

Appendix

Television programme “Scoop” (東張西望 - 電視牌照風雲) broadcast on the Jade and HD Jade Channels of TVB on 5 November 2013 at 7:30pm – 8:00pm¹ and on the TVB Encore Channel of TVBNV on 6 November 2013 at various timeslots including 7:30 pm – 8:00 pm

The CA received over 27,000 public complaints (the “Complaints”) against television programme “Scoop” (東張西望 - 電視牌照風雲) broadcast on the Jade and HD Jade Channels of Television Broadcasts Limited (“TVB”) on 5 November 2013 at 7:30 pm – 8:00 pm and repeated on the TVB Encore Channel of TVB Network Vision Limited (“TVBNV”) on 6 November 2013 at various timeslots including 7:30 pm – 8:00 pm (“the Programme”). The main allegations² were –

- (a) the Programme was partial, misleading, inaccurate, distorting and concealing facts, including the following allegations –
 - (i) the comparison of the financial capability of the three applicants for

¹ The programme was repeated at 1:15am – 1:50am and at 4:05am – 4:35am on 6 November 2013 on HD Jade.

² The CA has concluded that there was insufficient evidence that the following allegations raised by some of the complainants had breached the relevant provisions of the Broadcasting Ordinance (Cap 562), TVB’s domestic free television programme service licence and the Generic Code of Practice on Television Programme Standards: the comparison of the TV ratings of two domestic pay television programme services and bbTV was misleading; the argument in relation to unstable advertising revenue was misleading; the methodology and source of data and figures used in the Programme were not mentioned; the reference that Hong Kong Television Network Limited was formerly known as bbTV was inaccurate; the interview of a university professor was edited; the criticisms against the participants of the “turning off the TV” campaign and demonstration were unfair; the Programme contained non-programme and/or advertising materials, no subtitles, interruptions and freeze frames, and political agenda, and deviated from its usual format which contained entertainment contents; the broadcast of the Programme amounted to “inappropriation of public assets” and damaged the fair competition environment in Hong Kong.

domestic free television programme service licences (“Free TV Licences”), viz. Fantastic Television Limited (“Fantastic TV”), Hong Kong Television Entertainment Company Limited (“HKTVE”) and Hong Kong Television Network Limited (“HKTVN”) with references to the net assets of The Wharf (Holdings) Limited and PCCW Limited was misleading;

- (ii) the allegation that HKTVN had no plan to launch the mandatory English language channel, or its plan to launch the English channel was uncertain, was inaccurate;
 - (iii) the presentation of HKTVN’s proposal to launch 12 – 30 channels, which implied that HKTVN had to fill in a lot of programming hours without mentioning HKTVN’s plan to acquire channels for direct re-transmission, was misleading; and
 - (iv) on the comparison of the transmission arrangements of the three applicants, the remark of the expected service coverage rate of HKTVN being 78% was inaccurate, as the correct coverage rate should be 93%. The remark that a set-top box was required for the reception of HKTVN was also inaccurate;
- (b) the Programme presented partial views supporting the Government’s decision to reject HKTVN’s application for a Free TV Licence, but failed to present counter-arguments suggested by HKTVN so that it was unfair to HKTVN; and
- (c) HKTVN and/or its Chairman were not given suitable opportunities to

respond to the criticisms.

The CA's Findings

In line with the established practice, the CA considered the complaint case and the representations of TVB and TVBNV in detail. The CA took into account the relevant aspects of the case, including, among others, the following –

Details of the Case

- (a) the Programme under complaint focused entirely on the topic of the grant of Free TV Licences;
- (b) it started with the remarks of the programme hostesses that the Programme had collected relevant facts on the topic to facilitate better understanding of the issue and a rational deconstruction of the controversy;
- (c) the three applicants for free TV licences were compared in terms of financial capability, programming investment, programming strategy and capability, and technical capability. The information about the three applicants as presented in the Programme included the net assets of the three applicants and the parent companies of Fantastic TV and HKTVE, the proposed number of channels and daily broadcasting hours, the arrangement of an English language channel, the hours of programmes produced by Hong Kong Cable Television Limited (“HKCTV”) and PCCW Media Limited (“now TV”) annually, and by HKTVM in 2013,

the expected rate of service coverage, and the average TV ratings of HKCTV, now TV and bbTV of Hong Kong Broadband Network Limited (“HKBN”) in 2006 – 2012;

- (d) in the second part of the Programme, one of the hostesses briefly mentioned the response of HKTVN to the Government’s press release issued on 5 November 2013;
- (e) the Programme mentioned that while there was no limit to the number of Free TV Licences, not all applications for Free TV Licences would necessarily be approved. The views of HKTVN’s Chairman, the Chief Executive (“CE”), the Convenor of the Executive Council and the Secretary for Commerce and Economic Development (“SCED”) expressed on different occasions were shown; and
- (f) an excerpt of the SCED’s speech on 23 October 2013 was shown with a wrong caption of “2012-10-30”, and was referred to in a flipcard and in a voice-over with the date of October 2012.

Relevant Provisions in Generic Code of Practice on Television Programme Standards (“TV Programme Code”)

- (a) paragraph 1A of Chapter 9 – a licensee should make reasonable efforts to ensure that the factual contents of, among others, current affairs programme, and programme adopting an investigative style of reporting, are accurate;
- (b) paragraph 2 of Chapter 9 – licensees must ensure that due impartiality is

preserved as respects any factual programmes or segments thereof dealing with matters of public policy or controversial issues of public importance of Hong Kong;

- (c) paragraph 3 of Chapter 9 – balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes or programme segments under concern should not be slanted by the concealment of facts or by misleading emphasis;
- (d) paragraph 9 of Chapter 9 – unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion should be avoided;
- (e) paragraph 15 of Chapter 9 – licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented; and
- (f) paragraph 16 of Chapter 9 – where a factual programme reveals evidence of iniquity or incompetence or contains a damaging critique of an individual or organisation, those criticised should be given an appropriate and timely opportunity to respond.

The CA's Role and Statutory Function

Pursuant to section 11 of the Broadcasting (Miscellaneous Provisions)

Ordinance (Cap 391) (“B(MP)O”), the CA has a statutory obligation to consider complaints about licensees’ contravention of the TV Programme Code in accordance with the prescribed procedure therein. The CA emphasises that it examines each of the Complaints impartially and objectively in accordance with the facts of the case and the prevailing regulatory regime. The identity, intent and number of the complainants involved are irrelevant to the CA’s consideration as to whether or not there has been a breach of the TV Programme Code.

The CA’s Considerations

The CA, having regard to the relevant facts of the case, considered that –

Applicable Provisions of the TV Programme Code

- (a) the Programme was entirely dedicated to the discussion on the grant of Free TV Licences, an issue that was a matter of significant public importance and concern at the time of broadcast. The hostesses made clear at the start that the Programme would examine the facts behind the grant of Free TV Licences in order to give viewers a better understanding of this controversial issue. Given the context in which the Programme was broadcast and its content, the CA considered that it was a “current affairs programme” which adopted “an investigative style of reporting” and also a “factual programme” within the meaning of Chapter 9 of the TV Programme Code. As such, the Programme had to satisfy the requirement of accuracy, impartiality and fairness in Chapter 9 of the TV Programme Code;

Due Impartiality

(b) the CA considered that the Programme did not present the topic of the grant of Free TV Licences with due impartiality by seeking balance, as far as possible, in its presentation of the range of viewpoints on the subject, particularly given that it was a matter of significant public importance and concern at the time; and was slanted by the concealment of facts or by misleading emphasis. In reaching its view, the CA has given regard to the following points –

(i) the Programme sought to compare the financial capabilities of the three applicants for Free TV Licences. However, the Programme only compared the net assets of the applicants and/or their parent companies. No reference was made to other financial information about the applicants (for example, market capitalisation and total revenue) which was included in the Consultation Notices published by the then Broadcasting Authority on all three applications on 9 July 2010. Furthermore, no reference was made to the factors taken into account by the CE in Council regarding the financial capability of the applicants, as set out in the Government's press release issued on 5 November 2013, including the three applicants' or their parent companies' market capitalisation and profitability, cash flow, asset-to-liability ratio and financial support to be rendered to each applicant. Based upon the information presented in the Programme, the CA considered that the impression conveyed to the audience was that HKTVN was of lesser financial means than the other applicants. The CA considered that the information used in comparison in the Programme and the material omissions of

other factors relevant to the financial capabilities of the applicants constituted a concealment of facts or a misleading emphasis in this segment of the Programme;

- (ii) while discussing the fact that Fantastic TV and HKTVE would each operate two channels, one of which would be an English language channel, the provision of an English language channel by HKTVN was questioned by the voice-over that the public did not know which channel would be the English service channel provided by HKTVN as required by the licence. A graphic presentation displayed ticks in the boxes of “English channel” for Fantastic TV and HKTVE but a flashing question mark was shown for HKTVN. The impression conveyed to the audience by this graphic was that, compared with Fantastic TV and HKTVE, it was uncertain whether or not HKTVN would provide an English language channel. The Programme indicated that the information was drawn from the Consultation Notice on Application for a Free TV Licence by City Telecom (H.K.) Limited (“CTI”) (now HKTVN) (“CTI Consultation Notice”) in which CTI did not indicate which channel would be designated as an English language service as required by a Free TV Licence. However, more up-to-date information, which made clear that HKTVN would provide an English language channel, was available prior to the broadcast of the Programme³. The Programme’s presentation of whether HKTVN would provide

³ Such information could be found in a notice filed by the then CTI on its disposal of telecommunications related business in April 2012 (“Notice”). On page 10 of the Notice, CTI submitted that “as part of the application [for a Free TV Licence], the Group has also submitted a detailed business plan for the 6 year period following grant of the licence, which contains the Group’s plan for the rolling out of (i) 3 self-produced channels, namely an integrated Cantonese channel, an integrated English channel, and a “round-the-clock” news channel; and (ii) 27 “world-class” partnership and turn-around channels”. In addition, the Chairman of HKTVN made it clear in his column on Sky Post dated 4 November 2013 that HKTVN had planned to provide an English channel from day one.

an English language channel, given HKTVN's positive affirmation of so providing in information available in the public domain, gave rise to a lack of balance. As such, the CA considered that the overall presentation of HKTVN's plan to provide an English channel in the Programme was misleading. If HKTVN had been given an opportunity to respond in accordance with Chapter 9 of the TV Programme Code (see further below), it was very likely that this information would have been made available for presentation in the Programme;

(iii) the Programme commented that it would be difficult for HKTVN to fill its 12 to 30 channel service with self productions, and questioned HKTVN's use of the channels other than the two self-produced channels. HKTVN's position was set out in the CTI Consultation Notice, which clearly stated that HKTVN would operate two self-produced channels and the remaining 10 to 28 channels would be partnership or turnaround channels acquired for re-transmission. The lack of any reference to HKTVN's plan to acquire channels for direct re-transmission in the Programme was a material omission because such information was important to allow viewers to judge how HKTVN intended to fill up the 12 to 30 channels it proposed. The CA considered that the presentation was slanted by this material omission, which constituted a concealment of facts;

(iv) when presenting the service coverage rate of the three applicants⁴,

⁴ The voice-over mentioned that Fantastic TV said its programmes and basic service transmission system were ready and it did not need a long preparation time for launching the service. The Cantonese language channel could be launched within 6 months. Recently, it also indicated that at the time of launch, the

the CA noted that the Programme included an update of the initial and 12-month target coverage rates of Fantastic TV, which was not included in the Fantastic TV Consultation Notice, and that the coverage rates of 90% and 78% in the cases of HKTVE and HKTVN were quoted from the respective Consultation Notices. The CA noted that HKBN's press statement dated 3 August 2012 clearly stated that its fibre optic network coverage had reached 2 million households in July 2012, covering 85% of the households in Hong Kong. While it seemed that the Programme had researched into and updated the concerned coverage targets of Fantastic TV on its own accord, it did not appear to have done the same for HKTVN. To the contrary, it used the expression "currently" when describing HKBN's coverage rates stated in the CTI Consultation Notice. However, the CTI Consultation Notice was published on 9 July 2010 and was not "current" data at the time of the broadcast. The Programme should at least have made it clear that the concerned figure was quoted from a document published in July 2010. The CA took the view that the programme did not make it clear that the data about HKBN's coverage rates was from 2010. The CA also considered that using the expression "currently" to refer to the HKBN's fibre optic network coverage rate in the Programme could lead the viewers to believe that it was the current coverage rate of HKBN's fibre optic network, which was misleading; and

(v) the presentation of the transmission preparation/method and the

service coverage rate would reach 75% and within 12 months of launch, it would provide service to 95% of the households. As for the broadband network used by HKTVE, it covered about 2 million households, which was about 90% of the total households in Hong Kong. For HKTVN, it used the fibre optic network of HKBN, currently covered 1.8 million of households, which was about 78% of the total households in Hong Kong.

coverage rates of the three applicants, viz.

“Fantastic TV said its programmes and basic service transmission system were ready... As for the broadband network used by HKTVE... For HKTVN, it used the fibre optic network of HKBN...”⁵ was immediately followed by the voice-over that “Nevertheless, there are limitations for fibre optic broadband transmission, and it has to use a set-top-box. If the coverage is to increase, it is believed that the signal has to be transmitted through the buildings’ In-building Coaxial Cable Distribution System (“IBCCDS”), which would require the approval of Incorporated Owners of buildings, involve various investments and may pose huge pressure on IBCCDS” (emphasis added).

As can be seen above, the Programme described the limitations of fibre optic broadband transmission immediately after mentioning that HKTVN would use a fibre optic network. Despite that the proposed services of all three applicants would be delivered via IBCCDS within buildings to viewers and might require the installation of a set-top box, the impression conveyed to the audience was that only HKTVN was using a fibre optic network for transmission and that there were limitations with this technology. The CA considered such presentation misleading and slanted by the omission of material facts or by misleading emphasis.

In light of the above, the CA was of the view that in respect of the comparison of the three applicants for Free TV Licences which formed a

⁵ The Programme was broadcast in Cantonese and the sentences of the Programme referred to or quoted in this case summary were translations.

significant part of the Programme, its overall presentation was slanted by the material omission/concealments of facts and by misleading emphasis, and there was a cumulative effect of projecting a biased impression against HKTVN in the overall presentation. Thus, the CA considered that the Programme breached paragraphs 2 and 3 of Chapter 9 of TV Programme Code;

Fairness

- (c) for the reasons set out in paragraphs (b) above, the CA was of the view that the Programme misled the audience in a way that was unfair to HKTVN. The CA considered that the Programme breached paragraph 9 of Chapter 9 of the TV Programme Code governing fairness;

- (d) as shown in paragraphs (b) and (c) above, the CA considered that the Programme created an impression of HKTVN being an inferior applicant for a Free TV Licence as compared to the other two applicants. The CA was of the view that the Programme contained a damaging critique of HKTVN which was capable of adversely affecting the reputation of HKTVN within the meaning of the TV Programme Code. It could be inferred from the matters considered above that TVB and TVBNV did not take reasonable care to satisfy themselves that all material facts were, as far as possible, fairly presented in the Programme, and HKTVN was not given an appropriate and timely opportunity to respond. The CA considered that the broadcast of the footage of the interview of HKTVN's Chairman in a press conference could not be considered as an appropriate and timely opportunity for him to respond to the relevant content of the Programme. Therefore, the CA considered that the

Programme breached paragraphs 15 and 16 of Chapter 9 of TV Programme Code; and

Inaccurate Information

- (e) regarding the inaccurate date of SCED's speech which was referred to in the caption, the flipcard and the voice-over, the CA considered that the factual error was likely to have caused some confusion to the viewers, which was in breach of paragraph 1A of Chapter 9 of the TV Programme Code.

Decisions

Taking into account the severity and nature of the lapses, the CA decided that a **financial penalty of \$50,000** should be imposed on TVB for breaching paragraphs 1A, 2, 3, 9, 15 and 16 of Chapter 9 of the TV Programme Code.

For TVBNV, having regard to the fact that the Programme was a rerun of the same edition broadcast on TVB the previous day and that it was produced by TVB, the CA decided that TVBNV should be **warned** to observe the relevant provisions of the TV Programme Code.