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通訊及科技科

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By Fax (No. 2869 6794)

2 May 2008

Ms Yue Tin Po
Clerk to Panel on
Information Technology and Broadcasting
3/F, Citibank Tower
3 Garden Road
Hong Kong

Dear Ms Yue,

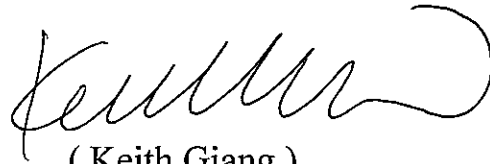
**Findings of Broadcasting Authority's Investigation into
Compliance with Cross-Media Ownership Provisions**

At the earlier meetings of the Panel, Members enquired about the Broadcasting Authority (BA)'s investigation into compliance with the cross-media ownership provisions under the Broadcasting Ordinance (Cap. 562) by entities in connection with PCCW Media Limited and Hong Kong Economic Journal Company Limited.

Please be informed that the BA, as the independent industry regulator, has completed the investigation and released its findings on

————— 2 May 2008. A copy of the BA's press release with details of the findings is enclosed for Members' information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Keith Giang', written in a cursive style.

(Keith Giang)

for Secretary for Commerce and
Economic Development

Encl.

c.c.

CTEL (Attn: Mr P L Po) w/encl.

Broadcasting Authority releases findings of investigation into compliance with Broadcasting Ordinance by entities in connection with PCCW Media Limited and Hong Kong Economic Journal Company Limited

At the meeting held on 22 April 2008, the Broadcasting Authority (BA) considered the findings of its investigation into compliance with the cross-media ownership provisions under the Broadcasting Ordinance (Cap. 562) by entities in connection with PCCW Media Limited (PCCW Media), a domestic pay television programme service licensee, and Hong Kong Economic Journal Company Limited (HKEJ Co.). Based on the evidence collected and having taken legal advice, the BA concluded that PCCW Media had not contravened the cross-media ownership provisions under the Ordinance.

Nonetheless, the BA considered that additional safeguards should be put in place to ensure that any possible cross-media ownership concerns would not arise in future. Accordingly, the BA secured relevant undertakings from Mr. Richard Li Tzar-kai, the individual trustees of the trusts that indirectly hold shares in PCCW Limited (PCCW Trusts), PCCW Limited (PCCW) and PCCW Media to report to the BA on any changes to the structural and corporate relationship relating to the operations of PCCW and PCCW Media, and any changes related to the PCCW Trusts.

The BA announced on 5 January 2007 the commencement of the investigation arising from the reported acquisition of shares in HKEJ Co. in August 2006 by Mr. R Li, and Mr. R Li's public statements towards the end of 2006, which appeared to raise possible cross-media ownership concerns. During the time of the investigation, the BA and its legal advisors have thoroughly examined a total of 36 submissions (including joint submissions) provided by 49 entities (companies and individuals), relating to HKEJ Co., PCCW Media including its ultimate holding company PCCW and various trusts established by Mr. R Li, in which the shares of PCCW and HKEJ Co. are vested. In addition, the minutes of the relevant Boards and Committees of PCCW and PCCW Media were examined. Based on the information gathered during the investigation and the legal advice received, the BA concluded that Mr. R Li was not exercising control of PCCW Media within the meaning of the Ordinance. Hence, based on the evidence collected, the BA concluded that PCCW Media had not contravened the cross-media ownership restrictions under the Ordinance.

The BA would like to express its appreciation to various entities concerned for their cooperation in the investigation.

Details of the findings of the investigation are set out at **Annex**.

Regulatory Regime

Cross-media ownership restrictions are stipulated in Part 2 of Schedule 1 to the Broadcasting Ordinance (hereafter referred to as “the Ordinance”). Domestic free or domestic pay television programme service licensees are subject to the regulation of the provisions relating to “disqualified persons” (“DPs”) under Part 2 of Schedule 1 to the Ordinance. The purpose of these provisions is to avoid conflict of interest, media concentration and editorial uniformity in the broadcasting industry and other relevant sectors.

According to these provisions, a DP shall not become the holder of a domestic free or domestic pay television programme service licence, or exercise control of such licensees, without the prior approval of the Chief Executive in Council. The categories of DPs are set out in Schedule 1 to the Ordinance, which include, among others, the proprietor of a newspaper printed or produced in Hong Kong, its controllers and associates.

The Ordinance provides for the legal definition of whether or not a person is “exercising control” of a company. Under the Ordinance, a person exercises control of a company if -

- (i) he is a director or principal officer of the company;
- (ii) he is the beneficial owner of more than 15% of the voting shares in the company;
- (iii) he is a voting controller of more than 15% of the voting shares in the company; or
- (iv) he otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that company or any other company, to ensure that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person.

Under section 10(1) of Schedule 1 to the Ordinance, if it appears to the Broadcasting Authority (“BA”) that there is reason to investigate the voting controllers of a licensee, it may require the relevant persons to provide information as to DPs.

The BA's Investigation

Findings of the Investigation

Pursuant to section 10(1) of Schedule 1 to the Ordinance, the BA has issued 67 notices to 49 entities (including Mr. Richard Li Tzar-kai (“Mr. R Li”), PCCW Limited (“PCCW”), PCCW Media Limited (“PCCW Media”), Hong Kong Economic Journal Company Limited (“HKEJ Co.”) and other relevant individuals and companies) requiring them to provide information for investigation into compliance with the cross-media ownership provisions under the Ordinance by entities in connection with PCCW Media and HKEJ Co. (“Investigation”). In addition, the minutes of the relevant Boards and Committees of PCCW and PCCW Media were examined.

The BA notes that—

- (i) Mr. R Li is the settlor of certain trusts which holds Pacific Century Group Holdings Limited (“PCGH”). PCGH indirectly holds approximately 75% of shares in Pacific Century Regional Developments Limited (“PCRD”), which in turn holds approximately 23% of PCCW. PCCW Media is a wholly-owned subsidiary of PCCW; and
- (ii) Mr. R Li is the Chairman of PCCW.

The BA has carried out thorough examination of the information gathered from the Investigation. During the Investigation, the BA has taken legal advice where necessary. In considering whether Mr. R Li has exercised control of PCCW Media within the meaning of “exercise control” under the Ordinance, the BA notes from the evidence gathered that—

- (i) Mr. R Li is not a director or principal officer of PCCW Media;
- (ii) Mr. R Li is not a beneficial owner of PCCW Media within the meaning of the Ordinance. By law, there is only one beneficial owner of PCCW Media and that is PCCW Interactive Media Holdings Limited;

- (iii) Mr. R Li is not a voting controller¹ within the meaning of the Ordinance, either *de jure* or *de facto*, of more than 15% of the voting shares in the company since the voting rights attached to the shares of PCGH are vested in the discretionary professional trustees who have no legal obligation to consult any third party when exercising the rights to vote attached to the shares; and
- (iv) Mr. R Li does not otherwise have the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating PCCW Media or any other company, to ensure that the affairs of PCCW Media are conducted in accordance with his wishes. This is based on the fact that the directors of PCCW (excluding Mr. R Li) and PCCW Media have confirmed that they have at all times understood and complied with their obligation to consider matters themselves and have not abdicated their rights and obligations by becoming accustomed to act merely on the directions or wishes of Mr. R Li.

On these facts, the BA concludes that Mr. R Li has not exercised control of PCCW Media within the meaning of the Ordinance. The BA has also considered submissions by HKEJ Co. and relevant entities relating to compliance by HKEJ Co. with the cross-media ownership provisions under the Ordinance. Based on the evidence collected and the fact that Mr. R Li is not found to have exercised control of PCCW Media, the BA concludes that it is not necessary to form any views on HKEJ Co. at this time.

Based on the evidence collected, the BA concludes that PCCW Media has not contravened the cross-media ownership restrictions under the Ordinance. Nonetheless, the BA is mindful that there is public expectation that sufficient safeguards be in place in the operations and structures of the trusts concerned and in the operations between PCCW and PCCW Media to ensure that any possible cross-media ownership concerns would not arise in future. Accordingly, the BA has secured relevant undertakings from Mr. R Li, the trustees of the PCCW Trusts, PCCW and PCCW Media as summarized below:

¹ A voting controller is a person who either alone or with one or more other persons holds voting control. "Voting control" means, inter alia, the ability to control, directly or indirectly, the exercise of the right to vote through a nominee or a trust etc.

Undertakings

- (i) Any changes in the trusts arrangements and the composition of trusts assets under any of the trusts settled by Mr. R Li so far as they relate to PCCW and PCCW Media or their holding companies should be reported to the BA.
- (ii) Any exercise of the voting rights attached to the shares of PCCW on matters affecting PCCW Media by the trustees should be reported to the BA.
- (iii) The terms of reference of the existing Regulatory Compliance Committees of PCCW and PCCW Media are to be broadened so as to include the monitoring of all dealings by PCCW and PCCW Media respectively with HKEJ Co. to ensure that there is no influence by HKEJ Co. over the programme content of PCCW Media or vice versa and that there is no anti-competitive conduct on the part of PCCW Media and HKEJ Co. in a television programme service market.
- (iv) Any changes in the structural and corporate relationship between PCCW and PCCW Media should be reported to the BA.

Background

Following the vote by the minority shareholders of PCRDC on 30 November 2006 against the proposed sale of approximately 23% of shares in PCCW by PCRDC to Fiorlatte Limited and Mr. Francis Leung Pak-to, the BA has been pursuing enquiries with PCCW Media, a domestic pay television programme service licensee, in relation to Mr. R Li's involvement in PCCW Media, through the holding company PCCW, and Mr. R Li's involvement in HKEJ Co., the proprietor of a local newspaper.

On 5 January 2007, the BA announced that pursuant to section 10(1) of Schedule 1 to the Ordinance, the BA has required PCCW Media and other relevant parties to provide information as to the voting controllers of PCCW Media.

Broadcasting Authority
Secretariat
2 May 2008