

Highlight 1 : HKTV Remains to be Reasonable and Open for Discussion

Hong Kong Television Network Limited ("HKTV") responds to the remarks made by Director-General of Communications, Miss Eliza Lee, after a Legislative Council meeting on 15 March :

- 1. What had happened afterwards? Mr. Wong has been striking OFCA repeatedly, kept on asking OFCA what technology that they should deploy in order to provide service legally, without the need to apply for a licence under Broadcasting Ordinance. At the beginning, he alleged that OFCA did not make suggestion to him, and then he clarified that OFCA has indeed made friendly suggestion that we have said : "Is it a must for you to switch to another technology? Can you please consider to use the original CMMB technology?"*
- 2. He (Ricky Wong) said, "We will not consider CMMB as it is obsolete. We must use DTMB technology."*

Response from HKTV :

- HKTV issued a letter to OFCA on 21 February querying :
Point 5 : ...But suppose our client (HKTV) has decided not to use DTMB but to stay with CMMB and now steps up the commercial efforts to promote their mobile television services by providing more set top boxes to customers in Hong Kong. We also understand that there are many buildings (approx. 400,000 to 500,000 households) in HK where the audience therein can simply connect such set top boxes to the building's CABD/IBCCDS and since such CABD/IBCCDS does not block channel 47 on their TV screens inside those premises.
Point 6 : Can you (OFCA) please confirm that should our client (HKTV) continue to stay with CMMB and distribute set top boxes to their customers, you do not consider that our client has to apply for a BO license when our client is aware that the number of premises wherein channel 47 is not blocked by the antenna exceeds 5,000?
From the above, HKTV made clear enquiry on future law enforcement direction if we decided to use CMMB technology. Instead of insisting on DTMB, HKTV wishes clarify legal considerations indeed.
- HKTV has never "been striking OFCA repeatedly". Since the meeting on 24 January, OFCA has not made any further reply despite HKTV has issued 4 letters to OFCA. Not until the meeting of Panel on Information Technology and Broadcasting at Legislative Council discussing the renewal of the Domestic Free Television Programme Service Licences, followed by a legal letter from OFCA, that

HKTV finally received their feedback, confirming that mobile TV service has to be regulated by Broadcasting Ordinance. However, all other enquiries raised in the 4 letters, including technology issue, OFCA's law enforcement on Class Licence, were not addressed.

3. *In a previous occasion Mr. Wong said he would not consider, and recently he changed his mind that he hasn't said he would not consider, and requested OFCA to provide proof that no prosecution will be made against HKTV in the coming 11 and a half year, when the licence is still valid.*

Response from HKTV :

- According to the minutes for 24 January meeting, items 3.2 and 3.3 mentioned that after OFCA's suggestion on DVB-H, HKTV expressed that no matter what technology to be deployed, illegality may still happen. This was confirmed by OFCA during the media briefing on 13 March.
 - In fact, both HKTV and its chairman Ricky Wong has not changed their minds, and have never said or showed that they would not consider DVB-H technology.
 - HKTV and its chairman Ricky Wong has never requested OFCA to provide proof or guarantee, no prosecution will be made in the remaining valid period of the licence. What we request are only clear answers, when the technology that OFCA suggested becomes popular in future, how will OFCA deal with that. Operators will invest billion dollars to build network facilities, and as a listed company in Hong Kong and the U.S., we are obliged to make proper risk evaluation to protect interests of the company, shareholders and all other stakeholders.
4. *I (Director-General of Communications Miss Eliza Lee) said, "Good, if you insist on DTMB, let us discuss whether there are efficient measures to ensure that the television service you deliver will not violate Broadcasting Ordinance. For example, have you considered encoding, before the delivery of television signal?"*

Response from HKTV :

- According to the minutes for 24 January meeting, item 3.3 mentioned that "HKMTV offered to inspect and provide devices at its own cost to block reception via any IBCCDS."
- This shows that HKTV has suggested to OFCA that we can hold responsible to check all the IBCCDS, and to bear the costs of filter installation. HKTV's suggestion include all buildings with IBCCDS, as well as village houses, single blocks, aged buildings that are not equipped with IBCCDS.

- HKTV has no intention to levy all the law enforcement burden onto OFCA, and has offered joint efforts to assist, but received no feedback from OFCA.
- It is necessary for an operator to clarify commercial risk and billion dollars will be invested. The maximum sentence for violation of Broadcasting Ordinance will be 5 years' imprisonment, and therefore, directors have to clarify legal concerns.

Highlight 2 : Technically Impossible

Technically, no matter which technology to be used and for encoded signals, it is still possible to have the signal available for reception by 5,000 specified premises with technological advancement.

Taking TVB as an example. Apart from Domestic Free Television Program Service Licence, they hold a Fixed Carrier Licence under Telecommunications Ordinance, with the following terms :

1.4 The grant of this licence does not authorize the licensee to do anything which **infringes any exclusive licence granted under the Ordinance** or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

In the first paragraph of Schedule 1 :

Subject to General Condition 1.4 and Clauses 2 and 3 of this Schedule 1, **all internal telecommunications services between fixed points** capable of being provided utilising the network as defined in Schedule 2 and the Radiocommunications Installations as defined in Parts (A) and (B) of Schedule 3 (other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence or a service subject to licensing under any other Ordinance), including transmission of television and associated sound and data signals for television programme service, including television programme services.

In the 4th paragraph of Schedule 1 :

“fixed point” means a network termination point and shall include such area within the immediate vicinity of such a point as the Authority may direct in writing, either generally or specially, to allow limited mobility for access to that point in such manner as the Authority may approve in writing not inconsistent with Clause 1 of

this Schedule;

We share the same issue with TVB and ATV on technical constraints. It is impossible to limit the signals to be received by specified premises but not moving locations in off-air transmission. However, OFCA has flexibility in law enforcement in circumstances beyond operators' control :

17. CONTRAVENTION BEYOND LICENSEE'S CONTROL

17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.

Encountering the same technical constraints, OFCA should be fair to all 3 operators. Understanding that it is impossible to limit television service signals to be received by mobile devices, OFCA should use the same principle on mobile TV operator; if HKTV is asked to encode its television service signals, how about the other 2 operators? Should they encode their television service signals too, so that the signals will not be available for reception at mobile locations?

Chronology

Date (Year 2014)	Event	Remarks
17 January	HKTV received letter from OFCA	Requesting for technical & commercial information for mobile TV service
23 January	HKTV issued written reply to OFCA	Submitted technical & commercial information on mobile TV (attached)
24 January	Meetings were held in the morning and afternoon between OFCA & HKTV	
6 February	OFCA sent out minutes for the meeting held on 24 January	
12 February	HKTV advised their opinion on the minutes for the meeting held on 24 January	
20 February	HKTV issued the first letter to OFCA	According to the meeting held on 24 January, OFCA mentioned that if HKTV may violate Broadcasting Ordinance if they switched to DTMB technology. HKTV expressed that there have been documents confirming that mobile TV will not be regulated by Broadcasting Ordinance, and queried if they adopt DVB-H technology resulting in more than 5,000 specified premises being able to receive service signals, will HKTV be required to switch technology again?
21 February	HKTV issued the second letter to OFCA	HKTV explained, if no equipment is installed in IBCCDS to filter the receipt of mobile television service

		signals, households can indeed receive CMMB signals
25 February	OFCA wrote back to HKTV via solicitors	OFCA is looking to the matter and will furnish a reply later
28 February	HKTV issued the third letter to OFCA	Making enquiries to OFCA, that currently, DVB-H technology is not popular, but HKTV's licence will last until 2025. Following the increasing popularity of mobile TV, if TV sets to be equipped with built-in receivers, would HKTV be required to switch technology, or to apply for a broadcasting licence? In addition to this, Class Licence requires licensees to receive terrestrial television and sound broadcasting signals only, should OFCA execute its statutory functions accordingly?
28 February	HKTV sent a letter to Communications Authority ("CA")	Requested for meeting with all members of CA, to make representations on technical arrangements
4 March	HKTV issued the fourth letter to OFCA	Requesting for a reply from OFCA, whether they will discharge their duties to ensure Class Licensees cannot receive signals via IBCCDS other than terrestrial television and sound services
7 March	Secretariat of CA replied HKTV	Replied that they would refer our opinion to CA, and will meeting with HKTV at appropriate time

10 March	Director-General of Communications, Miss Eliza Lee, attended the meeting of Panel on Information Technology and Broadcasting at Legislative Council discussing the renewal of the Domestic Free Television Programme Service Licences	In response to the question raised by the Hon. Paul Tse, revealed that HKTV may breach Broadcasting Ordinance for adopting DTMB technology
11 March, Afternoon	OFCA replied HKTV via solicitors	