

### **Details of the CA's Decisions to Relax the Regulation of Indirect Advertising and to Lift the Prohibition on Advertisements for Undertaker and Associated Services**

#### **A. Relaxation of the regulation of indirect advertising**

In view of the discussions in the community about indirect advertising<sup>1</sup> in television programme services, and having regard to the changing landscape of the local television market, the CA has researched into the regulation of indirect advertising and product placement in free television programme (“free TV”) services in other jurisdictions. The findings of the research reveal that the key principles underlying the relevant regulation in Hong Kong are generally in line with those in major overseas jurisdictions. Whilst the regulatory requirements in Hong Kong are similar to those in other places, the CA considers that there is room for relaxing the existing rules in Hong Kong.

2. The CA commissioned an independent survey firm to conduct a territory-wide opinion survey to gauge public views towards product placement in 2017 and conducted six focus group discussions for members of the public, members of the Television and Radio Consultative Scheme (“TRCS”)<sup>2</sup> as well as licensees, media professionals and academics to collect more in-depth views on the subject (the opinion survey and focus group discussions are collectively referred to as the “Survey”).

3. Having considered the findings of the research and the Survey, the CA decided in September 2017 to review the relevant provisions in the Generic Code of Practice on Television Programme Standards (“TV Programme Code”) and the Generic Code of Practice on Television Advertising Standards (“TV Advertising Code”) (collectively referred to as the “Codes”), with a view to relaxing, wherever possible and appropriate, the relevant standards and

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<sup>1</sup> Indirect advertising refers to the mingling of programme and advertising material or the embedding of advertising material within programme content, whether inadvertently or by design. Indirect advertising may or may not give rise to payment or other valuable consideration being received by licensees.

<sup>2</sup> The TRCS, administered by the Office of the Communications Authority, aims at gathering public opinions on broadcasting issues to assist the CA in formulating broadcasting regulations that can reflect community standards. Members of the public join the TRCS on a voluntary basis. The TRCS currently comprises about 540 members of the public to form a mix that mirrors the population profile of Hong Kong by age, sex and occupation.

restrictions. The CA conducted a public consultation from 28 March 2018 to 28 April 2018 to collect views from members of the public on its relaxation proposals which were formulated following an industry consultation with the licensees. Three focus group discussions for members of TRCS and licensees, media professionals and academics were also conducted during the public consultation to collect more in-depth views on the proposals.

4. Having taken into account the views received from the public and the licensees, the CA decided to implement the following relaxation measures

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(a) *to lift the current prohibition on indirect advertising in TV programmes, save for news programmes, current affairs programmes, children's programmes, educational programmes, religious service and other devotional programmes which are either of a serious nature or target at children;*

5. Under the current TV Programme Code, indirect advertising is generally prohibited. Notwithstanding this general prohibition, product placement subject to certain ground rules and unpaid commercial references to products/services within programmes which are justified by the editorial requirements of the programme or of an incidental nature are allowed.

6. The viewing public generally do not find indirect advertising in TV services objectionable but consider it necessary to regulate such practices in TV programmes. Viewers' acceptance of indirect advertising in programmes of a more serious nature (such as news and current affairs programmes) and in children's programmes is generally low, while indirect advertising in infotainment and lifestyle programmes (such as travelogues, food programmes, etc.) and dramas is more acceptable to them.

7. There are rules governing product placement<sup>3</sup> in major overseas jurisdictions. Some jurisdictions such as the European Union and the United Kingdom ("UK") prohibit product placement in certain types of programmes (which include news programmes, current affairs programmes, religious programmes and children's programmes) while other jurisdictions such as Korea and Taiwan permit product placement for certain types of programmes (which include films, sports, entertainment and cultural programmes).

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<sup>3</sup> While different definitions are adopted by individual jurisdictions, "product placement" generally refers to the inclusion of or reference to a product or service or trademark in a programme for a commercial/promotion purpose, in return for payment or other valuable consideration.

8. Having regard to the foregoing, the CA decided that indirect advertising should be permitted in TV services except for certain types of programmes, viz. news programmes, current affairs programmes, children's programmes, educational programmes, religious service and other devotional programmes.

***(b) to continue to allow product placement (i.e. inclusion of products/services within a programme in return for payment or other valuable consideration being received by a licensee) in current affairs programmes on condition that licensees exercise care in the choice of sponsor to safeguard the credibility and integrity of such programmes;***

9. At present, product placement is allowed in current affairs programmes provided that due care is exercised in the choice of sponsor to safeguard the credibility and integrity of such programmes. Therefore, notwithstanding the prohibition of indirect advertising in current affairs programmes, product placement will continue to be allowed in such programmes on the condition that licensees exercise care in the choice of sponsor to safeguard the credibility and integrity of such programmes.

***(c) to maintain the current practice of adopting general principles, rather than imposing detailed guidelines, for regulating product placement, so as to preserve creativity and flexibility, and to relax the general principles regulating product placement as follows -***

***(i) the exposure or use of products/services within a programme is presented in a natural and unobtrusive manner having regard to the programme context and genre; and***

***(ii) there is no direct encouragement of purchase or use of products/services;***

10. Currently, product placement is permitted provided that programme integrity is preserved by not allowing programme agendas to be distorted for commercial purposes. Where a programme is sponsored, the licensee should remain responsible for its content. Product placement is subject to a set of general principles<sup>4</sup>.

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<sup>4</sup> The general principles are as follows:

(a) the exposure or use of product(s) or service(s) within a programme is clearly justified editorially, not obtrusive to viewing pleasure and not gratuitous;

11. The public and media professionals who joined the focus group discussions generally support continued adoption of general principles for regulation of product placement so as to allow room for creativity for licensees. In major overseas jurisdictions, only Korea adopts detailed and specific requirements on product placement by stipulating the amount of broadcast time and the size allowed for product placement in a programme. Many other jurisdictions adopt regulatory principles which allow more room for creativity for licensees.

12. It is noted from Survey findings that one of the main factors affecting the viewers' acceptance level towards product placement in TV services is whether the presentation is natural and unobtrusive to viewing pleasure. Most viewers find forms of presentation which contain prominent commercial elements/references and which have the effect of promoting purchase or use of products/services unacceptable. It is also noted that the common principle adopted by major overseas jurisdictions is that there should not be direct encouragement of purchase or use of products/services; or there should not be promotional references to the products/services placed in programmes, so as to preserve programme integrity.

13. Having regard to the above, the CA decided to maintain the current practice of adopting general principles for regulating product placement so as to preserve creativity and flexibility, and to relax the general principles regulating product placement having regard to the views expressed by the viewing public. Examples of acceptable and unacceptable presentation of product placement with regard to the revised general principles are provided in a set of "Frequently Asked Questions" (FAQ) available at CA's website ([https://www.coms-auth.hk/filemanager/en/content\\_498/TV\\_FAQ\\_EN.pdf](https://www.coms-auth.hk/filemanager/en/content_498/TV_FAQ_EN.pdf)) for reference by licensees and the public.

***(d) to lift the current prohibition on undue prominence regarding unpaid commercial references within a programme;***

14. At present, the TV Programme Code provides that no undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature or a person identified with the above

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- (b) the sponsor for the product or service featured must be clearly identified in the front and/or end sponsor credits of the programme;
  - (c) the product or service featured in a programme must not be unacceptable for advertising under the TV Advertising Code; and
  - (d) the advertising standards set out in the TV Advertising Code shall apply to product/service sponsorship where appropriate.

so that the effect of such reference amounts to advertising. Such references must be limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature (collectively referred to as “prohibition of undue prominence”).

15. Currently, the prohibition of undue prominence applies to cases where commercial references are included within a programme for which the licensee does not receive any payment or other valuable consideration. Exemptions from the prohibition of undue prominence are provided for certain programmes and channels (viz. films made for the cinema, acquired programmes covering sporting and other events outside Hong Kong and direct re-transmission channels) under specific conditions<sup>5</sup>.

16. The viewers generally consider that whether the licensees receive payment or other valuable consideration for products/services featured in a programme is not a crucial factor in considering the regulation of indirect advertising. However, some take the view that should a licensee receive no payment or other valuable consideration for the inclusion of product/service in a programme, the relevant programme could be subject to more relaxed regulatory requirements.

17. In most major jurisdictions (except the UK), unpaid commercial references within a programme are either exempted from the rules governing product placement or are not regulated at all, and such references are not subject to the prohibition of undue prominence.

18. In view of the above, the CA decided to lift the prohibition of undue prominence regarding unpaid commercial references within a programme. Such a move is consistent with the overall direction of relaxation and is in line with the international trend. The relaxation should reduce the compliance burden on licensees. It is expected that licensees should not have the incentive to place a lot of products/services in a programme without receiving payment or valuable consideration in return. In any case, indirect advertising will not be allowed for certain types of programmes which are of a serious nature or

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<sup>5</sup> Examples of the exemptions are as follows –

- (a) references to commercial names which are built into live sports programmes acquired by a licensee for which the licensee does not receive any payment or other valuable consideration are not subject to the prohibition of undue prominence;
- (b) films made for the cinema and acquired programmes covering sporting and other events which take place outside Hong Kong may deviate from the sponsorship rules (including those on product placement) when the deviation is unavoidable; and
- (c) programmes of channels acquired for direct re-transmission which are produced primarily for reception outside Hong Kong and do not contribute to any advertising revenue of the licensee may deviate from the prohibition of indirect advertising and undue prominence, as well as the sponsorship rules when the deviation is unavoidable.

target at children, and this should have provided sufficient safeguards to protect viewers' interests. As a matter of fact, there have been relatively few substantiated complaint cases involving unpaid commercial references in a programme.

- (e) *a licensee is deemed to have received payment or other valuable consideration for including within its programme products or services of another company in the group of companies<sup>6</sup> of which the licensee is a member and the exposure of such products/services will be subject to the product placement rules;*

19. The CA considers that if the products/services featured in a programme are provided by companies associated with the licensee concerned, they should be subject to regulation even if the licensee does not receive any payment or other valuable consideration. This is because it is to be presumed that the licensee would have asked for payment or other valuable consideration for including the products/services in question in its programmes if not for the fact that they are provided by companies associated with it. Given the above, the CA decided that a licensee is deemed to have received payment or other valuable consideration for including within its programme products/services of another company in the group of companies of which the licensee is a member and the exposure of such products/services will be subject to the product placement rules. This measure is necessary to avoid creating a loophole whereby a free or domestic pay television programme service ("pay TV") licensee can use its licensed TV service as a platform to provide indirect advertising for its associated companies without being subject to any regulation.

- (f) *to require licensees to make a statement containing the wording "The following programme contains indirect advertising (以下節目含有間接宣傳)" before a programme starts to clearly inform viewers of the inclusion of product placement, and to apply the same requirement to indirect advertising in acquired programmes ;*

20. At present, the TV Advertising Code requires that all sponsored programmes must be clearly identified. For product placement, the sponsors must be clearly identified in the front and/or end sponsor credits of the programme. While licensees are allowed to identify sponsors in the front and/or end sponsor credits of the programme, their usual practice is to identify

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<sup>6</sup> The definition of "group of companies" in section 2(1) of the Companies Ordinance (Cap. 622), which refers to "any 2 or more bodies corporate one of which is the holding company of the other or others" will be adopted.

product/service sponsors in the end sponsor credits.

21. The public generally consider that licensees should clearly inform viewers of the inclusion of product placement before a programme starts to facilitate viewers to make an informed decision about viewing and assist parents in providing guidance to their children. In most major jurisdictions with specific rules governing product placement, there is a mandatory requirement to notify viewers of the inclusion of product placement at the start of a programme. In some jurisdictions such as the UK, identification is required at both the start and the end of a programme and when a programme resumes after a commercial break. Most major jurisdictions however do not require both aural and visual statements for the notification. It is also noted that verbal references to brand names in product placement are uncommon.

22. Having regard to the above, the CA decided to –

- (i) maintain the existing requirement on sponsor credits; and
- (ii) introduce a new requirement under which licensees should make a statement containing the wording “The following programme contains indirect advertising (以下節目含有間接宣傳)” before a programme starts to clearly inform viewers of the inclusion of product placement.

(g) *to exempt acquired programmes<sup>7</sup> from compliance with the rules governing product placement, provided that the inclusion of indirect advertising therein does not give rise to any payment or other valuable consideration to the licensee. To strike a balance between the interests of viewers and licensees, the prohibition of indirect advertising in respect of specific programme genres and the notification requirement for indirect advertising under (f) above also apply to acquired programmes;*

23. At present, acquired programmes are subject to the rules governing indirect advertising and product placement except for certain programmes and channels under specific conditions (please see footnote 5 for details).

24. In general, there is no major difference in the acceptance level towards indirect advertising in station-produced programmes and acquired

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<sup>7</sup> Acquired programmes are defined as programmes, produced locally or overseas, which are not produced by the licensees

programmes (produced locally or overseas) broadcast by TV licensees. Some consider that the same regulatory requirement should apply to both station-produced programmes and acquired programmes on grounds of equity. However, some others consider that indirect advertising in acquired programmes should be subject to more relaxed standards as licensees usually receive no payment or other valuable consideration for the commercial references featured therein nor have editorial control over such programmes. Moreover, the licensee's editing to ensure compliance (e.g. blurring the relevant products or trademarks) may affect the integrity of the programmes and viewing pleasure which would weaken the position of free TV licensees in their competition with other media platforms (such as over-the-top service) on which acquired productions are provided.

25. In other major jurisdictions, different forms of exemptions are provided for product placement in acquired programmes. For example, in Taiwan, commercial references in programmes produced by foreign producers and without post-production are not regarded as product placement if the broadcasters do not benefit directly from such commercial references. In Singapore, references to commercial names in programmes are acceptable if they are inherent in programmes acquired by a broadcaster.

26. The CA considers that providing exemption for acquired programmes (produced locally or overseas) would be more in line with the overall direction of relaxing the current rules and the practices adopted in other major jurisdictions. In fact, similar exemption is currently provided for programmes of channels acquired for direct re-transmission which are produced primarily for reception outside Hong Kong but which do not contribute to any advertising revenue of the licensee. Hence, the CA decided to exempt acquired programmes from compliance with the rules governing product placement provided that the inclusion of indirect advertising within an acquired programme does not give rise to any payment or other valuable consideration to the licensee. That said, to strike a balance between the interests of viewers and licensees, the prohibition of indirect advertising in respect of specific programme genres (viz. news programmes, current affairs programmes<sup>8</sup>, children's programmes, educational programmes, religious service and other devotional programmes) should apply to acquired programmes. To ensure that viewers would be aware of indirect advertising featured in acquired

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<sup>8</sup> In case the licensees receive payment or other valuable consideration for inclusion of commercial references within acquired current affairs programmes, the licensee should exercise care in the choice of sponsors so as to safeguard the credibility and integrity of such programmes and should comply with the sponsorship rules.



programmes, acquired programmes should be subject to the notification requirement to clearly inform viewers of the inclusion of indirect advertising before a programme starts<sup>9</sup>.

27. The exemption should reduce the compliance burden on licensees (e.g. obviating the need to blur out logos) while viewers' interest would be safeguarded by a prior notification requirement for acquired programmes. For foreign acquired programmes, given that product placement in such programmes are subject to regulation by relevant authorities in those jurisdictions, there are already certain safeguards against unacceptable presentation. As a matter of fact, there have only been a very small number of substantiated complaint cases against indirect advertising in foreign acquired programmes in recent years.

28. There are comments that since programmes produced by independent local production houses would be exempted, they would have an unfair advantage over station-produced programmes. It should however be pointed out that programmes produced by independent local production houses only constitute a small portion of the programmes broadcast by the licensees which have the discretion on what to broadcast on its channels.

***(h) as an extension of the current exemption for direct re-transmission channels, to exempt direct re-transmission channels which are produced primarily for reception in Hong Kong on a pay TV service (which do not contribute to any advertising revenue of the licensee) from compliance with the rules governing indirect advertising on the condition that the licensee would indicate in its programmes schedules or superimpose a text message for at least 15 seconds when viewers switch to the channel that such channel is acquired for direct re-transmission and may contain indirect advertising.***

29. The CA considers that the exemption from compliance with the indirect advertising and sponsorship rules which currently apply to direct re-transmission channels produced primarily for reception outside Hong Kong which do not contribute to any advertising revenue of the licensees should be extended to direct re-transmission channels produced primarily for reception in Hong Kong on a pay TV service and which do not contribute to any advertising revenue of the licensees given the technical difficulties for the licensees to

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<sup>9</sup> To avoid imposing requirement which are more stringent than the current regulatory regime, the above notification requirement will not apply to films made for the cinema, acquired programmes covering sporting and other events, as well as direct re-transmission channels.

comply with the relevant rules during direct re-transmission of channels.

30. Programmes on direct re-transmission channels which are produced primarily for reception in Hong Kong may contain commercial references targeting local viewers. To address the technical difficulties of the licensees on the one hand and to protect the interests of viewers on the other, the CA decided that such channels on a pay TV service should be exempted from compliance with the relevant rules, on the condition that the licensee should indicate in its programmes schedules or superimpose a text message for at least 15 seconds when viewers switch to the channel that such channel is acquired for direct re-transmission and may contain indirect advertising.

## **B. Lifting of the Prohibition on Advertisements for Undertaker and Associated Services**

31. At present, the TV Advertising Code and the Radio Code of Practice on Advertising Standards provide that advertisements for undertaker and others associated with death or burial, except for advertisements for columbaria which are in compliance with the relevant presentation and scheduling requirements, are not acceptable for inclusion in a licensed service.

32. The CA has received views from the public that the restriction on advertisements for funeral services could be relaxed provided that they do not make reference to death and terror. There are also comments that in view of changing social and cultural values, the current restriction should be lifted, so that the viewing public can be better informed of the services relating to after-death arrangements.

33. In major jurisdictions such as the UK and Australia, there is no provision prohibiting broadcast of advertisements for burial or death-related services. In Singapore, advertisements for death-related and undertaker services are allowed between 11 p.m. and 6 a.m., subject to some restrictions on presentation. As such, relaxation of the restriction on advertisements for undertaker and burial services is consistent with the practices adopted in major jurisdictions.

34. In view of the foregoing and in line with the general direction to relax the current regulatory regime, the CA decided to lift the general prohibition on advertisements for undertaker and others associated with death

or burial, subject to the following conditions on presentation and scheduling as a safeguard to protect the interests of the audience<sup>10</sup> –

- (a) presentation of such advertisements should be dignified and restrained, and the licensee should exercise due sensitivity in scheduling and presenting such advertisements; and
- (b) all explicit references to death and technical aspects of associated services and morbid details must be avoided.

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<sup>10</sup> The proposed conditions on presentation and scheduling are the same as those applicable to advertisements for columbaria which are allowed for broadcast.