

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from City Telecom (H.K.) Limited, a company duly incorporated in Hong Kong whose registered office is situated at Level 39, Tower 1, Metroplaza, No. 223 Hing Fong Road, Kwai Chung, N.T., for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by City Telecom (H.K.) Limited. Nothing in this notice shall affect or prejudice any powers, discretion and rights of the Broadcasting Authority or the Government.

1. COMPANY INFORMATION

Principal shareholders

City Telecom (H.K.) Limited (“CTI”) is a publicly listed company in Hong Kong under HKEx (Stock Code: 1137) and the U.S. under NASDAQ (Ticker Symbol: CTEL). As at 6 July 2010, the company’s shares are held by Top Group International Limited (44.42%) and other shareholders including Mr Ricky Wong Wai Kay (0.93%), Mr Lai Ni Quiaque and Mrs Lai Michelle Pek Lian (1.36%), Mr Paul Cheung Chi Kin (2.27%), Worship Limited (3.26%) and general public (47.46%).

Compliance with statutory requirements

- (a) CTI submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 32) in 1992.
- (b) CTI submits that it is not a subsidiary of a corporation¹.
- (c) CTI submits that the company and all persons exercising control of the company will be and remain fit and proper persons².

¹ Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

² Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (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 and Articles of Association or other instrument regulating that corporation or any other corporation, to ensure that the affairs

- (d) CTI submits that all the directors and principal officers of CTI, including the principal officer in charge of the selection, production or scheduling of television programmes, are ordinarily residents in Hong Kong and have been so residents for at least one continuous period of not less than 7 years³.
- (e) CTI submits that the control and management of CTI will be bona fide exercised in Hong Kong, the majority of its directors described in (d) will actively participate in the direction of the company⁴.
- (f) CTI submits that there are no disqualified persons⁵ exercising control of CTI or vice versa. While CTI has two subsidiaries designated as advertising agencies, i.e. IDD1600 Company Limited and CTI Marketing Company Limited, which may be construed as an “advertising agency” under the Broadcasting Ordinance, these companies have never conducted business as an advertising agency or exercised control of an advertising agency, nor will they do so in future. As such, CTI submits that it does not exercise control of any advertising agencies. Upon the grant of the licence, CTI will apply for deregistration of the two subsidiaries.
- (g) CTI submits that there are no unqualified voting controllers⁶ holding,

of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

³ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁴ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of “ordinarily resident in Hong Kong” in section 2(1);
- (ii) the majority of the directors required under section 8(4)(a)(iv) actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁵ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

⁶ Under section 1 to Schedule 1 of the Broadcasting Ordinance, “unqualified voting controller” means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who –

acquiring or exercising or causing or permitting to be exercised 2% or more of the total voting control of CTI⁷.

- (h) CTI submits that CTI is empowered under its Memorandum and Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

CTI submits that its subsidiary, Hong Kong Broadband Network Limited (“HKBN”) has invested over HK\$3 billion on the construction of a territory-wide fibre network in Hong Kong. Riding on HKBN’s fibre transmission network, CTI envisages that the capital expenditure and operating expenditure in the first six years of operation are projected at \$1,052 million. CTI plans to invest \$180 million on capital expenditure and \$394 million on programming (excluding capital expenditure) (self-produced programmes) in the first six years⁸.

CTI submits that the funding requirement of the proposed service will be supported by the CTI group. CTI is a listed company in Hong Kong with a market capitalisation of \$3.3 billion as at 6 July 2010. The total revenue of the company was \$1.5 billion for 2009. According to CTI’s submission, the financial status of the company is robust and should be adequate for funding the investment and operating activities of the proposed service.

Managerial and technical expertise

CTI submits that its management team has managerial experience and technical

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- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
 - (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

“Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, 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;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
 - (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁷ Under section 20(1) of Schedule 1 to the BO, an unqualified voting controller shall not without the prior approval of the BA hold or acquire 2% or more of the total voting control of a domestic free television programme licensee.

⁸ CTI submits that operating expenditure (excluding programming expenditure) in the first six years is projected at \$478 million.

expertise, comprising businessmen, professionals, executives and experts with experience in both telecommunications and broadcasting. Its subsidiary, HKBN, has been providing a subscription-based video service over the Internet in Hong Kong⁹ since 2003.

According to CTI's submission, all members of the Board of Directors are nominated and appointed by shareholders at the Annual General Meeting or Extraordinary General Meeting and the total number of Directors shall be not less than three. Currently, the Directors appointed are Mr Ricky Wong Wai Kay, Mr Paul Cheung Chi Kin, Mr William Yeung Chu Kwong, Mr Lai Ni Quiaque, Dr Moses Cheng Mo Chi, Mr John Lee Hon Ying, Dr Chan Kin Man and Mr Jefferson Peh Tun Lu.

Mr William Yeung Chu Kwong is the Chief Executive Officer ("CEO") overseeing the day-to-day operation of CTI under the direction of the Board of Directors. CTI plans to have nine divisions: Programming, Production, Finance, External Affairs, Engineering, Corporate Communications, Sales and Marketing, Talent and Administration, and News and Information Services for the operation of the domestic free television services. They will be overseen by a management team led by the CEO. The management team will comprise of at least one Managing Director, News Controller and a number of Senior Managers.

Quality control and compliance

CTI submits that a designated operation manager will be responsible for overseeing the day-to-day operation of the broadcasting centre, on a round-the-clock basis, to ensure that the proposed service will meet the availability of not less than 99.98%.

CTI submits that it will set up a Standards and Practice Team to assure compliance of all the programme contents of CTI with applicable laws, licence conditions and codes of practice and directions or orders issued or made by the Broadcasting Authority. The Standards and Practice Team will be responsible for checking and vetting the programme and advertising content, in particular programmes that are targeting children, by strictly adhering to the codes of practice issued by the Broadcasting Authority. It will work closely with the scheduling team taking into account the likely viewership during the relevant hours of the day, in particular during the family viewing hours.

⁹ The Broadcasting Authority has ruled that HKBN's subscription-based video service is provided on the Internet and exempted from the licensing regime of the Broadcasting Ordinance.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature, and number of channels and extent of local production

CTI submits that it aims to meet the needs of its audience who are interested in knowledge and information about Hong Kong, the Mainland and the world.

CTI plans to operate a 12-channel domestic free television programme service (i.e. 2 self-produced channels, 4 turn-around channels¹⁰ and 6 partnership channels¹¹) at launch to be broadcast in both analogue and digital formats. CTI, however, has not indicated which channel will be designated as English language service as currently required for domestic free television programme service licensees. The number of channels will increase to 20 (i.e. 2 self-produced channels, 8 turn-around channels and 10 partnership channels) within 3 years of launch and up to 30 (i.e. 2 self-produced channels, 11 turn-around channels and 17 partnership channels) within 6 years of launch.

CTI plans to produce and/or commission local news, current affairs and entertainment programmes for its self-produced Cantonese channels. It plans to broadcast 1 to 3 hours of locally produced programmes daily during prime time (i.e. between 7:00p.m. and 11:00p.m.). Not less than 1.5 hours of prime time programmes will be first-run programmes.

CTI plans to acquire programmes from branded channel providers and producers in the Mainland and overseas.

CTI submits that it plans to provide, in its digital programme service, standard definition television programmes but not high definition television programmes in the first six years but will consider offering high definition television programmes if there are overwhelming market demands.

Compliance with programming requirements

CTI submits that it commits to carry Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK programmes and educational programmes for school) supplied by the Government as currently required for domestic free television programme service licensees.

¹⁰ These are acquired channels of which the channel providers pay the carriage fee to CTI. According to CTI's submission, these channels will comprise financial news, information programmes and programmes for regional affairs.

¹¹ These are acquired channels of which the channel providers share revenue with CTI. According to CTI's submission, these channels will comprise children's programmes, adventure-reality programmes, international news programmes and science programmes.

CTI submits that it should not be subject to the requirements to carry positive programmes¹² other than those supplied by the Government as currently required for domestic free television programme service licensees, taking into account that it does not use UHF frequencies. However, CTI is prepared to provide a minimum amount of positive programmes provided that UHF frequencies are allocated to it to provide its service after the switch-off of the analogue television services.

CTI submits that subtitling service will be provided on the two self-produced channels for emergency announcements only¹³. Subject to programme sources, some of the programmes originated from the content providers may provide subtitling.

The daily operating hours of the service

CTI plans to provide 12 hours to 24 hours daily broadcasting¹⁴.

3. TECHNICAL INFORMATION

Transmission mode to be employed

CTI plans to hire the fibre network operated by its subsidiary, HKBN, to transmit the proposed service in both analogue format and digital terrestrial television (DTT) format of Hong Kong. Television signals will be modulated to the designated channels for transmission over the buildings' existing in-building coaxial cable distribution systems ("IBCCDS") to reach domestic households covered by the IBCCDS. The choice of deploying IBCCDS channels for receiving various CTI's free television services is to be decided by the residents of concerned buildings.

Geographic coverage and service roll-out

CTI submits that the fibre network of HKBN currently reaches 78% of households, i.e. 1.8 million households and all these households will be able to access the proposed service within 36 months after the grant of licence, and the remaining

¹² The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes, and programmes for children to be broadcast on each of the licensee's services, and programmes for young people, senior citizens and on arts and culture, to be broadcast on the licensee's Cantonese language service.

¹³ The domestic free television programme service licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on its analogue/simulcast digital channels. In addition, on the Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00pm and 11:00pm, and on the English channels, two hours per week of English programmes with educational value targeting teenagers shall carry English subtitles.

¹⁴ Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

22% of households will be covered either by the extended fibre network of HKBN (or other operators) or by vacated spectrum released following the analogue switch-off. CTI intends to achieve territory-wide coverage within 6 years after launch.

CTI submits that HKBN will extend its fibre coverage to (a) the public estates, private developments (including village houses and tenement buildings) or (b) the demarcation point within 10 metres from the public estate and private developments if no building access approval from the Building Management Offices (“BMOs”)/Incorporated Owners (“IOs”) can be obtained.

CTI proposes to install a set-top box and other reception equipment at the headend of each residential building to enable the domestic households to receive the proposed service. Coordination with BMOs or IOs is required for installation of the relevant equipment inside the buildings.

CTI submits that it will bear the cost for the transmission of video signal to buildings and that the BMOs/IOs are expected to make available the relevant equipment at their own cost for the reception of the proposed service and CTI may provide one-off subsidy during the first two years. CTI submits that it will provide the BMOs/IOs technical support and advice on the choice of equipment and network design free of charge and coordinate interconnection arrangement inside buildings with network operators.

Proposed service coverage milestones¹⁵

CTI commits to pass: –

- (a) not less than 100,000 domestic premises within 9 months after service commencement;
- (b) not less than 500,000 domestic premises within 24 months after service commencement; and
- (c) not less than 1,500,000 domestic premises within 36 months after service commencement.

Equipment and facilities required at the customer end

CTI submits that viewers can receive the proposed analogue domestic free television programme service by any existing television set. In the case of digital channels, if a viewer’s television set is not equipped to receive DTT signal, a standard set-top box for the reception of such signal would be required.

¹⁵ CTI submits that the proposed milestones are its minimum commitments and may not tally with CTI’s plan stated in the application.

4. OTHER INFORMATION

Commencement of service

CTI plans to commence the 12-channel service within 9 months after the grant of licence.

Construction work required and its impact on the public, if any

CTI submits that riding on the existing infrastructure already built by HKBN, there is no need to undertake large-scale civil works for rolling out the proposed service. However, certain upgrading works inside the buildings are required to connect HKBN's fibre network to the IBCCDS headend. The actual time spent for each upgrade work in a typical building will be less than half a day. Due to environmental constraints, upgrade work in tenement buildings and buildings without appropriate connecting space will be determined on a case-by-case basis.

The benefit brought by the implementation of the proposal to the local industry, audience/customers and the economy as a whole

CTI submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Bringing more programming choice for viewers* – CTI submits that it will adopt an innovative programming strategy with a view to bringing a wider choice of programmes to viewers, promoting fair and balanced views on social and public affairs, and broadening the reach of Hong Kong people to the Mainland and the world.
- (b) *Fostering competition in the free television market* – CTI submits that the current state of domestic free television market can improve if more competitors are present in the market. CTI is prepared to be a new competitor. With CTI's track record in the telecommunications industry, CTI envisages that it can introduce a new model in domestic free television programme service in Hong Kong.
- (c) *Promoting the development of local television industry* – CTI believes that a domestic free television programme service licensee should provide opportunities to different producers so that they can access the audience equally. The proposed service platform of CTI will serve as a catalyst to stimulate development of the local television industry, thus facilitating the development of creative industries and rectifying the distorted situation of the television industry in Hong Kong.
- (d) *Creating job opportunities and maintaining Hong Kong's position at the*

forefront of broadcasting technology – CTI submits that the substantial capital investments of CTI in building the free television service infrastructure will create job opportunities and help Hong Kong maintain its leading position as one of the most advanced network infrastructures in the world.

Members of the public may provide comments on CTI's application to the Broadcasting Authority by **8 August 2010** by mail, fax or e-mail as follows: –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39th Floor, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Fax Number: 2507 2219
2598 5509 (Confidential)

E-mail: ba@tela.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

9 July 2010
Secretary, Broadcasting Authority