

**Notice of the Decision of the Communications Authority on
Revocation of the Type B Other Licensable
Television Programme Service Licence of NXTV Asia, Limited
pursuant to Section 32(4)(a) of the Broadcasting Ordinance
(Cap. 562)**

The Communications Authority (“CA”) has reached a final decision pursuant to section 32(4)(a) of the Broadcasting Ordinance (“BO”) to revoke the Type B other licensable television programme service (“**OLTVPS**”) licence (“**the Licence**”) of NXTV Asia, Limited (“**NXTV**”).

2. The grounds upon which and the reasons why the Licence was revoked are set out below –

NXTV’s Non-payment of Financial Penalty

Relevant Statutory Provisions and Licence Conditions

- (a) Sections 21(2) and 39(1) of the BO stipulate that NXTV shall, on or before the 1st of April of each year, provide to the CA information in the specified form to enable the CA to establish and verify whether NXTV or a person exercising control of NXTV is a fit and proper person, and submit to the CA a return in the specified form showing the names and places of residence of the directors and principal officers of NXTV and indicating whether or not those directors and principal officers are for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years (the “**Annual Returns**”).
- (b) Condition 9.2 of the Licence provides that NXTV shall submit to the CA a certificate made by the auditor of NXTV or a statutory declaration made by a director, a company secretary or a principal officer of NXTV stating the names, addresses and number of hotels containing one or more hotel rooms to which its service is provided as at each anniversary date of the commencement date of the Licence (the “**AC or SD**”) within 30 days of each such anniversary.

- (c) Under section 24(1) of the BO, the CA may issue directions in writing to a licensee requiring it to take such action as the CA considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it. Section 23(2)(c) of the BO provides that a licensee shall comply with any directions, orders, or determinations, under the BO which are applicable to it.

- (d) Sections 28(1) and 28(2) of the BO provide that the CA may, by notice in writing served on a licensee, require the licensee to pay a specified financial penalty if it is satisfied that the licensee contravened, among others, a licence condition, a requirement under the BO, or a direction, order or determination under the BO which is applicable to that licensee. Section 28(6) of the BO provides that the CA shall not impose a financial penalty unless it has given the licensee a reasonable opportunity to make representations to it in relation to the matters in respect of which a financial penalty is proposed to be imposed. Section 29(4) of the BO provides that a licensee shall pay the financial penalty imposed by a notice under section 28(1) served on it within 30 days after the date on which the notice is served.

- (e) Section 32(4)(a)(ii) of the BO provides that the CA may revoke a licence for failure by the licensee to pay any financial penalty within 60 days beginning on the date the payment is due under section 29(4) of the BO.

Relevant Facts and Circumstances

- (f) NXTV failed to submit the Annual Returns for the year of 2013 and the AC or SD for the licence year 2013/2014 by the stipulated deadlines. On 1 April 2014, the CA determined that NXTV's failure to submit the above returns constituted a breach of sections 21(2) and 39(1) of the BO and Condition 9.2 of the Licence and decided, among others, to exercise its power under section 24(1) of the BO by issuing a direction to NXTV requiring it to, among

others, submit the outstanding Annual Returns and the AC or SD by 1 May 2014 (“Direction”).

- (g) Up to the date hereof, NXTV failed to submit the Annual Returns for the year of 2013 and the AC or SD for the licence year 2013/2014 as required under the Direction. NXTV also failed to submit the Annual Returns for the year of 2014 and the AC or SD for the licence year 2014/2015 by the stipulated deadlines.
- (h) On 2 September 2014, the CA, having invited representations from NXTV on 31 July 2014¹ under section 28(6) of the BO, determined that NXTV’s failure to comply with the Direction and to submit the Annual Returns for the year of 2014 and the AC or SD for the licence year 2014/2015 constituted a breach of section 23(2)(c) of the BO, and a further breach of sections 21(2) and 39(1) of the BO and Condition 9.2 of the Licence. The CA decided to, among others, exercise its power under section 28(1) of the BO by imposing on NXTV a financial penalty in the sum of \$100,000 (the “**Financial Penalty**”), for NXTV’s non-compliance with the Direction and failure to submit the Annual Returns for the year of 2014 and the AC or SD for the licence year 2014/2015. On 2 September 2014, the CA issued a notice of the imposition of financial penalty to NXTV demanding payment of the financial penalty (the “**Notice**”).
- (i) Despite the service of the Notice on NXTV and the repeated demands issued on the CA’s behalf, the Financial Penalty due and outstanding from NXTV remained unpaid up to the date hereof. Prima facie, NXTV was in breach of section 29(4) of the BO. Given that 60 days had elapsed since the due date for payment of the Financial Penalty, grounds for revocation under section 32(4)(a)(ii) of the BO were satisfied.

¹ NXTV did not respond to the CA’s invitation for representations.

NXTV's Non-payment of Variable Fee

Relevant Statutory Provisions and Licence Conditions

- (j) Section 13 of Schedule 4 to the BO provides that a licensee shall pay annually to the CA a prescribed licence fee and such other fees as may be prescribed. Condition 7.1 of the Licence provides that NXTV shall pay to the CA every year during the period of validity such licence fee in advance as may be prescribed from time to time by regulation made under section 42 of the BO and section 13 of Schedule 4 to the BO.
- (k) Section 3(b)(ii) of Schedule 4 to the Broadcasting (Licence Fees) Regulation (Cap. 562A) (the “**Broadcasting Regulation**”) provides that the subsequent annual licence fee payable for a Type B OLTVPS licence includes a variable fee calculated by multiplying HK\$5,400 with the number of hotels to which the OLTVPS is provided (if any) on each anniversary of the effective date of the licence. Section 5(2)(b) of Schedule 4 to the Broadcasting Regulation further requires that the variable fee provided in section 3(b)(ii) of Schedule 4 to the Broadcasting Regulation shall be payable not later than 60 days after each anniversary of the effective date of the licence.
- (l) Section 32(4)(a)(i) of the BO provides that the CA may revoke a licence for failure by the licensee to pay any licence fee within 60 days beginning on the date the payment is due.

Relevant Facts and Circumstances

- (m) On the basis of the list of hotels in Hong Kong to which NXTV provided Type B OLTVPS as at 20 April 2012 as declared by NXTV in the AC or SD dated 13 May 2012², and pursuant to

² Since NXTV did not provide the AC or SD for the calculation of the variable fee payable for the licence year 2014/2015, the Office of the Communications Authority (“OFCA”) was unable to confirm the final amount of variable fee payable. NXTV also did not provide the AC or SD for the licence year 2013/2014 and so OFCA provisionally demanded a payment of \$21,600 for the licence year 2014/2015 which was estimated on the basis of the number of hotels as set out in the last AC or SD submitted by NXTV, being the SD dated 13 May 2012 submitted by NXTV for the licence year 2012/2013.

sections 3(b)(ii) and 5(2)(b) of Schedule 4 to the Broadcasting Regulation, NXTV was liable to pay a variable fee of HK\$21,600 (“**Variable Fee**”) to the CA by 19 June 2014 (i.e. 60 days after the 9th anniversary of the effective date of the Licence).

- (n) Despite the repeated demands and reminders issued on the CA’s behalf, the Variable Fee due and outstanding from NXTV to the CA remained unpaid up to the date hereof. Prima facie, NXTV was in breach of (i) section 13 of Schedule 4 to the BO; (ii) sections 3(b)(ii) and 5(2)(b) of Schedule 4 to the Broadcasting Regulation; and (iii) Condition 7.1 of the Licence. Given that 60 days had elapsed since the date that the Variable Fee was due under section 5(2)(b) of Schedule 4 to the Broadcasting Regulation, grounds for revocation under section 32(4)(a)(i) of the BO were satisfied.

Inquiry by the CA

- (o) As a result of NXTV’s failure to pay the Financial Penalty and Variable Fee within 60 days of their respective due dates, the CA was satisfied that there might be cause to revoke the Licence under section 32(4)(a) of the BO. On 13 March 2015, the CA served on NXTV a notice in writing pursuant to section 33(2)(a) of the BO stating that the revocation of the Licence was under consideration by the CA and the grounds upon which and reasons why the revocation of the Licence was being considered. NXTV was invited to make representations regarding the proposed revocation of the Licence to the CA on or before 13 April 2015. NXTV did not respond to the CA’s invitation for representations.
- (p) On 15 June 2015, the CA served on NXTV a draft notice of the CA’s decision regarding the revocation of the Licence. NXTV was invited to make representations on the draft notice to the CA on or before 29 June 2015. NXTV did not respond to the CA’s invitation for representations.

3. Taking into account the severity, nature and duration of NXTV's breaches, the CA reached a final decision on 30 June 2015 that NXTV's licence should be revoked pursuant to section 32(4)(a) of the BO. Pursuant to section 32(7)(a) of the BO, the revocation took effect on 31 July 2015.

1 August 2015
Communications Authority