

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from the HK Television Entertainment Company Limited, a company duly incorporated in Hong Kong whose registered office is 39th Floor, PCCW Tower, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by HK Television Entertainment Company 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

HK Television Entertainment Company Limited ("HKTVE") is a wholly-owned subsidiary of PCCW Interactive Media Holdings Limited ("PCCW Interactive") which in turn is a subsidiary of PCCW Limited ("PCCW")¹, a publicly listed company in Hong Kong under HKEx (Stock Code: 0008), through a series of four wholly owned companies². HKTVE submits that upon receiving an approval-in-principle to grant the licence by the Chief Executive in Council ("CE in C"), HKTVE will implement changes to the company's corporate and shareholding structure prior to the grant of licence. Following the restructuring, PCCW Interactive, a member of the PCCW Group, will own 15% of voting shares in HKTVE and a trustee will hold the remaining 85% of voting shares in HKTVE through a trust. Another trustee will hold 100% of non-voting shares (and 100% economic interest) in HKTVE on trust for the benefit of PCCW Interactive. According to HKTVE's submission, the two trustees will be private companies.

Compliance with Statutory Requirements

- (a) HKTVE submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 32) in 2010.
- (b) HKTVE submits that upon completion of the corporate restructuring as described above, HKTVE will not be a subsidiary of a corporation as required

¹ Two other subsidiaries of PCCW are currently holders of broadcasting licences under the Broadcasting Ordinance. They are PCCW Media Limited ("PCCW Media"), a domestic pay television programme service licensee, and Starbucks (HK) Limited ("Starbucks"), a non-domestic television programme service licensee.

² These companies are CAS Holdings No.1 Limited (BVI), HKT Group Holdings Limited (Cayman Islands), HKT Media Holdings Limited (Cayman Islands) and HKT Media (Cayman Islands) Limited.

by the Broadcasting Ordinance³.

- (c) HKTVE submits that the company and all persons exercising control of the company will be, and remain, fit and proper persons⁴.
- (d) HKTVE submits that the majority of the directors and principal officers of HKTVE, including the principal officer in charge of the selection, production or scheduling of television programmes, will be ordinarily residents in Hong Kong⁵ and will have been so residents for at least one continuous period of not less than 7 years⁶.
- (e) HKTVE submits that the control and management of HKTVE will be bona fide exercised in Hong Kong and the majority of its directors described in (d) will actively participate in the direction of the company⁷.

³ 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.

⁴ 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 or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs 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.

⁵ “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.

⁶ Under section 8(4)(a)(iv) of the BO, 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.

⁷ 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

- (f) HKTVE submits that there will be two directors and three principal officers of HKTVE who are disqualified persons⁸ by virtue of their being persons under the Broadcasting Ordinance associated with PCCW Media, a domestic pay television programme service licensee, and Starbucks, a non-domestic television programme service licensee. Said persons have experience and expertise in the television and media industries, and are an invaluable resource to the applicant. HKTVE seeks the required prior approval from the CE in C under the Broadcasting Ordinance for the said persons to be directors and principal officers of HKTVE⁹.
- (g) HKTVE acknowledges that the four holding companies between HKTVE and PCCW (see footnote 2) are unqualified voting controllers¹⁰ and will need the approval of the Broadcasting Authority to hold, acquire, exercise or cause or permit to be exercised 15% of the total voting control of HKTVE¹¹. HKTVE seeks the requisite approval of the BA in the application. It is noted that these four holding companies are wholly owned by PCCW and that PCCW itself is a qualified voting controller.
- (h) HKTVE submits that HKTVE 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.

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.

⁸ 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.

⁹ Sections 3(2), 4(1) and 33(1) of Schedule 1 to the Broadcasting Ordinance provides that a domestic pay and non-domestic television programme service licensee, their controllers and associates of the above shall not exercise control of a domestic free television programme service licensee, and vice versa, unless the CE in C approves on public interest grounds.

¹⁰ Under section 1 to Schedule 1 of the Broadcasting Ordinance, "unqualified voting control" means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who—

- (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.

¹¹ 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.

Financial soundness

HKTVE submits that the capital expenditure and operating expenditure in the first three years of operation are projected at over \$600 million¹². PCCW has submitted a formal document in which it indicates that it will provide full financial support to fund HKTVE's investment and operation.

PCCW is a listed company in Hong Kong with a market capitalization of \$15.5 billion as at 6 July 2010. The total revenue of the company was \$25 billion for 2009. According to HKTVE's submission, PCCW is financially sound and is well positioned to enable the applicant to carry out the business plan.

Managerial and technical expertise

HKTVE submits that its management team has proven managerial and technical expertise in both telecommunications and broadcasting. PCCW, through PCCW Media, has over 6 years of experience in operating a domestic pay television programme service network. The relevant expertise covers areas such as network planning, network operations, content production, content acquisition, customer care, quality control and compliance, marketing and contract and intellectual property management.

HKTVE submits that it will enter into a contract with PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited to construct and operate the transmission network for the proposed service and with PCCW Media for carriage of the proposed service over the existing broadband network. HKTVE will outsource its broadcasting operations to PCCW Media and rent studio equipment/facilities from PCCW Media in whole or in part.

According to HKTVE's submission, the Board of Directors of the company shall comprise not more than four directors. Currently, the Directors appointed are Ms Susanna Hui Hon Hing and Mr Alexander Anthony Arena.

Quality control and compliance

HKTVE submits that it will adopt appropriate quality and compliance control standards and procedures to ensure compliance with all relevant laws, regulations and codes of practice in providing the service, and will engage the services of suitably skilled and experienced persons to conduct and oversee the quality control and compliance processes.

A team of experienced Standards and Practice staff will be responsible for ensuring that the broadcast standards of HKTVE will be in full compliance with the relevant

¹² The applicant has requested that a breakdown on the capital expenditure and programming expenditure be treated as commercially sensitive information and as such, is not disclosed.

regulations and codes of practice. Internal monitoring system and work flow will be designed to ensure that proper checks-and-balance procedures will be observed.

2. PROGRAMMING INFORMATION

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

HKTVE aims to create a new viewing experience and provide an alternate choice of entertainment for general and niche viewers.

HKTVE's Cantonese channel will be a general entertainment channel comprising news, finance, current affairs, documentary, lifestyle, travel, variety show, arts and culture, sports, music and movie programmes as well as programmes for seniors, children and young persons. The English channel, if required (please see below), will endeavour to bring a taste of Hong Kong to English-speaking viewers by providing subtitling and audio language options (e.g. Putonghua and/or English) to cater for different viewing preferences of the community, as well as niche language programmes to cater to the needs of ethnic minority groups and multi-lingual speakers.

HKTVE plans to locally produce general and financial news, current affairs, music, food and travel, and other lifestyle programmes for prime-time slots during its first year of operation.

HKTVE plans to provide, on the Cantonese channel, high definition television programmes and, on the English channel (if provided), standard definition television programmes.

HKTVE has indicated that it will carry Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK and educational programmes for schools) supplied by the Government as required for domestic free television programme service licensees¹³.

¹³ The current domestic free television programme service licensees are required to include Broadcasting Authority publicity material to promote knowledge and understanding of the activities and functions of the Broadcasting Authority, and such material in the public interest provided by the Government as directed by the Broadcasting Authority.

The Broadcasting Authority is empowered under the current licences to direct a domestic free television programme service licensee to broadcast programmes (such as RTHK programmes) supplied by the Government, subject to the daily and weekly caps on the channels prescribed in section 3 of Schedule 4 to the Broadcasting Ordinance.

The Broadcasting Authority is empowered under section 19 of the Broadcasting Ordinance to require a domestic free television programme service licensee to include in its television programme service, without charge, any ETV programmes for schools supplied by the Government.

As to subtitling, HKTVE has requested that the BA not to impose any requirements in view of the government policy of light-handed and market driven regulation. In the alternative HKTVE suggests that the BA not to impose any subtitling obligations on it until it has achieved a specified market share. HKTVE submits that any subtitling obligation be limited to two hours per day for its Cantonese channel and two hours per week for its English channel (if provided)¹⁴.

The daily operating hours of the service

HKTVE plans to provide, on its Cantonese channel, 24 hours daily broadcasting, and, on its English channel (if provided), 8 hours daily broadcasting¹⁵.

English language channel

HKTVE requests that its licence should not include a requirement to provide an English language service¹⁶. Such a requirement is not statutory and precedent exists for not requiring an English service (i.e. Commercial Television's licence). Specifically, HKTVE requests not to be required to provide a second language (i.e. English language) service since doing so would adversely affect its ability to provide competitive Cantonese programming which is its first priority and the first priority of the community. At present, there are two free English television channels and over 80 English channels provided by the pay television licensees. In addition, the Internet has now become a major source of free English language programming. There is already a great deal of English language options for viewers today and there is no strong market evidence demonstrating the need for another English language service. HKTVE therefore submits there is no convincing basis to require it to provide an English language channel which will be loss making and adversely affect its ability to compete with the free television incumbents in Hong Kong.

If the above request cannot be granted after due consideration by the Broadcasting Authority, HKTVE plans to operate a two-channel (Cantonese and English) domestic free television programme service.

Compliance with programming requirements

HKTVE requests that its licence should not include requirements as to the

¹⁴ The Broadcasting Authority is empowered under the existing licences to direct a domestic free television programme service licensee to provide subtitling.

¹⁵ 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.

¹⁶ The current domestic free television programme service licensees are required under Conditions 2.1 and 2.2 of the First Schedule to the licences to provide both Cantonese and English channels, and any other language services as may be imposed by the Broadcasting Authority from time to time.

following:

- (a) Wholly of Hong Kong origin – The existing domestic free television programme service licences as negotiated by the incumbents contain provisions which require a licensee to provide a certain amount of programming that is “wholly of Hong Kong origin” although that condition does not require programmes to be actually produced in Hong Kong¹⁷. HKTVE will broadcast a substantial amount of programming that is wholly of Hong Kong origin and actually produced in Hong Kong. However, as a new entrant in the free television market, HKTVE seeks as its first priority the flexibility to create programming that is attractive to viewers without constraints, HKTVE submits that this will maximise HKTVE’s ability to successfully compete in the market for the benefit of Hong Kong viewers. In addition, HKTVE sees no basis for such a requirement in view of the Government policies favouring light handed regulation, competition and market driven results. HKTVE suggests that past practice is not a good reason in 2010 to impose costly requirements on a new entrant that are no longer relevant. HKTVE considers that the market will drive licensees to provide programmes that are relevant and attractive, and this can only be done in significant part via locally produced programming.
- (b) Other programming requirements – the existing domestic free television programme service licences as negotiated by the two incumbents contain provisions with specified minimums of minutes or hours that the two incumbents must broadcast of various programme genres¹⁸. HKTVE will broadcast a broad range of programmes as noted above. This includes general news, financial news, current affairs, documentaries, children’s and young persons, seniors, lifestyle, travel, sports, general entertainment, and arts

¹⁷ Section 5.1 of the First Schedule of the licences states that: For the purposes of this Licence “wholly of Hong Kong origin” means:

- (a) produced
- (i) in substance and in form in Hong Kong; or
 - (ii) by the Licensee, by any employee of the Licensee, by any company or employee of any company which, in relation to the Licensee, is a subsidiary company within the meaning given by section 2(1) of the Broadcasting Ordinance, or by any other independent production company engaged by the Licensee in or outside Hong Kong; and
- (b) the Broadcasting Authority is satisfied that it is produced primarily for the Hong Kong market.

¹⁸ The positive programme requirements comprise the minimum 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.

The current domestic free television programme service licensees are required under Conditions 5.1, 6.1, 7.1 and 10.1 of the First Schedule to the licence to provide, on the Cantonese and/or English channels, the following programmes that are wholly of Hong Kong origin –

- (a) documentary programmes (30 minutes per week on each channel);
- (b) current affairs programmes (30 minutes per week on each channel);
- (c) children’s programmes (30 minutes daily on the Cantonese channel only); and
- (d) arts and culture programmes (15 minutes per week on each channel).

and culture. HKTVE submits that its programming hours devoted to these topics will meet or exceed those of the incumbent operators. Nevertheless, as a matter of principle it considers that there is no reason to have such licence conditions imposed on it as a new entrant. HKTVE submits that it is the Government policy to be light handed and to support market driven outcomes. HKTVE seeks as its first priority the flexibility to create positive programming that is attractive to viewers without constraints so that it may best compete with the incumbent operators. HKTVE would suggest that past practice is not a good reason in 2010 to impose costly requirements on a new entrant that are no longer relevant, which will limit competition and harm viewers. HKTVE considers that the market will drive licensees to provide programmes that meet the diverse needs of users.

3. TECHNICAL INFORMATION

Transmission mode to be employed

HKTVE will provide free television service in the form of digital terrestrial television (“DTT”), given that Hong Kong is now well on the way towards analogue switch-off. Both standard and high definition television will be supported. The service will also support multi-language, electronic programme guide and interactivity capabilities. HKTVE requests to carry its DTT service via channel 62, a spare territory-wide Ultra High Frequency (“UHF”) channel, until 2015 and thereafter return it to the Government if requested. To ensure that viewers are able to enjoy a seamless and continuous service, HKTVE will then apply for or otherwise obtain radio frequencies released following the switch-off of the analogue television services in Hong Kong.

HKTVE submits that it will use the current broadband network of PCCW Media’s domestic pay television programme service (i.e. “now TV”) to supplement its DTT coverage.

Geographical coverage and service roll-out

HKTVE submits that subject to negotiation with the other operators on sharing the use of hilltop sites designated for DTT, HKTVE plans to roll out the DTT network and achieve near universal coverage for the proposed service within 5 years of launch.

PCCW Media’s broadband network covers about 2 million households (about 90% of total Hong Kong households) of which over 1 million are now PCCW Media subscribers. PCCW Media’s geographical coverage will therefore be substantial.

Proposed service coverage milestones¹⁹

HKTVE commits to cover: –

- (a) not less than 70% of Hong Kong households within 12 months after service commencement;
- (b) not less than 80% of Hong Kong households within 24 months after service commencement; and
- (c) not less than 90% of Hong Kong households within 36 months after service commencement.

Equipment and facilities required at the customer end

Viewers will need to have an appropriate DTT set-top box for receiving the digital television signal. The set-top box will provide digital interface (i.e. high-definition multimedia interface (“HDMI”) and analogue interface (i.e. composite video) for connection to television set. nowTV subscribers can make use of the nowTV set-top box for reception of HKTVE signals.

4. OTHER INFORMATION

Commencement of service

HKTVE plans to commence the Cantonese and English (if provided) channels within 12 months and 18 months respectively after the grant of licence.

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

HKTVE submits that minimum construction work at hilltop sites would be required assuming that it reaches an agreement with the other free television operators on sharing the use of hilltop sites. The construction work will involve laying optical cables to hilltop sites or setting-up of microwave links in addition to indoor installation work for hilltop premises.

On the other hand, HKTVE would also expect the Government to grant the applicant suitable land on hilltops designated for DTT broadcasting under the same terms for the incumbent operators. HKTVE will construct its broadcasting towers and associated facilities.

HKTVE submits that no construction work is required to provide service over the

¹⁹ HKTVE submits that the proposed milestones are contingent upon its negotiation with the other operators on sharing the use of hilltop sites without any significant delay.

broadband network.

The benefits brought by the implementation of the proposal to the local industry, viewers/consumers and the economy as a whole

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

- (a) *Enhancing competition and benefits to viewers* – PCCW Media's track record in the domestic pay television market ensures that a broad range of viewers will be benefited from the entry of a new competitor who broadcasts informative and entertaining programmes. General entertainment, sports, news, finance, current affairs, documentaries, lifestyle, travel, movies, etc. will all cater to the viewing needs of the community. HKTVE will not simply copy the incumbents in delivering programmes to the Hong Kong community. Viewers will be substantially benefited from the state-of-the-art technology, innovation, service quality, customer care and programmes of the proposed service.
- (b) *Delivery of a well-financed and innovative service* – The experience and expertise of PCCW and PCCW Media in the management and operation of television broadcasting service in Hong Kong are directly applicable and transferable to the applicant. The financial support of PCCW to the applicant will ensure the availability of the required funding necessary to support the proposed service.
- (c) *Unique programming mix* – HKTVE submits that its Cantonese channel will ride on the proven track record of PCCW Media's flagship news and information programmes.
- (d) *All providers will be motivated* – HKTVE submits that its entry with funding and experience will encourage the existing operators and other new entrants to improve their services.
- (e) *Creating job opportunities* – HKTVE submits that several hundreds of skilled jobs will be created or maintained in the creative and content sectors. At the same time the entry by HKTVE will help maintain Hong Kong as the regional broadcasting hub.

Members of the public may provide comments on HKTVE'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