be refunded or cease to be payable in the event of a surrender of the Licence. Condition 11.1 of the Licence further provides that the Chief Executive in Council has the right to revise by notice in writing to the licensee at any time the amount of licence fee on the basis of recovery of the reasonable costs and expenses incurred by or on behalf of the Government in relation to the licence. This provision, notwithstanding Condition 11.4, provides a basis for the Chief Executive in Council to exercise his power under the Licence in response to DBC's Licence Fee Request.

(C) Compliance with the Milestone in the Performance Bond

11. In March 2013, the CA was satisfied that DBC had complied with the milestone under the Licence to formally commence its DAB service within

18 months after the grant of the Licence. The performance bond submitted by DBC to secure compliance with the milestone was discharged. There is no other outstanding milestone under the Licence.

(D) Compliance with the Programming Requirements

12. There is no outstanding regulatory issue regarding DBC's compliance with the programming requirements.

(E) Compliance with the Six-year Investment Plan

13. The CA has examined DBC's actual capital and programming expenditures incurred for the years up to 2016 against the projected investment under its Six-year Investment Plan for 2011 to 2017. There is no outstanding regulatory issue regarding the Six-year Investment Plan of DBC.

14. The Chief Executive in Council has considered the above assessments and approved the termination of the Licence with effect from 15 October 2016. The Chief Executive in Council has also, pursuant to Condition 11.1 of the Licence and notwithstanding Condition 11.4 of the Licence, revised the amount of licence fee by notice in writing to DBC on the basis of recovery of the reasonable costs and expenses incurred by or on behalf of the Government in relation to the Licence up to 14 October 2016, to \$758,365¹. If DBC eventually settles the revised amount of the licence fee for the licence year 2016/2017, there will be no outstanding liability on the part of DBC in respect of payment of licence fee under the Licence.

Follow-up Actions

15. The DAB licensees and RTHK have entered into a network sharing agreement (NSA) on the sharing of equipment and facilities, construction, maintenance and operation costs for the DAB transmission network. We will take action to recover the outstanding payment under the NSA from DBC concerning the maintenance and operation costs, etc. which DBC is obliged to shoulder.

IMPLICATIONS

16. Under section 20(1) of the Communications Authority Ordinance, all sums of money payable or paid to the CA must be credited to the OFCA Trading Fund, to be held and applied in accordance with the Trading Funds Ordinance. The payment of Licence Fee by DBC on a cost recovery basis up until the approved date of termination of the Licence will bring about reduction in revenue of the OFCA Trading Fund of \$3,779,395 in the licence year 2016/2017, being the sum that DBC originally had to pay for the licence period

¹ On the basis that the original amount of the Licence Fee represents the costs and expenses incurred by OFCA in administering the Licence for the whole of the licence year 2016/2017, the revised amount of licence fee to be calculated on a cost recovery basis should be in proportion to the varied period of validity of the Licence as approved by the Chief Executive in Council: Original Licence Fee * (number of days up to last day of the varied period of validity of Licence/365), or \$4,537,760*(61/365) = \$758,365

from 15 October 2016 to 14 August 2017. The termination of the Licence means that DBC will no longer be required to pay the licence fee from 2017 to 2023 under Condition 11.1 of the Licence. This will bring about reduction in revenue of the OFCA Trading Fund from 2017 to 2023.

17. Upon the termination of the Licence of DBC, the company is no longer required to share out the costs in relation to the equipment and facilities, construction, maintenance and operation costs for the DAB transmission network under the NSA. This will bring about an increase in the said costs to be taken up by RTHK, which is also a party to the NSA. Currently, RTHK is paying about \$1.58 million per annum for such cost. With the departure of DBC, the cost will increase by around \$0.78 million for the year 2016-2017 to \$2.36 million.

18. As to economic implications, the exit of DBC, the major DAB player in the market, is unlikely to entail any significant impact on the overall economy. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no productivity, civil service, environmental, family, gender or sustainability implications.

PUBLICITY

19. We will issue a press release on 11 October 2016.

ENQUIRIES

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

Communications and Creative Industries Branch
Commerce and Economic Development Bureau
October 2016

Chief Executive in Council approves termination of sound broadcasting licence of DBC

The Government announced today (October 11) that the Chief Executive (CE) in Council approved the termination of the sound broadcasting licence of Digital Broadcasting Corporation Hong Kong Limited (DBC) with effect from October 15, 2016 and the revision of the amount of its licence fee for the licence year 2016/2017.

Upon the CE in Council's approval, DBC's sound broadcasting licence will be amended to end on October 14, 2016.

A spokesman for the Commerce and Economic Development Bureau said, "DBC wrote to the Secretary for Commerce and Economic Development on August 8, 2016 to seek the approval of the CE in Council for the surrender of its licence. In its application, the company indicated that it has found no prospect of making its business model commercially viable."

The CE in Council today also approved the revision of the licence fee to be paid by DBC for the licence year 2016/2017. Such fee will be charged on the basis of recovery of costs and expenses incurred by the Office of the Communications Authority in administering the licence for the period from the commencement of the licence year (i.e. August 15, 2016) to the revised end date of the licence (i.e. October 14, 2016), which amounts to \$758,365.

"Apart from the licence fee to be paid by DBC, the Communications Authority considered that there are no outstanding obligations and liabilities accrued under the licence. The CE in Council therefore approved the termination of the sound broadcasting licence of DBC," the spokesman said.

The spokesman added that the review on the future of DAB services in Hong Kong is underway.

The CE in Council granted on March 22, 2011 a sound broadcasting licence to DBC, originally for a period of 12 years.

Ends/Tuesday, October 11, 2016