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2 May 2019

Mr Daniel Sin  
Chief Council Secy (1)6  
Council Business Division 1  
Legislative Council Secretariat

Dear Mr Sin,

### **Broadcasting and Telecommunications Legislation (Amendment) Bill 2019**

I refer to your email of 18 April 2019 on the further information requested by Members at the Bills Committee meeting of 16 April 2019. The requested information is provided as follows.

#### **(a) Cross-media ownership restrictions**

2. Since the commencement of the Broadcasting Ordinance (Cap. 562) (BO) in 2000, the Chief Executive in Council (CE in C) has considered 13 applications by domestic free television programme service (free TV), domestic pay television programme service (pay TV) and/or sound broadcasting licensees for approval for certain disqualified persons (DPs) to exercise or to continue exercising control of the licensees. A total of 67 individuals/companies were involved and the majority of them (around 85%) were directly or indirectly associated with DP categories (i.e. advertising agencies, local newspaper proprietors, non-domestic and other licensable

television programme service licensees) which fall within the scope of the proposed relaxations. Among these applications, some sought retrospective approvals from the CE in C regarding breaches made before the application dates. The CE in C has rejected all such retrospective applications, resulting in subsequent financial penalties imposed by the Communications Authority (CA) on the licensees concerned.

**(b) Foreign control restrictions**

3. Since the enactment of the BO in 2000, regarding the shareholding in free TV licensee by non-Hong Kong residents requiring prior approval of the CA, the CA has approved 16 such applications, amongst which 14 applications (i.e. 87.5%) did not involve changes in the control and management of the licensees and were, as confirmed by the investors by way of statutory declarations, for pure investment purposes.

**(c) Licensing authority**

4. The existing broadcasting licensing system is designed in such a way to ensure that the licensing authority is commensurate with the degree of influence and pervasiveness of the broadcasting service to be licensed. Generally speaking, the more influential a service is, the greater the need for wider public interest considerations and hence the higher in the hierarchy should the licensing authority be.

5. Under the licensing system, free TV, pay TV and sound broadcasting, being the most pervasive broadcasting services in Hong Kong, are subject to a two-tier scrutiny system for licence application and renewal. Licence application and renewal application have to be made to the CA, which would process the application in accordance with the statutory requirements and established procedures, before making its recommendation to the CE in C as to whether a licence should be granted or renewed and if so, on what terms. The power as to whether or not to grant or renew a licence is vested in the CE in C.

6. On the other hand, for broadcasting services that only target viewing public outside Hong Kong or a relatively small number of people in Hong Kong, viz. non-domestic TV licences (covering TV service not primarily targeting Hong Kong) and other licensable TV licences (covering TV service



targeting a relatively small number of local audience or hotel rooms), the power as to whether to grant or renew a licence is vested in the CA.

7. Traditional media (free TV, pay TV and sound broadcasting services), despite the decline in audienceship in the past decade amidst growing prominence of Internet media, are still amongst the most pervasive media outlets that have great influences on public morals and children. For instance, the coverage of Digital Terrestrial Television is at 99%; the prime time audience of a popular TV channel can be over a million. Given the influence of such major broadcasting licensees, we are of the view that the existing licensing framework aforementioned should remain intact.

#### **(d) Merging BO and Telecommunications Ordinance (Cap. 106) (TO)**

8. Before the full commencement of the fair trading sections of the Trade Description Ordinance (Cap. 362) (TDO) and the Competition Ordinance (Cap. 619) (CO) in 2013 and 2015 respectively, the consumer protection safeguards and competition safeguards concerning the broadcasting and telecommunications industries were subject to separate and different sectoral provisions under the then BO and the then TO. For instance, the tests of the (now repealed) competition provisions under the TO and the BO were different in that under the TO, the CA can only assess whether a telecommunications licensee's conduct is anti-competitive "in a telecommunications market"; whereas under the BO, the CA can only assess a broadcasting licensee's conduct "in a television programme service market" which is a downstream market. The consumer protection provisions were similarly different in the two ordinances whereby telecommunications licensees were prohibited from engaging in misleading and deceptive conduct under the TO whilst there was no such prohibition against the broadcasting licensees under the BO. There were hence views from certain stakeholders suggesting that the competition and consumer protection provisions should be consolidated into one single set of safeguards covering both the broadcasting and the telecommunications industries.

9. Such inconsistencies were readily addressed when the fair trading sections of the TDO and the CO commenced in 2013 and 2015 respectively. Ever since then, cross-sectoral consumer protection and competition frameworks were introduced to cover all sectors in Hong Kong including the broadcasting and telecommunications industries. The CA has also been conferred concurrent jurisdiction to enforce the TDO and the CO in relation to the telecommunications and broadcasting industries. The competition and

consumer protection provisions under the BO and TO were repealed subject to the transitional arrangements.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Tony YIP', written in a cursive style.

( Tony YIP )  
for Secretary for Commerce and Economic Development

c.c. Office of the Communications Authority (Attn: Miss Gloria LO)