

Appendix A

Case 1 – Television Programme “Pentaprism” (左右紅藍綠) broadcast from 2:00pm to 2:05pm on 20 November 2019 on RTHK TV31 & 31A Channels of Radio Television Hong Kong (RTHK)

A total of 347 members of the public complained about the captioned programme. The main allegations were –

- (a) the remarks made by the host of the programme (the host) regarding the actions taken by the Police during the confrontations between the Police and protesters at the campuses of the Chinese University of Hong Kong (CUHK) and the Hong Kong Polytechnic University (PolyU) distorted facts, were baseless, misleading, biased, partial, and defamed and incited hatred against the Government/Police, and endorsed/promoted the violent/illegal acts of protesters;
- (b) the programme only focused on and exaggerated the force used by the Police, but turned a blind eye on the protesters’ acts of violence against the Police and vandalism over the previous months; and
- (c) it was irresponsible for RTHK, being a public service broadcaster to broadcast biased, smearing and inciting remarks of the host without verifying the truthfulness of such remarks.

The Communications Authority (CA)’s Findings

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

Details of the Case

- (a) the programme under complaint, a 5-minute television programme, was identified as a personal view programme (PVP);
- (b) the host concerned was a guest host for the edition entitled “評警方圍攻大學校園事件” (“Commenting on the siege of university campuses by the Police”) broadcast on 20 November 2019, initially at 2:00pm on RTHK TV31 & 31A and then repeated twice on the same channels on

the same day. In that edition, the host talked about the siege of CUHK and PolyU by the Police. He commented on the Police's actions and tactics in dealing with the students/protesters inside the universities during the siege of the university campuses, and made the following remarks –

“警方...硬闖校園搜捕，近日血腥圍攻中文大學同埋理工大學”，“(警方)喺中文大學瘋狂發射超過二千枚催淚彈...中國製嘅催淚彈被指會釋放大量化學毒物，包括山埃毒氣，同埋極難清除嘅致癌物二噁英，但係警方仍然以滅絕對方嘅方式瘋狂開槍，難怪連外國記者亦都批評警方比ISIS更恐怖，近乎無血性、無道德”，“圍攻理工大學...即使校園內糧水斷，過百市民受傷...”，“警方更加被拍到進入校園，不為拘捕，卻喺極近距離瘋狂開槍，以市民同埋學生作為活靶，如此報復式廝殺平民...”，“警方...甚至高聲恐嚇市民要重演六四，蒙面警漆黑之中喺街道上邊亂槍掃射催淚彈，同埋橡膠彈，甚至以小巴高速衝向人群”，“香港...有戒嚴同埋戰爭之實，甚至面臨生化危機” (“The Police ... stormed and raided the campuses, laying bloody siege to CUHK and PolyU in recent days”; “(the Police) had madly fired over 2 000 rounds of tear gas in CUHK ... the Chinese-made tear gas rounds could allegedly release a large amount of toxic chemicals, including poisonous cyanide gas and carcinogenic dioxin which is extremely difficult to eradicate. Yet, the Police still fired them madly in a way amounting to extermination. No wonder that even foreign journalist criticised the Police for being more terrifying than ISIS, bordering on being cold-blooded and immoral”; “besieging PolyU ...even when there were no supplies of food and water on the campus and with over a hundred people injured ... ”; “There was even footage showing that the Police entered the campus not for making arrests, but for shooting citizens and students madly at close range as live targets. Such retaliatory killing of civilians ...”; “the Police ... even yelled at citizens, threatening to repeat the June Fourth Incident. Masked police officers fired tear gas rounds and rubber bullets arbitrarily in pitch-dark streets, and even drove a van at high speed towards the crowd” and “Hong Kong ... is in effect under curfew and in war, and is even facing a biochemical crisis”);

- (c) in the programme, there was footage showing scenes of the Police firing tear gas and making arrests; objects on fire; injured people being transported on stretchers; an armoured vehicle on a road with bricks scattered around; and protesters shielding themselves with umbrellas. In showing the footage, the host remarked that “警方更加被拍到進入校園，不為拘捕，卻喺極近距離瘋狂開槍，以市民同埋學生作為活

靶.....” (“the Police entered the campus not for making arrests, but for shooting citizens and students madly at close range as live targets ...”);

- (d) RTHK had removed the programme from its web archive. In response to an enquiry from one of the complainants via email, RTHK replied on 13 December 2019 that the programme under complaint had been removed from its web archive “to avoid possible misunderstanding of the audience, as the information mentioned in that episode was contradictory to the fact”;
- (e) RTHK submitted, among others, that although the script of the programme was prepared by the host, its production team had made an effort to revise it to ensure programme quality and that the opinions or comments made by guest hosts did not represent the stance of RTHK. The programme was a pre-recorded one which was produced under a tight schedule and the development of events concerned was fast, chaotic, conflicting and large in scale. Also, given the time constraint of a 5-minute PVP, RTHK’s programme staff always encouraged its guests to focus on their comments and analysis and deliver their ideas as crisp as possible. The information based on news reports as well as the viewpoints, observation and knowledge of the host were incorporated in the programme without any fabrication or distortion; and
- (f) another edition of the programme titled “警方圍攻大學校園後的局勢發展” (“Development after the siege of university campuses by the Police”), hosted by another guest host was broadcast on 22 November 2019. In that edition, the guest host commented that the Police did not storm the campuses of the universities and their actions and tactics, which were relatively humane and peaceful, had in fact averted further casualties and conflicts.

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

- (a) paragraph 1 of Chapter 3 - licensees should ensure that their programmes are handled in a responsible manner and should avoid needlessly offending audiences by what they broadcast;
- (b) paragraphs 2(b) and 2(c) of Chapter 3 - a licensee should not include in its programmes any material which is likely to encourage hatred against or fear of, and/or considered to be denigrating or insulting to any person(s) or group(s) on the basis of, among others, social status; or anything which

is in contravention of the law;

- (c) paragraph 1A of Chapter 9 - licensees shall make reasonable efforts to ensure that the factual contents of PVPs are accurate;
- (d) paragraph 9 of Chapter 9 - licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion;
- (e) paragraph 15 of Chapter 9 - licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals 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) paragraphs 17(b) & (d) of Chapter 9 - for all PVPs on matters of public policy or controversial issues of public importance in Hong Kong, facts must be respected and the opinion expressed, however partial, should not rest upon false evidence; and licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVPs.

The CA's Consideration

The CA, having regard to the relevant facts of the case including the information submitted by RTHK, considered that –

- (a) the programme under complaint was identified as a PVP and the topic discussed therein concerned matters/issues of public importance and widespread concern in Hong Kong. Therefore, the relevant provisions in the TV Programme Code, including those governing PVPs, were applicable to the present case. The CA also noted that the host's comments in the programme were presented and identified as his personal opinions;

Factual Contents of PVPs

- (b) the CA noted RTHK's submission that the host's remarks in the programme were mainly based on different media reports or coverage of the incidents or issues concerned. Nonetheless, the host did not make it clear in the programme that most of his comments were based on information from secondary sources and *a fortiori* did not cite the source

of his information so as to enable viewers to decide for themselves the credibility of such secondary information. It was apparent that some of the cited information in those media reports was simply from claims or opinions of individuals with unknown identities posted on the Internet, and it was not clear whether those media organisations had performed any fact checking on such claims. It was also apparent that the host relied on such information as if it were solid facts, or at least commonly accepted facts, and set out his comments based on such “facts”. Although RTHK contended that the host’s remarks were based on material facts, information provided by RTHK in its representations was unable to substantiate such remarks. Indeed, the CA noted from the sources of information provided by RTHK that there were apparent inconsistencies or contradictions with the host’s remarks, distortion of meanings of the source of information, or lack of substantiation of claims, for example, –

- (i) the host remarked that a foreign correspondent had compared the Police to the terrorist military group of Islamic State of Iraq and Syria (ISIS) and criticised the Police for being more terrifying than ISIS, and was bordering on being cold-blooded and immoral (“難怪連外國記者亦都批評警方比 ISIS 更恐怖，近乎無血性、無道德”). However, information submitted by RTHK revealed that the relevant foreign correspondent posted a message on his social media and the exact wordings of his comment were “I worked at the ISIS-Frontlines but I’m more afraid of the HK police, since they are unpredictable”. The host’s remarks in the programme distorted the meaning of the message of the foreign correspondent who did not make the claims contained in the host’s remarks; and
 - (ii) the host remarked that the Police entered the PolyU campus simply for the purpose of shooting citizens and students at close range as live targets (“警方更加被拍到進入(理工大學)校園，不為拘捕，卻喺極近距離瘋狂開槍，以市民同埋學生作為活靶”). The accompanying footage, however, did not show that the Police had fired at people at close range. In fact, the surroundings in the footage cast doubt on whether the footage was indeed filmed at the PolyU campus. RTHK’s representations did not offer any explanations or clarifications on this aspect in support of such remarks made by the host;
- (c) RTHK did not deny the point made by a complainant that “the

information mentioned in that episode was contradictory to the fact” as mentioned in RTHK’s email to that complainant, represented RTHK’s position on the programme, and indicated in its representations that “an inconsistency was found in RTHK’s news reports” and RTHK removed the archive on its platform “to avoid any confusion”;

- (d) the CA noted RTHK’s representations that it was a pre-recorded programme produced under a tight schedule and RTHK strove to make efforts to comply with broadcasting rules and regulations. However, RTHK did not explain why it insisted on meeting the self-imposed deadline at the expense of fact-check and accuracy, particularly when very serious allegations were made, while video footage was added to the programme that seemed to have reinforced these allegations;
- (e) based on the above, the CA considered that RTHK’s explanations could not be accepted due to the following reasons –
 - (i) RTHK appeared to have uncritically accepted the information of other media reports, articles or opinions from unverified, secondary sources posted on the Internet at face value without conducting any fact checking on its own, in dereliction of its duties as a broadcaster. Given the exceptionally serious criticisms and accusations levelled against the Police by the host, it was reasonable to expect RTHK to be vigilant and meticulous in ensuring that the host’s opinions were based upon accurate facts. The fact that the pre-recorded programme was produced under a tight schedule and the development of events concerned was fast and chaotic did not obviate RTHK’s duties to perform rigorous fact checking as a free-to-air television broadcaster before deciding whether the information and the accompanying video materials were appropriate for broadcast;
 - (ii) some of the host’s remarks were inconsistent or contradictory with or distorted the literal meaning of the sources. RTHK could have found out and corrected the host with some verification, but this was not done;
 - (iii) RTHK could have issued subsequent official clarifications, corrections and supplementary information/details to rectify those inconsistencies, contradictions or confusions in its programmes, but none of the above was done; and

- (iv) while RTHK submitted in its representations that its production team had made an effort to revise the script to ensure programme quality, it failed to show to the CA what it had specifically done or what compliance/quality control processes were in place. No details were provided in its representations;
- (f) given the above, the CA considered that there were grounds to consider that RTHK had failed to put in reasonable efforts to ensure that the factual contents used in the programme are accurate; and to gather information from different sources with a view to verifying the veracity of such serious accusations made by the host before the broadcast of the programme;

Incitement of Hatred, Fairness and Promotion of Illegal Behaviour

- (g) the CA noted that, as contended by RTHK, the feeling of hatred was indeed subjective and that the host merely expressed his anger towards the Police but did not mention or suggest in the programme taking any action against the Police. However, the CA considered that recent social events had attracted such widespread public concern, that reports and commentaries on such recent social events ought to be treated with sensitivity and impartiality by a broadcaster. The CA considered that throughout the programme, very strong epithets (such as “血腥圍攻” (“laying bloody siege”), “滅絕對方” (“in a way amounting to extermination”), “瘋狂開槍” (“shooting madly”), “比 ISIS 更恐怖，近乎無血性、無道德” (“more terrifying than ISIS, bordering on being cold-blooded and immoral”), “以市民同埋學生作為活靶” (“treated citizens and students as live targets”), “報復式廝殺平民” (“retaliatory killing of civilians”), “恐嚇市民” (“threatening citizens”), “有戒嚴同埋戰爭之實” (“in effect under curfew and in war”), “面臨生化危機” (“facing a biochemical crisis”)) were used deliberately to demonise the actions of the Police, comparing the Police to a terrorist group condemned by the United Nations and claiming that their actions led to a perilous state in society. However, scant efforts were made to substantiate such serious allegations. Such remarks, some of which were apparently made on the basis of inaccurate, distorted information or without justifications, were highly likely to provoke hatred against the Police. Although the remarks were made by a guest host and RTHK claimed that the host’s remarks did not represent its stance, these would not obviate RTHK’s obligation as a free-to-air television broadcaster to ensure the full compliance with the relevant provisions of the codes of practice of its programmes. Taking into account the overall

presentation of the programme and the comments and views expressed therein, in particular the fact that it pinpointed the actions allegedly taken by the Police without setting out the wider context of such actions, and that the host's remarks had apparently been based on distorted, inaccurate information or personal opinions on the Internet without making clear the sources of information, the CA took the view that the host's remarks made in the programme was irresponsible, and could be regarded as a hate speech with the effect of inciting hatred against the Police, unfair to and were capable of adversely affecting the reputation of the Police;

- (h) regarding the allegations that the programme endorsed and/or promoted the violent and illegal acts of protesters, the CA considered that there was insufficient evidence that any of the remarks of the host in the programme had promoted or endorsed illegal behaviour; and

Broad Range of Views in PVPs

- (i) the CA noted that RTHK had made an effort to include another view on the confrontations between the Police and protesters at university campuses in another edition of the programme broadcast on 22 November 2019. Hence, there was insufficient evidence to establish that RTHK had breached the relevant requirement.

Decision

Having carefully and thoroughly considered the relevant facts and full circumstances of the case including the representations of RTHK, the CA took the view that the complaints in respect of accuracy, incitement of hatred, fairness and factual contents of PVPs were justified and RTHK was in breach of paragraphs 1 and 2(b) of Chapter 3, and paragraphs 1A, 9, 15, and 17(b) of Chapter 9 of the TV Programme Code. Taking into account the specific circumstances of the present complaints and balancing all relevant considerations including the severity of the breach, the CA decided that RTHK should be **seriously warned** to observe more closely the relevant provisions of the TV Programme Code.

The CA recognises and respects the freedom of expression and editorial independence of broadcasters. This notwithstanding, such rights are not without limits. Any broadcaster has the responsibility to ensure that its programmes fully comply with the relevant provisions of the codes of practice

issued by the CA in accordance with the law. By virtue of its Charter, RTHK is committed to the same compliance with the codes of practice issued by the CA, and the CA may decide whether complaints against RTHK's programme contents are substantiated on the same basis as complaints against commercial broadcasters.

Case 2 – Television Programmes “30 Minute Meals” (30 分鐘大放餸) broadcast from 8:30pm to 9:00pm on 19, 20, 21 and 27 August 2019 on Hong Kong Open TV of Fantastic Television Limited (Fantastic TV)

Two members of the public complained about the captioned programmes. The allegations were –

- (a) although the programme contained product sponsorship of two unspecified brands which were repeatedly shown in the programme, there was no announcement before the programme started informing viewers of the inclusion of indirect advertising or product sponsorship; and
- (b) a built-in induction hob was repeatedly promoted in the edition of the programme broadcast on 27 August 2019.

The CA’s Findings

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

Details of the Case

- (a) the programme under complaint was a culinary programme broadcast on Mondays to Fridays starting from 19 August 2019;
- (b) in the editions of the programme broadcast on 19 to 23 and 26 to 30 August, and 2 to 4 September 2019 (i.e. 13 editions in total), there was no announcement before the programme started informing viewers of the inclusion of product sponsorship or indirect advertising therein, notwithstanding that a cooking oil brand and a condiment brand (“two brands” collectively) were identified as the sponsors of the programme in the end credits in all 13 editions concerned. From 5 September 2019 onwards, the announcement “以下節目含有間接宣傳” (The following programme contains indirect advertising) was shown before the start of the programme;
- (c) in each edition of the programme under complaint, the chefs demonstrated the preparation of different dishes of various kinds of cuisines with the programme host in a kitchen setting. The cooking oil

and condiment products of the two sponsors were placed on the kitchen countertop. During the programme, the chefs sometimes used the sponsors' products when they cooked, and the brand names on the products were occasionally discernible;

- (d) the alleged induction hob, which was installed in the kitchen countertop with the brand name printed at the top left corner, was found in some editions under complaint, including the one broadcast on 27 August 2019. When the chef was cooking with a frying pan, there were occasional top shots of the frying pan with the brand name discernible. The said induction hob was not identified as a sponsor of the programme in the end credits in the edition concerned; and
- (e) Fantastic TV admitted the lapse of not making an announcement to inform viewers of the inclusion of product sponsorship in the programme before it started, and submitted, among others, that it had taken appropriate measures to avoid recurrence of similar incidents.

Relevant Provisions in the Generic Code of Practice on Television Advertising Standards (TV Advertising Code)

- (a) paragraph 2(g) of Chapter 2 – the term advertisement or advertising material does not include incidental or natural references to products or services in the course of a programme which are justifiable in programme context;
- (b) paragraph 2A(a) and (c) of Chapter 9 – a licensee may include one or more product(s) or service(s) within a programme in return for payment or other valuable consideration provided that their exposure or use is presented in a natural and unobtrusive manner having regard to the programme context and genre, and there is no direct encouragement of purchase or use of product(s) or service(s); and that an announcement containing the wording “The following programme contains indirect advertising” is made to clearly inform viewers of the inclusion of product/service sponsorship in the programme before the programme starts.

The CA's Considerations

The CA, having regard to the relevant facts of the case including the information submitted by Fantastic TV, considered that –

- (a) paragraph 2A(c) of Chapter 9 of the TV Advertising Code requires a licensee to make an announcement to clearly inform viewers of the inclusion of product/service sponsorship in a programme before the programme started (prior announcement). The programme under complaint was sponsored by the two brands in the form of product sponsorship and no prior announcement was made for a total of 13 editions. The absence of prior announcement in those programmes constituted a clear breach of paragraph 2A(c) of Chapter 9 of the TV Advertising Code;
- (b) in the relevant editions under complaint, the products concerned of the two brands, viz. cooking oil and condiments, were placed on the kitchen countertop and were occasionally used by the chefs when they were preparing the food. While the brand names were sometimes discernible, there was no verbal reference to the sponsors by the chefs or the programme host, nor was there any direct encouragement or inducement of purchase or use of the said products. The exposure of the said products was presented in a natural and unobtrusive manner having regard to the context of a culinary programme. There was insufficient evidence suggesting that the requirement under paragraph 2A(a) of Chapter 9 of the TV Advertising Code had been breached; and
- (c) regarding the exposure of the brand name of the induction hob in the edition broadcast on 27 August 2019, the brand concerned was not a sponsor of the programme as clarified by Fantastic TV. The exposure of the brand name of the induction hob was brief and incidental, which was justifiable in the context of a culinary programme and should not be regarded as advertising material pursuant to paragraph 2(g) of Chapter 2 of the TV Advertising Code.

Decision

In view of the above, the CA considered that the complaints in respect of the absence of prior announcement were justified and that Fantastic TV was in breach of paragraph 2A(c) of Chapter 9 of the TV Advertising Code. Having taken into account the specific facts, circumstances of the present complaints and other relevant factors, the CA decided that Fantastic TV should be **advised** to observe more closely the relevant provision of the TV Advertising Code.