

**For discussion on
13 September 2021**

**Legislative Council
Panel on Information Technology and Broadcasting
Domestic Free Television and Sound Broadcasting
Regulatory Framework**

Purpose

This paper briefs Members on the domestic free television and sound broadcasting regulatory framework and the timetable for the mid-term review of the relevant licences.

Background

2. The broadcasting policy in Hong Kong strives to promote competition and provide an appropriate and up-to-date regulatory environment, so as to facilitate robust development of the broadcasting industry and the provision of innovative and diversified broadcasting services to local viewers and listeners. Domestic free television and sound broadcasting services, as the major sources of information, entertainment and education for the public, are required to ensure that their services could keep pace with the development of the society, and cater for local taste and culture.

3. Currently, Hong Kong has three domestic free television programme service (“free TV”) licensees, namely Fantastic Television Limited (“Fantastic TV”), HK Television Entertainment Company Limited (“HKTVE”) and Television Broadcasts Limited (“TVB”), providing nine digital television programme channels using radio frequency spectrum and/or fixed network. Moreover, Radio Television Hong Kong (“RTHK”), as the public broadcaster, provides three additional digital television programme channels.

4. With regard to sound broadcasting, Hong Kong has two licensees, namely Hong Kong Commercial Broadcasting Company Limited (“CRHK”) and Metro Broadcast Corporation Limited (“Metro”), each operating two Cantonese programme “frequency modulation” (“FM”) channels, and one

English programme “amplitude modulation” (“AM”) channel. RTHK provides seven FM/AM programme channels.

Free TV and Sound Broadcasting Licencing and Regulatory Framework

5. According to the Broadcasting Ordinance (Cap. 562) (“BO”) and Part 3A of the Telecommunications Ordinance (Cap. 106) (“TO”), the Chief Executive in Council (“CE in C”) may grant free TV and sound broadcasting licences, and specify conditions he thinks fit in the licences. Currently, all licences are valid for 12 years, which are reviewed approximately every six years in the context of a mid-term review exercise or a licence renewal exercise.

6. The Communications Authority (“CA”), an independent statutory body established in 2012 under the Communications Authority Ordinance (Cap. 616), is the unified regulator of the broadcasting and telecommunications sectors, responsible for ensuring licensees’ compliance with requirements of the prevailing legislation, licence conditions and codes of practice.

7. Broadcasting licensees are required to comply with the relevant statutory requirements and licence conditions, the latter includes requirements on channel programme line-up, broadcasting hours and language, broadcast of specific programmes (such as programmes for children, young persons and senior citizens, and particular types of programmes such as news, arts and culture programmes, current affairs programmes, etc.), broadcast of announcements in public interest provided by the Government, programming and investment plans, submission of audited accounts, etc.

8. Broadcasting licensees are also required to comply with the television and radio codes of practice promulgated by the CA on programme, advertising and technical standards. The programme codes set out various standards on the use of language, depiction of sex and violence, accuracy and impartiality of factual programmes, protection of children, etc., while the advertising codes set out the standards of advertising materials and sponsorship of programmes. The technical codes stipulates the technical standards on television programme services and sound broadcasting services with which licensees must comply. The CA will process all complaints against broadcasting licensees in accordance with the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391). If the complaints were

substantiated, the CA may consider imposing sanctions on broadcasting licensees, including advice, warning and financial penalty. Although RTHK is not a licenced broadcaster, according to Article 22 of the Charter of RTHK, it must also ensure that its television and radio programmes comply with the above codes of practice, and be regulated by the CA in this regard.

Relaxation Measures to Facilitate the Broadcasting Industry

9. The Government has been closely monitoring the development of the free TV and sound broadcasting industry, and reviews and amends the relevant legislation from time to time as necessary. In recent years, the robust development of Internet-based broadcasting services and platforms have put the traditional broadcasting sector under intense competition and pressure. Removal of obstacles for the traditional broadcasting sector, as and where appropriate, can facilitate the sector to operate under a more balanced and sustainable investment and operation environment. To this end, the Government completed the "Review of Television and Sound Broadcasting Regulatory Framework" and public consultation in 2018, in which stakeholders also generally supported the direction of the legislative proposals to relax obsolete statutory requirements and rationalise the regulatory arrangements.

10. In March 2019, the Commerce and Economic Development Bureau introduced the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 ("the Bill") into the Legislative Council to amend the provisions in the BO and TO that regulate television broadcasting and sound broadcasting services respectively, so as to implement the proposed measures of the "Review of Television and Sound Broadcasting Regulatory Framework", including relaxation of the "cross-media ownership restrictions" and "foreign control restrictions", as well as removal of the "requirement of a licensee being a non-subsidiary company" (please refer to the **Annex** for a summary of the amendments). The amendments came into effect on 5 February 2021, and will enable sustainable development of the traditional broadcasting sector amid fierce competition from Internet-based infotainment. The CA has also revised the relevant guidelines to give effect to the relevant relaxation measures and facilitate the development of the industry.

11. Apart from legislative amendments, the CA consults the industry and the public from time to time in reviewing the regulatory measures that may be further relaxed and streamlined in keeping abreast with demands, meet the evolving standards and values of the community, continuously

encourage the development of the broadcasting industry, provide greater flexibility to licensees' business operations, and facilitate industry development. The CA has implemented the following relaxation measures in recent years –

- (a) in July 2018, revised the codes of practice to relax the regulation of indirect advertising in television programmes, allowing licensees to broadcast product placements in programmes¹. This enabled licensees to broaden their sources of advertising income amid fierce competition faced by the broadcasting industry, and at the same time protected the interests of viewers;
- (b) in early 2019, further streamlined the regulatory procedures and reporting requirements, and allowed licensees more time to make representations in response to public complaints;
- (c) in January 2020, lifted the requirement on the broadcast of educational television programmes by free TV licensees;
- (d) in March 2020, lifted the requirement on the broadcast of RTHK programmes by free TV licensees; and
- (e) in September 2020, relaxed the regulations governing real property advertisements, insertion of advertising materials in programmes covering sports and live events, and broadcast hours of mature programmes.

12. In response to the licensees' requests for flexible arrangements to programmes, the CA may, on a temporary basis, approve the relaxation of certain requirements, such as the broadcast of specified programmes, programmes of designated language, subtitles and advertisements, etc. The CA will consider each application submitted by the licensee on its own merits. For example, the CA has previously approved applications for

¹ Before the revision of the codes of practice, indirect advertising is prohibited to be broadcast in television programmes, and product placement (i.e. the type of indirect advertising where licensees receive payment or other valuable consideration for exposure or use of products/services within a programme) is also subject to quite stringent regulation, such as the exposure of sponsor products/services within a programme should be clearly justified editorially, not obtrusive to viewing pleasure and not gratuitous. After the revision, indirect advertising is permitted in television programmes, except for news, current affairs, children, educational, religious service and other devotional programmes, while the general principles regulating product placements are also relaxed, so long as viewers are clearly informed of the inclusion of product placement before a programme starts, the exposure of products/services is presented in a natural and unobtrusive manner having regard to the programme context and genre, and that there is no direct encouragement of purchase or use of the products/services. In addition, relaxation measures also include lifting the prohibition on the broadcast of advertisements for undertakers and associated services.

insertion of in-programme advertising within sports programmes subject to certain restrictions on the number, size, frequency, duration, etc. to protect viewing interests. Currently, there are an average of five cases of exemption as approved by the CA upon application by licensees each month. With regard to sound broadcasting licences, the CA may also temporarily relax requirements on broadcast language and broadcast of specified programmes in accordance with requests of licensees. At present, the CA has allowed sound broadcasting licensees to adjust the broadcast time and frequency of news and weather reports when there are live programmes.

13. The Government purchased the broadcasting rights to the Tokyo 2020 Olympic Games this year, which was broadcast by five local licenced television stations for free, adding impetus to the local television industry and enabling all Hong Kong citizens to watch the Olympic Games for free and support our athletes. In order to cater for the arrangements of free TV licensees to broadcast the Tokyo Olympic Games, the CA, in response to the licensees' requests, approved the temporary relaxation of the requirements on the broadcast of other specified programmes and the restrictions on advertising time. In addition, RTHK not only broadcast the Tokyo Paralympic Games but also provided live feeds to commercial broadcasters, supporting Hong Kong athletes and strengthening cooperation between public and private broadcasters.

Timetable for the mid-term review of licences

14. Pursuant to the relevant statutory provisions and licence conditions, the licences of the three free TV broadcasters and the two sound broadcasters shall be subject to a mid-term review by the CE in C, which is approximately the sixth year of the 12-year validity period of the licences².

15. The CA is now conducting a consolidated mid-term review exercise of the free TV and sound broadcasting licences, so as to manage the public consultation more effectively and obtain a fuller understanding of the latest development of the broadcasting industry. The CA will examine the performance of the licensees during the first six years of their respective licences and consider the following aspects –

- (a) the licensees' compliance with the statutory requirements, licence conditions and codes of practice promulgated by the CA;

² The validity period of their licences: HKTVE is 1 April 2015 – 31 March 2027; TVB is 1 December 2015 – 30 November 2027; Fantastic TV is 31 May 2016 – 30 May 2028; and CRHK and Metro are 26 August 2016 – 25 August 2028.

- (b) their investment commitments in the coming six years; and
- (c) public views on the services provided by the licensees.

16. The CA has commenced the relevant assessments. Based on the assessment results of the licensees' performance and the public views received, the CA will submit its recommendations regarding licence conditions and service requirements for the remaining period of the licences to the CE in C in mid-2022.

Public Consultation

17. To gauge public views on the services provided by the free TV and sound broadcasting licensees, the CA has commenced a two-month public consultation exercise for the mid-term review from 10 September 2021, including –

- (a) Opinion Survey – the CA has commissioned an independent consultancy firm to conduct an opinion survey from October to December 2021 to collect public views on the licensees' services;
- (b) Online Public Consultation Session – to be conducted through an online meeting platform on 25 September 2021, to gauge public views on the licensees' services;
- (c) Focus Group Discussion – to organise a group discussion session with members of the Television and Radio Consultative Group in mid-October 2021 to obtain more in-depth views on the licensees' services; and
- (d) Written Submissions – to invite members of the public to send written submissions to the CA through various channels including web-based forms, email, fax and mail.

18. The CA has publicised the consultation exercise through different means, including a dedicated webpage, publicity on the websites of licensees, and uploaded an information document for public consumption containing summaries of the licensees' services, complaints records, the licensees' investment plans and the current regulatory requirements for free TV and sound broadcasting licences.

19. The CA will publish a summary of the public views collected and findings of the opinion survey in due course, and will carefully consider the views of the industry and the public in formulating its recommendations.

Advice Sought

20. Members are invited to note this paper and provide their comments.

**Communications and Creative Industries Branch
Commerce and Economic Development Bureau
Office of the Communications Authority
September 2021**

“Review of Television and Sound Broadcasting Regulatory Framework”

The Commerce and Economic Development Bureau has introduced the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 into the Legislative Council in March 2019, to implement the following measures -

(1) Relaxation of cross-media ownership restrictions

To remove obsolete categories including "non-domestic TV licensee", "other licensable TV licensee", "advertising agency" and "proprietor of a local newspaper" from the definition of "disqualified persons" (DPs) under the Broadcasting Ordinance (Cap. 562) (BO), and "advertising agent", "person who in the course of business supplies material for broadcasting by a sound broadcasting licensee" and "person who in the course of business transmits sound or TV material, whether in or outside Hong Kong" from the definition of DPs under Part 3A of the Telecommunications Ordinance (Cap. 106) (TO), and to confine the scope of "relative" under the definition of "associate" to immediate family members.

(2) Relaxation of foreign control restrictions

To maintain the existing foreign control restrictions embodied in the BO and Part 3A of the TO. Only minor refinements to the threshold percentages of shareholding in free TV licensee by an unqualified voting controller that are subject to prior approval of the Communications Authority from the existing “2%, 6%, 10% and above”, to “5%, 10%, 15% and above”.

(3) Removing the requirement of a licensee being a non-subsidiary company

To remove the existing requirement that a free TV or sound broadcasting licence must not be granted to a company which is a subsidiary of a corporation.