

## Appendix

### **Case – Television Broadcasts Limited (“TVB”)’s Pre-emption of Radio Television Hong Kong (“RTHK”) Television Programme “Headliner” (頭條新聞) Originally Scheduled for Broadcast on the Jade Channel of TVB at 6:00pm to 6:30pm on 30 June 2017**

A total of 406 complaints were received against TVB’s pre-emption of the captioned RTHK programme. The major allegation was that the sudden pre-emption of the RTHK programme to make way for the broadcast of news footage of President Xi Jin-ping’s meeting people from various sectors of the society (which had already been broadcast on the I News Channel of TVB and by other TV stations at around 5:10pm) and a pre-recorded feng-shui programme that had no urgency violated the relevant condition in TVB’s domestic free television programme service (“free TV”) licence regarding the broadcast of RTHK programmes.

Other allegations included breach of the relevant provision regarding programme changes as no prior notice or only short notice was given to inform viewers of the relevant broadcasting arrangement; the pre-emption amounted to self-censorship, affected freedom of speech and the press, deprived viewers of the right to watch the programme concerned; and some complainants were dissatisfied with TVB’s response to media enquiries issued on 5 July 2017 about the rescheduling.

## **The Communications Authority (“CA”)’s Findings**

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

### *Details of the Case*

- (a) pursuant to Condition 19.1(b) of TVB’s free TV licence, the CA issued a direction to TVB (hereinafter referred to as the “CA’s Direction”) requiring it to broadcast on its integrated Chinese channel 2.5 hours per week of RTHK programmes with effect from 1 April 2017 in either one of the timeslots specified<sup>1</sup>. TVB has taken up the Weekday Timeslot, i.e. a daily broadcast of 30 minutes of RTHK programmes between 6:00pm and 7:30pm from Monday to Friday. As stipulated in the CA’s Direction, the CA may approve alternative arrangements for compliance with this Direction upon application in writing by TVB on a case-by-case basis;
- (b) in accordance with the Weekday Timeslot taken up by TVB and as set out in the published programme schedules, the RTHK programme “Headliner” was originally scheduled for broadcast on the Jade Channel of TVB at 6:00pm to 6:30pm on 30 June 2017 (Friday). However, “Headliner” was pre-empted and no RTHK programme was broadcast in the 90-minute Weekday Timeslot between 6:00pm and 7:30pm on that day;

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<sup>1</sup> Two timeslots are provided for in the CA’s Direction, viz. a daily broadcast of 30 minutes of RTHK programmes should be shown between 6:00pm to 7:30pm from Monday to Friday (the “Weekday Timeslot”), or an aggregate of 2.5 hours of RTHK programmes from 7:00pm to 10:30pm on Saturdays and Sundays.

- (c) three programmes were broadcast in proximity to or within the original timeslot for “Headliner” on 30 June 2017, namely, (i) “News Flash” which comprised pre-recorded footage of President Xi’s meeting people from various sectors of the society and was broadcast from 5:49pm to 6:04pm (some 14 minutes including the anchor’s wrap-up); (ii) “Financial News” from 6:06pm to 6:12pm (about 6 minutes); and (iii) “Hong Kong So Blessed”, a re-run of a pre-recorded entertainment programme, which was broadcast from 6:15pm to 6:25pm (about 10 minutes);
- (d) teloping messages regarding the pre-emption and rescheduling of “Headliner” to TVB J5 Channel at 12:30am on 1 July 2017 were shown at around 6:00pm and 6:19pm on TVB Jade Channel in the original timeslot for the programme concerned;
- (e) on 4 July 2017, TVB submitted to the CA a retrospective application to deviate from the requirement on the broadcast of RTHK programmes arising from the above pre-emption. On 5 July 2017, TVB informed the Office of the Communications Authority (“OFCA”) that the aforesaid retrospective application was considered withdrawn and notified OFCA later on the same day that verbal agreement of RTHK had been sought for the pre-emption and rescheduling; and
- (f) TVB submitted, among other things, in its representations that the RTHK programme concerned was not pre-empted but merely re-scheduled to another timeslot agreed by RTHK, and OFCA had not requested TVB to re-submit the withdrawn retrospective application dated 4 July 2017.

***Relevant Condition in TVB's Free TV Licence***

- (a) Condition 19.1(b) – the licensee shall include, among others, in its domestic free television programme service such television programmes provided by the Government, as the CA may provide or direct and at such time, within such period, on such channel, within or outside such television programmes and in such language or dialect as the CA may direct; and

***Relevant Provision in the Generic Code of Practice on Television Programme Standards (“TV Programme Code”)***

- (b) paragraph 11 of Chapter 12 – where programmes are not shown in accordance with publicly announced or published programme schedules, the licensee should take reasonable steps to inform viewers of such changes, which may include making on-screen announcements at the beginning of the scheduled time of the programmes affected.

**The CA's Considerations**

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

- (a) as stipulated in the CA's Direction, the CA may approve alternative arrangements for compliance with the Direction upon application in writing by TVB on a case-by-case basis. In other words, a well-established mechanism is already in place to consider application for alternative arrangements for the broadcast of RTHK programmes by

TVB;

- (b) while TVB submitted a retrospective application on 4 July 2017, it withdrew the application shortly on 5 July 2017. In the absence of the CA's approval, the pre-emption of "Headliner" and its rescheduling to the J5 Channel at 12:30am on 1 July 2017 (which was outside the Weekday Timeslot) constituted a breach of the CA's Direction;
- (c) with regard to TVB's allegation that it had not received a request from OFCA to re-submit the retrospective application, the CA considered that it was incumbent upon TVB, as a veteran licensee, to ensure compliance with the CA's Direction in relation to the broadcast of RTHK programmes. Under the CA's Direction, the onus should be on TVB to apply for the CA's approval for alternative arrangements for compliance with the CA's Direction;
- (d) as regards TVB's assertion that verbal agreement had been sought from RTHK for the pre-emption and rescheduling of "Headliner", the CA noted that RTHK's agreement was not a prerequisite in the CA's Direction and therefore it was not necessary to look into the aforementioned assertion for the purpose of the present complaint case;
- (e) most of the materials broadcast during the timeslot of 6:00pm to 6:30pm on 30 June 2017 were pre-recorded, the timing and duration of which could be juggled/controlled by TVB. Even if TVB had genuine difficulties accommodating "Headliner" within the timeslot of 6:00pm to 6:30pm while keeping the live news bulletin "News at 6:30" on schedule at 6:30pm to 7:00pm, arguably arrangement could have been

made to broadcast “Headliner” in the remaining time of the Weekday Timeslot, i.e. from 7:00pm to 7:30pm during which a pre-recorded drama was broadcast. The CA considered that with the flexibility already built in the existing arrangement for TVB to broadcast a half-hour RTHK programme within the specified 90-minute Weekday Timeslot, the present case could have been handled much better;

- (f) as regards the allegations on the programme change notification, TVB had taken reasonable steps to inform viewers of the programme change concerning “Headliner”; and
- (g) the other allegations were outside the jurisdiction of the CA.

### **Decision**

Having considered carefully the specific facts and circumstances of the case, the CA considered that TVB had breached the CA’s Direction issued pursuant to Condition 19.1(b) of TVB’s free TV licence, and decided that TVB should be **strongly advised** to observe more closely this Direction, particularly the need for TVB to seek, by application in writing, the CA’s approval of alternative arrangements for compliance with this Direction.