

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

NINTH EDITION

Editor
John P Janka

THE LAWREVIEWS

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MEDIA AND
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PREFACE

This fully updated ninth edition of *The Technology, Media and Telecommunications Review* provides an overview of evolving legal constructs in 26 jurisdictions around the world. It is intended as a business-focused framework rather than a legal treatise, and provides a general overview for those interested in evolving law and policy in the rapidly changing TMT sector.

Broadband connectivity (regardless of the technology used) continues to drive law and policy in this sector. Next-generation wireless connectivity will be provided by a network of networks, with multiple technologies – both wired and wireless, using licensed and unlicensed spectrum – playing an integral role in delivering service to the end user. By way of example, free WiFi service in homes and businesses today carries the majority of the data that is transmitted to smartphones and wireless tablets that also rely on paid service from a wireless carrier. And wireless carriers otherwise rely on a variety of technologies to ultimately connect the customer to the internet or someone on the other end of the phone.

The disruptive effect of new technologies and new ways of connecting people and devices creates challenges around the world as regulators both seek to facilitate digital inclusion by encouraging the deployment of state-of-the-art communications infrastructure to all citizens, and also seek to use the limited radio spectrum more intensively than before. At the same time, technological innovation makes it commercially practical to use large segments of ‘higher’ parts of the radio spectrum for the first time. Moreover, the global nature of TMT companies requires them to engage on these issues in different ways than before.

A host of new demands, such as the developing internet of things, the need for broadband service to aeroplanes, vessels, motor vehicles and trains, and the general desire for faster and better mobile broadband service no matter where we go, all create pressures on the existing spectrum environment. Regulators are being forced to both ‘refarm’ existing spectrum bands and rewrite their licensing rules, so that new services and technologies can access spectrum previously set aside for other purposes that either never developed or no longer have the same spectrum needs. Regulators also are being forced to seek means for coexistence in the same spectrum between different services in ways previously not contemplated.

Many important issues are being studied as part of the preparation for the next World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), to be held in 2019. No doubt, this conference will lead to changes in some long-standing radio spectrum allocations. And the conference also may include some political spectrum allocations that are based on pressures brought by well-heeled industries, rather than logic or sound policy. Indeed, these pressures already exist around the world in decisions being made by national regulators outside of and before the WRC.

Legacy terrestrial telecommunications networks designed primarily for voice are being upgraded to support the broadband applications of tomorrow. As a result, many governments

are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. However, many policymakers still have not solved the problem caused when their incumbent service providers fail to extend service to all of their citizens for business reasons – because those businesses deem ‘unprofitable’ those who are the hardest to serve. Curiously, policymakers sometimes exacerbate this failure by resorting to spectrum auctions to award the right to provide service in a given frequency band to the highest bidder, failing to require service availability to everyone in the auctioned area, and then making the auction winner the gatekeeper for anyone else who wants to use the same spectrum. Too often, decisions are based (explicitly or implicitly) on expected auction revenues, which consumers end up paying for in the end through higher costs of service. Far too infrequently do policymakers factor in the benefits of ensuring ubiquitous connectivity: new jobs, economic growth, security, social inclusion, and improvements in healthcare, education and food production, to name a few. Indeed, treating spectrum as a property right rather than as the valuable public resource it is often leads to perverse results in the marketplace.

Convergence, vertical integration and consolidation can also lead to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector. Similarly, many global companies now are able to focus their regulatory activities outside their traditional home, and in jurisdictions that provide the most accommodating terms and conditions.

Changes in the TMT ecosystem, including increased opportunities to distribute video content over broadband networks, have led to policy focuses on issues such as network neutrality: the goal of providing some type of stability for the provision of the important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus may be laudable, the way in which resulting law and regulation are implemented has profound effects on the balance of power in the sector, and also raises important questions about who should bear the burden of expanding broadband networks to accommodate capacity strains created by content providers and to facilitate their new businesses.

The following chapters describe these types of developments around the world, as well as the liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I thank all of the contributors for their insightful contributions to this publication, and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

John P Janka

Latham & Watkins LLP

Washington, DC

November 2018

HONG KONG

Simon Powell and Chi Ho Kwan¹

I OVERVIEW

Hong Kong has one of the most developed telecommunications and internet services markets in the world. Its legal and regulatory system promotes competitiveness while at the same time striving to enhance and facilitate business investment.

In terms of telecommunications, there are in total four MNOs,² 27 local fixed network operators³ and 241 external fixed telecommunications service providers⁴ serving Hong Kong's population of slightly over 7.44 million in a land area of approximately 1,000 square kilometres.⁵ The residential fixed line penetration rate is 89.60 per cent,⁶ and the mobile subscriber penetration rate is 248.2 per cent.⁷ The competition for internet services is intense, with a total of 249 ISPs.⁸ The number of registered customer accounts with broadband access amounts to approximately 2.67 million, and the household broadband penetration rate is 92.6 per cent.⁹ According to the Office of the Communications Authority (OFCA), there are approximately 2.17 million subscribers to licensed domestic pay-TV services in Hong Kong¹⁰ out of around 2.57 million households in Hong Kong.¹¹ There are more than 56,600 public Wi-Fi access points in the city,¹² and the numbers continue to grow. As these figures demonstrate, the use of telecommunications services is advanced and widespread in Hong Kong.

1 Simon Powell is a partner and Chi Ho Kwan is an associate at Latham & Watkins.

2 As of September 2018, provided by the Office of the Communications Authority (OFCA).

3 i.e., licensees authorised to provide facility-based local fixed telecommunications services under an FTNS licence, an FCL or a UCL using wireline or wireless technology (as of September 2018, provided by OFCA).

4 i.e., licensees authorised to provide facility-based external telecommunications services (ETS) under an FTNS licence, an FCL or a UCL, and those authorised to provide service-based ETS under SBO licences (as of September 2018, provided by OFCA).

5 As of mid-2018, provided by the Census and Statistics Department (CSD).

6 The residential fixed line penetration rate is calculated by dividing the number of residential fixed lines by the number of households in Hong Kong (as of June 2018, provided by OFCA).

7 As of March 2018, provided by OFCA.

8 i.e., licensees authorised to provide internet access services under an FTNS licence, an FCL, a UCL or an SBO licence (as of September 2018, provided by OFCA).

9 As of June 2018, provided by OFCA.

10 As of June 2018, provided by OFCA.

11 According to statistics from May 2018 to July 2018, provided by the CSD.

12 As of September 2018, provided by OFCA.

In terms of television broadcasting, despite the fact that there is no limit to the number of licences that can be granted, until 2015 there had only ever been two domestic free-to-air television programme service providers in Hong Kong for the past 30 years. Recently there have been some major changes in this respect. On 1 April 2015, the Chief Executive in Council granted a third domestic free-to-air television programme service licence to HK Television Entertainment Company (HKTVE), enabling HKTVE to provide free television services in Hong Kong using a fixed network as its transmission mode for 12 years. HKTVE commenced its service on 6 April 2016 with a Cantonese language general entertainment television channel, ViuTV. PCCW, HKTVE's parent company, also operates an IPTV platform, Now TV, and a media streaming service, Viu. Further, Asia Television Limited, one of the two original domestic free-to-air television service providers, ceased to be a domestic free-to-air television programme service licensee on 1 April 2016 following the expiry of its licence. On 31 May 2016, the government announced that the Chief Executive in Council had decided to grant a domestic free-to-air television programme service licence to Fantastic Television Limited (Fantastic TV), a subsidiary of listed communications company i-CABLE Communications Limited. The licence is valid from 31 May 2016 for 12 years until 30 May 2028, subject to a mid-term review around 2022. Fantastic TV launched its integrated Cantonese channel on 14 May 2017, and its English and Putonghua channel on 30 July 2018. Therefore, there are currently three domestic free-to-air television licensees in Hong Kong. As for domestic pay-TV service, there are currently two licensees (Hong Kong Cable Television Limited and PCCW Media Limited).

In addition to domestic free-to-air and domestic pay-TV service providers, there are two other main categories of television broadcasting licences: non-domestic television programme service licences (mainly satellite television services) and other licensable television programme service licences (mainly hotel room television services).

Domestic television licences (both free-to-air and pay) are granted and renewed by the Chief Executive in Council (with recommendations from the Communications Authority (CA)), while the CA issues and renews licences in the other two categories. Post-licensing, the responsibility for regulating compliance with the relevant rules and regulations and monitoring compliance and non-compliance rests mainly on the CA.

The Chief Executive in Council is responsible for issuing sound broadcasting licences. There are two licensees of analogue sound broadcasting services.¹³ This does not include Radio Television Hong Kong (RTHK), which is funded by the government (and does not hold a sound broadcasting licence). Hong Kong's close proximity to Mainland China means it is not uncommon for radio signals from radio stations on Mainland China to be picked up in Hong Kong.

The development of DAB services in Hong Kong has not been satisfactory. In March 2011, the government granted 12-year sound broadcasting licences to three providers for the provision of DAB services in Hong Kong. They were required under their licences to provide 24-hour DAB services within 18 months of the licences being granted and launched in stages, with a wide variety of programmes. Between September 2015 and September 2016 (three to four years after service launch), all three commercial DAB licensees sought approval from the Chief Executive in Council to surrender their respective licences before expiry. According to the Review of the Development of Digital Audio Broadcasting in Hong Kong published by the Communications and Creative Industries Branch of the Commerce and Economic

13 As of September 2018, provided by OFCA.

Development Bureau (CEDB), the DAB operators cited the lack of a critical audience mass for DAB services and of any prospect of making the business model commercially viable as the grounds for early termination.¹⁴ On 28 March 2017, the Chief Executive in Council decided that DAB services should be discontinued in Hong Kong, and that the DAB services provided by the public broadcaster, RTHK, would be terminated. RTHK's DAB services were terminated at midnight on 3 September 2017 (its analogue radio service remains).

II REGULATION

i The regulators

The Telecommunications Authority and the Office of the Telecommunications Authority

Prior to 1 April 2012, the Hong Kong telecommunications industry was regulated by the Telecommunications Authority (TA) through its executive arm, the Office of the Telecommunications Authority (OFTA). OFTA advised and regulated the telecommunications industry with a view to formulating macro-supervisory policies, and supervised the licensing of telecommunications services providers (such as unified carriers, space station carriers and MVNOs). Its other roles included enforcing fair competition in the market, formulating, allocating and managing RF spectrum and satellite coordination. OFTA was also responsible for supervising and overseeing the implementation and enforcement of measures against unsolicited electronic messages, and represented Hong Kong in the International Telecommunication Union and other international forums.

The Broadcasting Authority and the Television and Entertainment Licensing Authority (TELA)

Prior to 1 April 2012, the broadcasting industry in Hong Kong was regulated by the Broadcasting Authority (BA), an independent statutory body established under the Broadcasting Authority Ordinance¹⁵ comprising members appointed by the Chief Executive of Hong Kong. The BA's responsibilities included handling licence applications and renewals, handling complaints, conducting enquiries, overseeing the enforcement of fair competition and levying sanctions on licensees who breached the laws, rules and regulations. It relied on the Commissioner of the Television and Entertainment Licensing Authority (TELA) to discharge its executive functions.

As the executive arm of the BA with regard to broadcasting regulation, TELA was mainly responsible for dealing with complaints against the content of broadcasting programmes and complaints regarding anticompetitive behaviour, and for processing applications (new and renewals) for television programme service licences.

Further, as the regulatory agency responsible for the entertainment, film and newspaper industries, TELA also monitored publications, handled film censorship, and processed applications for other entertainment and gaming licences (such as amusement arcade licences and mahjong licences) and the registration of newspapers.

14 Review of the Development of Digital Audio Broadcasting in Hong Kong published by the Communications and Creative Industries Branch of the CEDB, December 2016.

15 Chapter 391 of the Laws of Hong Kong.

The CA and OFCA

In light of the continued blurring of the roles of the BA and the TA, on 1 April 2012, the Communications Authority Ordinance¹⁶ came into operation, and the CA was created as a unified regulator to service the broadcasting and telecommunications (including internet) industries. The functions of the BA and the TA were transferred to the CA. Like the TA before it, the CA operates through an executive arm, OFCA. OFCA is a combination of the broadcasting arm of TELA (other TELA functions were transferred to other government departments) and OFTA. The Office for Film, Newspaper and Article Administration under OFCA took over TELA's previous functions in relation to film classification, control of obscene and indecent articles and newspaper registration, but the issuance of entertainment licences was transferred to the Home Affairs Department. The CA took over all powers and functions of the TA and the BA, and the TA and the BA were both dissolved on 1 April 2012.¹⁷

The major pieces of legislation administered by OFCA are:

- a the Communications Authority Ordinance;
- b the Telecommunications Ordinance (TO);¹⁸
- c the Unsolicited Electronic Messages Ordinance (UEMO);¹⁹
- d the Broadcasting Ordinance;
- e the Competition Ordinance;²⁰
- f the Broadcasting (Miscellaneous Provisions) Ordinance;²¹ and
- g the Trade Descriptions Ordinance (TDO).²²

The purpose of the TO is to 'make better provision for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment'. For this purpose, the TO contains provisions regulating, *inter alia*, licensing, preventing some anticompetitive practices and imposing some restrictions on ownership.

The Legislative Council enacted the Competition Ordinance in June 2012, giving the CA concurrent jurisdiction with the Competition Commission with regard to the investigation and bringing of enforcement proceedings in respect of competition cases in the communications sector before the Competition Tribunal (the tribunal established within the judiciary to hear and adjudicate competition cases). The Competition Ordinance fully came into force on 14 December 2015, and the competition provisions in the Broadcasting Ordinance and TO were repealed simultaneously.

The UEMO 'provide[s] for the regulation of the sending of unsolicited electronic messages and for connected purposes' and was adopted in 2007. All forms of commercial electronic messages with a Hong Kong link are regulated so as to monitor and regulate professional spamming activities. Users of telecommunications services in Hong Kong now have an option to register on facsimile, short message and pre-recorded message do-not-call registers. As of September 2018,²³ more than 2.7 million numbers have been registered.

16 Chapter 616 of the Laws of Hong Kong.

17 Part 2, Section 7 of the Communications Authority Ordinance.

18 Chapter 106 of the Laws of Hong Kong.

19 Chapter 593 of the Laws of Hong Kong.

20 Chapter 619 of the Laws of Hong Kong.

21 Chapter 391 of the Laws of Hong Kong.

22 Chapter 362 of the Laws of Hong Kong.

23 Based on the Registration Statistics on Do-not-call Registers published by OFCA.

However, the effectiveness of this legislation is sometimes queried, as service providers in various industries still appear able to circumvent the regulations and restrictions, and continue to make or send unsolicited marketing calls, facsimiles and text messages. In March 2018, the government proposed that a statutory do-not-call register for cold calls should be established, and that this new register should be managed by the Privacy Commissioner (see the section below), which will serve as a one-stop shop to administer the statutory register and enforce the new rule.²⁴

The purpose of the TDO is:

[to] prohibit false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods provided in the course of trade or suppliers of such goods; to confer power to require information or instruction relating to goods to be marked on or to accompany the goods or to be included in advertisements; to restate the law relating to forgery of trade marks; to prohibit certain unfair trade practices; to prohibit false trade descriptions in respect of services supplied by traders; to confer power to require any services to be accompanied by information or instruction relating to the services or an advertisement of any services to contain or refer to information relating to the services; and for purposes connected therewith.

On 19 July 2013, amendments to the TDO came into effect to 'provide greater protection for consumers by extending its coverage from goods to services and specified unfair trade practices'²⁵ by prohibiting false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepted payments. The CA has concurrent jurisdiction with the Customs and Excise Department to enforce these provisions in the broadcasting service sector. The CA does not preview or pre-censor any material before its broadcast. Editorial responsibility lies with the licensees themselves. The CA has promulgated a set of codes of practice for television and sound broadcasting services to provide guidance on these issues to the service providers.

The Office of the Privacy Commissioner for Personal Data

Hong Kong was the first territory in Asia to legislate and establish an independent privacy commissioner for personal data, covering both the private and public sectors. Hong Kong's Privacy Commissioner for Personal Data (Privacy Commissioner) has formulated operational policies and procedures relating to the implementation of privacy protection provisions, and is responsible for ensuring the protection of the privacy of individuals with respect to personal data and for overseeing the administration and supervision of the Personal Data (Privacy) Ordinance (PDPO),²⁶ the legislation that regulates the collection and use of personal data in Hong Kong.

There are six data protection principles under the PDPO that must be adhered to, the fourth of which deals with the security of personal data. Telecommunications and broadcasting service providers must be prudent at all times in safeguarding personal data that is in their possession against unauthorised or accidental access, processing, erasure or other use. There have been several incidents in Hong Kong regarding the alleged breach of this principle: for example, the leakage of personal data by members of the Hong Kong police

24 *South China Morning Post*, 'Hong Kong government cracks down on cold-calling with new do-not-call register proposal', published on 30 March 2018.

25 Press release of OFCA dated 15 July 2013.

26 Chapter 486 of the Laws of Hong Kong.

force as a result of a peer-to-peer application that was installed on their personal computers. The police force's alleged lack of awareness of the potential impact of such programmes led to the leakage of important personal data to the public via the internet. A second example is the alleged misuse of the personal data of more than 2 million individuals in Hong Kong that had registered under a rewards programme run by the service provider of the biggest electronic payment system in Hong Kong (Octopus).²⁷ The leak of the personal data of Octopus users was so significant that the Privacy Commissioner issued its first-ever interim report on its investigation into the matter at the end of July 2010. The final report was published in October 2010.

In response to increasing concerns over the alleged misuse of personal data, the PDPO was amended in 2012 to:

- a* address the unauthorised disclosure of personal data by a person who obtained such personal data from a data user;
- b* extend the enforcement power of the Privacy Commissioner;
- c* clarify the requirements when using personal data for direct marketing and when providing personal data to another for use in direct marketing; and
- d* provide legal assistance to aggrieved individuals seeking compensation from a data user for damages suffered as a result of the data user's contravention of any requirement imposed by the PDPO in relation to their personal data.

The Privacy Commissioner has published codes and guidelines on personal data privacy protection regarding the internet for information technology practitioners, biometric data users, CCTV and drone operators as well as mobile service operators.

The Hong Kong Computer Emergency Response Team Coordination Centre

The Hong Kong Computer Emergency Response Team Coordination Centre (HKCERT), managed by the Hong Kong Productivity Council, is the centre for coordination of computer security incident responses for local enterprises and internet users. It facilitates information dissemination, provides advice on preventive measures against security threats and promotes information security awareness, as well as issuing security alerts to warn about vulnerable computer systems.²⁸

ii Sources of law

Hong Kong's laws governing broadcasting, communications, media and the publication of books and newspapers are scattered across multiple pieces of legislation, including:

- a* the Communications Authority Ordinance;
- b* the Broadcasting Ordinance;
- c* the Competition Ordinance;

²⁷ Octopus runs a rewards programme for customers to incentivise the usage of the Octopus card. When one registers for the Octopus reward programme, certain personal data is provided to Octopus. In the summer of 2010, it was revealed that Octopus had been selling personal data of those registered for the reward programme to other unrelated service providers (such as insurance companies) for direct marketing purposes. In July 2010, Octopus disclosed that it had made HK\$44 million since early 2006 by selling personal data.

²⁸ See, for example, HKCERT's Security Bulletin entitled Microsoft Monthly Security Update (Aug 2018), released on 15 August 2018.

- d* the Film Censorship Ordinance;²⁹
- e* the Interception of Communications and Surveillance Ordinance;³⁰
- f* the TO;
- g* the UEMO;
- h* the Books Registration Ordinance;³¹
- i* the Registration of Local Newspapers Ordinance;³²
- j* the TDO; and
- k* the PDPO.

The Communications and Creative Industries Branch of Hong Kong's CEDB is the policy bureau responsible for broadcasting and telecommunications policy. However, the responsibility for supervision of licensees rests with the CA.

iii Ownership restrictions

The TO

The CA has power to impose conditions, including the period of validity, in respect of the licences issued under the TO. In addition, the CA has authority to require a licensee to comply with the terms of its licence and any applicable legislation, regulations and codes of practice, and to suspend or revoke licences in accordance with the TO or other rules or regulations to protect the public interest.

The TO disqualifies two categories of person from controlling an entity with a sound broadcasting licence: disqualified persons and unqualified persons. Subject to exemptions, disqualified persons are restricted from exercising control (or increasing control) over a sound broadcasting licence holder.³³ Disqualified persons include:

- a* advertising agents;
- b* suppliers of broadcasting materials to licensees;
- c* a sound broadcasting licence holder;
- d* any person who (as its business) transmits sound or television material, whether in Hong Kong or outside Hong Kong;
- e* a domestic free-to-air or a domestic pay-TV licensee; or
- f* an associate of any of such persons, or any person who exercises control of a corporation that is a person referred to above.³⁴

Unqualified persons are persons who are not, for the time being, ordinarily resident in Hong Kong³⁵ and who have not at any time been resident for a continuous period of no less than

29 Chapter 392 of the Laws of Hong Kong.

30 Chapter 589 of the Laws of Hong Kong.

31 Chapter 142 of the Laws of Hong Kong.

32 Chapter 268 of the Laws of Hong Kong.

33 Section 13G of the TO.

34 Section 13A of the TO.

35 Ordinarily resident in Hong Kong:

a in the case of an individual, means:

(i) resident in Hong Kong for not less than 180 days in any calendar year; or

(ii) resident in Hong Kong for not less than 300 days in total in any two consecutive calendar years; and

b in the case of a company, means a company:

(iii) that is formed and registered in Hong Kong under the Companies Ordinance (Cap 622);

seven years; or, in the case of a company, is not a company that is ordinarily resident in Hong Kong.³⁶ The aggregate of the voting shares that can be held by unqualified persons may not exceed 49 per cent of the total number of voting shares of a sound broadcasting licence holder.

The CA also imposes a disposal restriction after the grant of a sound broadcasting licence.³⁷ Unless the CA otherwise agrees, a right, title or interest in 15 per cent or more of the shares in a sound broadcasting licence holder may not be transferred or acquired, directly or indirectly, within a three-year period after the grant date. Any agreement or similar arrangement or understanding that breaches this requirement is void.

The regulation and classification of internet and IP-based services fall under the purview of the TO. There is no separate regime insofar as internet services are concerned. All sectors of Hong Kong's telecommunications market have been liberalised with no foreign ownership restrictions.³⁸

The Broadcasting Ordinance

The Chief Executive in Council grants licences under the Broadcasting Ordinance for domestic free-to-air and domestic pay-TV programme services, whereas the CA is responsible for granting licences for non-domestic and other licensable television programme services.³⁹

Control restrictions for broadcasting licences are set out in Section 8(4) of the Broadcasting Ordinance. The restrictions in relation to domestic free-to-air and domestic pay-TV programme service licences are:

- a the exercise of the control and management of the licence holder must be *bona fide* in Hong Kong and, where there are two or more directors (the majority being individuals as opposed to corporates), the individuals who actively participate in the company must satisfy a residency requirement.⁴⁰ The residency requirement is equally applicable to those directors who actively participate in management and operations, and to the principal officers (being those in charge of the selection, production or scheduling of television programmes) of the licence holder; and
- b no disqualified person or their controlling entities or persons or associates (unless otherwise disclosed in the licence application) can exercise control over (or remain in control of) the licence holder. The purpose of this is to restrict cross-media ownership.

(iv) in which case: if not more than two of its directors take an active part in the management of the company, each of those directors is for the time being ordinarily resident in Hong Kong and each of them has at any time been resident for a continuous period of not less than seven years; or, if more than two of its directors take an active part in the management of the company, a majority of those directors are each of them, for the time being ordinarily resident in Hong Kong and have at any time been resident for a continuous period of not less than seven years; and

(v) the control and management of which is bona fide exercised in Hong Kong.

36 Section 13I of the TO.

37 Section 13J of the TO.

38 Telecommunications Overview published by OFCA, June 2016.

39 Sections 8(1) and (2) of the Broadcasting Ordinance.

40 Such individuals must be ordinarily resident in Hong Kong. According to Section 2(1) of the Broadcasting Ordinance, ordinarily resident in Hong Kong in relation to an individual means that the individual must reside in Hong Kong for no less than 180 days in a calendar year or have done so for no less than for a total of 300 days in any two consecutive years and, further, such individuals must have ordinarily resided in Hong Kong for a period of not less than seven years.

The restrictions are less stringent for non-domestic and other licensable television programme service licence holders, which are only required to have at least one director or principal officer satisfying the residency requirement.

Broadcasting licences ownership and voting restrictions

The Broadcasting Ordinance sets out detailed restrictions regarding the holding, acquisition or exercise of voting control of licence holders who are not qualified voting controllers (except for domestic pay-TV licence holders). A qualified voting controller is someone who, in the case of an individual, has resided in Hong Kong for a period of no less than seven years or, in the case of a corporation, whose directors satisfy the Hong Kong residency requirement. An unqualified voting controller is anyone who is not a qualified voting controller. Unqualified voting controllers cannot exercise voting control in excess of 49 per cent of the total voting control at any time. Further, prior approval of the CA is required for the holding, acquisition or exercise of voting control by an unqualified voting controller of 2 to 6 per cent or 6 to 10 per cent, or more than 10 per cent of a licence holder. If an unqualified voting controller holds more than 10 per cent, only up to 10 per cent of the voting rights can be exercised by such controller.

Further, a domestic free-to-air television programme service licence will not be granted to a company that is a subsidiary of a corporation.⁴¹

iv Competition measures

The Competition Ordinance

On 14 June 2012, the Competition Ordinance was passed as a general and cross-sector competition law curbing anticompetitive conduct across all industry sectors. The Competition Ordinance came into full force on 14 December 2015. Under the Competition Ordinance, the CA has concurrent jurisdiction with the Competition Commission to enforce the Competition Ordinance in respect of the conduct of telecommunications and broadcasting licensees, including merger and acquisition activities involving carrier licensees.⁴² A memorandum of understanding was entered into between the CA and the Competition Commission in December 2015 to affirm their commitment to exercising their functions with a consistent interpretation and application of the provisions of the Competition Ordinance.⁴³ The CA will ordinarily take the role of lead authority on matters that fall within the concurrent jurisdiction.

The Competition Ordinance provides for a cross-sectoral competition law prohibiting anticompetitive conduct through three competition rules:

- a* the First Conduct Rule:⁴⁴ an undertaking⁴⁵ must not make or give effect to an agreement, engage in a concerted practice or, as a member of an association of undertakings, make

⁴¹ Section 8(3) of the Broadcasting Ordinance.

⁴² Section 159 of the Competition Ordinance.

⁴³ Press release of the Competition Commission and Memorandum of Understanding between the Competition Commission and the CA dated 14 December 2015.

⁴⁴ Section 6(1) of the Competition Ordinance.

⁴⁵ Undertaking means any entity, regardless of its legal status or the way in which it is financed, engaged in an economic activity, and includes a natural person engaged in an economic activity.

or give effect to a decision of the association, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong;

b the Second Conduct Rule: an undertaking that has a substantial degree of market power must not abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong;⁴⁶ and

c the Merger Rule: an undertaking must not, directly or indirectly, carry out a merger involving telecommunications carrier licensees that has, or is likely to have, the effect of substantially lessening competition in Hong Kong.⁴⁷ When determining whether a merger has, or is likely to have, the effect of substantially lessening competition, the CA may take into account:

- the extent of competition from competitors outside Hong Kong;
- whether the acquired undertaking, or part of the acquired undertaking, has failed or is likely to fail in the near future;
- the extent to which substitutes are available or are likely to be available in the market;
- the existence and height of any barriers to entry into the market;
- whether the merger would result in the removal of an effective and vigorous competitor;
- the degree of countervailing power in the market; and
- the nature and extent of change and innovation in the market.⁴⁸

For the telecommunications industry, in addition to the provisions of the Competition Ordinance, the TO also contains a further provision relating to dominant licensees – Section 7Q (exploitative conduct). Under this section, a licensee in a dominant position in a telecommunications market must not engage in conduct that in the opinion of the CA is exploitative. In determining whether a licensee is dominant, the CA must take into account, *inter alia*:

a the market share of the licensee;

b the licensee's power to make pricing and other decisions;

c any barriers to entry to competitors in the relevant market;

d the degree of product differentiation and sales promotion; and

e any other matters stipulated in guidelines issued for the purposes of Section 7Q.

III SPECTRUM POLICY

i Development

Spectrum policy in Hong Kong encompasses management, pricing, supply and rights relating to spectrum. It was monitored and regulated by the former TA prior to 1 April 2012, and is now monitored and regulated by the CA. Since 2007, the government has adopted a market-based approach to spectrum management,⁴⁹ and it will not depart from this approach

46 Section 21(1) of the Competition Ordinance.

47 Section 3, Schedule 7 of the Competition Ordinance.

48 Section 6, Schedule 7 of the Competition Ordinance.

49 Market-based approach for spectrum management means methods relying on market forces to ensure the efficient use of spectrum as a public resource. (From the Radio Spectrum Policy Framework (April

unless there is a public policy reason to do so. The CA is open about the availability of spectrum, and a spectrum release plan governing a three-year period going forward was released pursuant to the Radio Spectrum Policy Framework that was announced in April 2007. Under the spectrum release plan, industry participants can bid for spectrum use rights through an open bidding or tendering process. To ensure industry participants are kept aware of the availability of spectrum, the spectrum release plan is updated annually on a rolling basis or as required taking into account the latest developments. Spectrum availability determines the number of market players in the industry. Currently, spectrum is auctioned and allocated by the CA through the latest spectrum release plan. Where spectrum has been previously allocated under an earlier release plan, this will be clearly stated in the current release plan.

The CA announced the spectrum release plan for 2018 to 2020 on 26 July 2018. According to the plan, 4,500MHz of bandwidth is expected to be available for release to the market through auction, tendering or other appropriate means (subject to the outcome of consultation and the enactment of the relevant subsidiary legislation) in 2019.⁵⁰ Nonetheless, the CA has clearly stipulated that the release plan is non-binding, and it is not bound to allocate or assign any spectrum to any industry player. All allocation of spectrum, as and when such allocation is made, is subject to the CA's discretion.

As part of the spectrum management policy, Hong Kong is also considering spectrum trading to create a market for secondary trading of spectrum use. The government is understood to have commissioned feasibility studies, but it has yet to make the consultant's report publicly available.⁵¹ However, the consultant's conclusions can be inferred from the reports of the Subcommittee on Telecommunications. These suggest that, in jurisdictions where it is permitted, spectrum trading does not occur frequently. Further, while demand for spectrum remains incessant, few holders of spectrum rights are willing to transfer their rights to other operators. The administration did not therefore consider spectrum trading a matter of priority, even though it is viewed as desirable under the Radio Spectrum Policy Framework.⁵²

In November 2013, two Hong Kong TV stations were fined by OFCA for renting transmission capacity without the prior consent of the CA, per the licence requirement, constituting illegal spectrum trading under the current legislation.

In February 2016, the CA and the Secretary for Commerce and Economic Development (SCED) jointly published a consultation paper in relation to the arrangement for reassignment of the frequency spectrum in the 900MHz and 1,800MHz bands upon expiry of the existing assignments between November 2020 and September 2021.⁵³ The 900–1,800MHz spectrum consists of 50MHz of spectrum in the 900MHz band and 150MHz of spectrum in the 1,800MHz band. It accounts for 36 per cent of the 552MHz of spectrum already assigned to the industry for the provision of public mobile telecommunications services.⁵⁴ According

2007, published by the-then Communications and Technology Branch of the Commerce, Industry and Technology Bureau of Hong Kong).

50 Spectrum Release Plan for 2018–2020 dated 26 July 2018 published by OFCA.

51 OFTA's 2008/2009 Trading Fund Report.

52 Report of the Subcommittee on Telecommunications, LC Paper No. CB (4) 170/12-13; LC Paper No. CB (4) 364/12-13(05).

53 Arrangements for the Frequency Spectrum in the 900MHz and 1,800MHz Bands upon Expiry of the Existing Assignments for Public Mobile Telecommunications Services and the Spectrum Utilization Fee – Consultant Paper dated 3 February 2016.

54 Press release of the CA dated 3 February 2016.

to HKT, Hong Kong's largest operator of fixed-line and mobile networks, it is the largest amount of spectrum ever assigned in one lot, and the frequency bands are critical blocks for the provision of 3G, 4G and future 5G services. In essence, there are three proposals put forward by the government: a full-fledged administratively assigned approach that assigns all the spectrum to the incumbent MNOs through the offer of a right of first refusal; a full-fledged market-based approach that reassigns all the spectrum by way of auction; and a hybrid approach that reassigns 40MHz or one-fifth of the 900–1,800MHz spectrum to the incumbent MNOs through the offer of the right of first refusal and the rest by way of auction.

In February 2017, the CA and the Secretary for Commerce and Economic Development (SCED) launched the second round of public consultation in relation to the arrangement for reassignment of 200MHz of frequency spectrum in the 900MHz and 1,800MHz bands. Having considered the submissions received in response to the February 2016 consultation paper, and the findings of a consultancy study on the impact on service quality arising from the various spectrum reassignment options set out in that consultation paper, in the second consultation paper, the CA proposed for further consultation the hybrid option of the administratively assigned cum market-based approach for the reassignment of the frequency spectrum in the 900MHz and 1,800MHz bands. That approach would reassign part of the spectrum to the incumbent spectrum assignees through the offer of a right of first refusal, with the remaining spectrum to be reassigned by auction. Under the hybrid approach proposed by the CA:

- a* 2 x 10MHz of spectrum in the 1,800MHz band would be reassigned to each of the four incumbent spectrum assignees through the offer of a right of first refusal (RFR spectrum): i.e., a total of 80MHz or 40 per cent of the 900 and 1,800MHz spectrum would be offered as RFR spectrum;
- b* the remaining 70MHz of spectrum in the 1,800MHz band and all the 50MHz of spectrum in the 900MHz band would be assigned by way of auction: i.e., at least a total of 120MHz or 60 per cent of the 900 and 1,800MHz spectrum would be auctioned; and
- c* any spectrum that may become available arising from the decision of any incumbent spectrum assignee to not take up the RFR spectrum (as mentioned in (a) above) will be pooled together with the 120MHz of spectrum (as mentioned in (b) above) to form the auctioned spectrum.⁵⁵

In December 2017, the CA announced its decision to adopt a hybrid administratively assigned cum market-based approach to reassign the 200MHz of spectrum in the 900 and 1,800MHz bands upon the expiry of their existing assignments. Under the hybrid approach, each of the incumbent spectrum assignees will be offered a right of first refusal to be reassigned 20MHz of spectrum in the 1,800MHz band, amounting to a total of 80MHz of RFR spectrum. This will leave at least 70MHz of spectrum in the 1,800MHz band, which, together with the 50MHz of spectrum in the 900MHz band, is to be reassigned by way of auction (the auctioned spectrum). As to spectrum utilisation fee (SUF), the SECD decided that the auction reserve price for the auctioned spectrum in the 900MHz and 1,800MHz bands should be set at HK\$38 million per MHz, and that the SUF of the RFR spectrum should be set at the average SUF of the auctioned spectrum in the 1,800MHz band, subject

⁵⁵ Press release of the CA dated 14 February 2017.

to a minimum price of HK\$54 million per MHz and a cap at HK\$70 million per MHz.⁵⁶ The OFCA published an information memorandum in September 2018 for the auction of spectrum in the 900MHz and 1,800MHz bands. Parties interested in participating in the auction should submit their applications to OFCA between 15 and 16 November 2018.⁵⁷

The recent consultations have renewed calls to allow spectrum trading among Hong Kong's telecommunications network operators. However, the CA's view is that as spectrum is a scarce resource, it is unlikely that MNOs would be willing or able to release any spectrum to make trading viable. The CA considers the implementation of spectrum trading in Hong Kong a policy matter on which the government has commissioned a consultancy study. The CA noted that this issue will be addressed further once the findings of that consultancy study are available.⁵⁸ The CEDB asked Analysys Mason and DotEcon to provide an assessment on the potential implementation of spectrum trading in Hong Kong. In their presentation to the Panel on Information Technology and Broadcasting of the Legislative Council dated 11 June 2018,⁵⁹ they concluded that there is limited evidence that spectrum trading is necessary or beneficial in the Hong Kong context, and that the benefits of spectrum trading are unlikely to justify the costs and risks of implementing spectrum trading in Hong Kong.

ii Broadband and next-generation mobile spectrum use

With over 56,600 registered Wi-Fi access points,⁶⁰ Hong Kong has extensive public Wi-Fi service coverage. Wi-Fi operates on unlicensed spectrum in the 2.4GHz and 5GHz bands. Small cells are installed in payphone kiosks, bus stops and shops and on lampposts to boost mobile network capacity and improve signal reception. OFCA facilitates the extension of mobile broadband coverage by use of microwave backhaul links for the connection of small cells to the core network.

The CA adopts a light-handed licensing and regulatory approach for public Wi-Fi services.⁶¹ As of September 2018, eight unified carrier licensees are authorised to provide public Wi-Fi services.⁶² The CA aims to release available spectrum blocks as soon as they are made available to the public so that the public can enjoy the benefits of advanced wireless technologies as early as possible.

It is expected that there will be greater demand for radio spectrum for the development and commercial application of 5G mobile technologies, which is expected to launch in the market around 2020. The SCED indicated in his written reply to a question raised in the Legislative Council that, since it is expected that 5G services will use radio spectrum above the 6GHz band, the CA will closely monitor the latest developments in the allocation of the concerned spectrum for the provision of 5G services in the international arena, and plan for the necessary supply of spectrum having regard to the actual situation in Hong Kong.⁶³

56 Press release of the CA dated 19 December 2017.

57 Press release of OFCA dated 21 September 2018.

58 Annex to the second consultation paper, Paragraph 22.

59 Powerpoint presentation, Study on the implementation of spectrum trading in Hong Kong by David Abecassis dated 11 June 2018.

60 As of September 2018, provided by OFCA.

61 OFCA presentation, Facilitating the Wireless Broadband Connection of Hong Kong, by Sanda Cheuk, Assistant Director (Regulatory) dated 9 March 2016.

62 Provided by OFCA.

63 Commerce of Economic Development Bureau, Legislative Council Question 22: Efficiency of radio spectrum utilization dated 29 June 2016.

In March 2018, the CA decided that the allocation of the 3.4–3.7GHz band will be changed from fixed satellite service to mobile service from 1 April 2020, with 200MHz of spectrum in the 3.4–3.6GHz band assigned for the provision of public mobile services and 100MHz of spectrum in the 3.6–3.7GHz band partitioned as a guard band to minimise radio interference.⁶⁴ Further, the CA opened up the 5GHz band typically used for Wi-Fi for use by mobile operators in June 2018. A total bandwidth of 580MHz was made available, with MNOs free to apply to the CA for use of the concerned band to provide public mobile services through necessary amendments to their UCLs. This decision is intended to enable Hong Kong to become one of the first few economies in the world to adopt advanced mobile technologies, such as licensed assisted access, in the 5GHz shared band for the provision of higher speed public mobile services.⁶⁵

The SCED and CA jointly launched a public consultation in August 2018 on the allocation and assignment arrangements on a total of 200MHz of spectrum in the 3.3GHz and 4.9GHz bands for the provision of public mobile services. Spectrum in these two frequency bands forms part of the 4,500MHz of new spectrum that the CA is expected to release in 2019 and 2020 for supporting the development of 5G services.⁶⁶

iii Spectrum auction and fees

Since it is a limited resource, and demand is high, the government imposes a fee on the use of spectrum. The SUF is applicable to all use of spectrum save that reserved for government use. As an example, in March 2013, a total of 50MHz of radio spectrum in the 2.5–2.6GHz band was sold for HK\$1.54 billion to four bidders.⁶⁷

The results of the auction of spectrum in the 1.9–2.2GHz band were announced by OFCA on 10 March 2015. A total of 49.2MHz of spectrum was reassigned after the incumbent spectrum assignees exercised their right of first refusal. Following the decision of the CA on the arrangements for reassignment of the spectrum, and its decision to give conditional consent to the acquisition by HKT Limited of CSL New World Mobility Limited, the other three incumbent spectrum assignees accepted the right of first refusal for the reassignment of 68.2MHz of the 118.4MHz of paired spectrum that was assigned in 2001. The remaining 49.2MHz was reassigned through auction, where a non-incumbent spectrum assignee was assigned a total of 19.6MHz of spectrum, with the rest being assigned to the incumbent spectrum assignees. Together, the winners of the auction paid SUFs of HK\$2.42 billion for their 15-year licences, which commenced on 22 October 2016.⁶⁸

The SECD considers that determining the SUF for the auctioned spectrum and the RFR spectrum in the 900 and 1,800MHz spectrum is a policy matter and, in accordance with the government's Radio Spectrum Policy Framework, a market-based approach in spectrum management will be used wherever the CA considers that there are likely to be competing demands from providers of non-government services for the spectrum. An SUF that reflects the full market value of the spectrum, as determined by the market through a competitive

64 Statement of CA dated 28 March 2018.

65 Press release of CA dated 4 June 2018.

66 Press release of CA dated 28 August 2018.

67 Press release of OFCA dated 19 March 2013.

68 Press release of OFCA dated 8 December 2014 and the Successful Bidder Notice published by the CA dated 10 March 2015.

bidding process, seeks to ensure that spectrum, being a scarce public resource, is put into the hands of those who value it the most and who will consequently put it to the most efficient use. See subsection i in relation to the SUFs for the auctioned spectrum and RFR spectrum.

IV MEDIA

i Mobile services

To facilitate the development of broadcast-type mobile TV services, the government announced the Framework for Development of Broadcast-type Mobile TV Services in Hong Kong in February 2010. In the Framework, the government announced that the radio spectrum of 678–686MHz would be released for the introduction of broadcast-type mobile TV services in Hong Kong, with at least 75 per cent of the transmission capacity to be used to provide mobile TV services and with the operator entitled to harness the remaining capacity of the UHF allocated for delivery of other services such as datacasting.⁶⁹

Pursuant to the TO, an operator of the network used to transmit mobile TV services via the assigned spectrum is required to obtain a UCL. The government has also indicated that the content of mobile TV, either local broadcast-type or streaming-type, should be subject to regulation by general laws rather than under the Broadcasting Ordinance. To enable self-regulation, the industry will be required to develop codes of practice on the provision of mobile TV services prior to service commencement. The codes should include, *inter alia*, the requirement of conditional access with a view to protecting public morals and children.⁷⁰

The radio spectrum of 678–686MHz was auctioned off in June 2010, with China Mobile Hong Kong Corporation Limited successfully bidding for the spectrum for an SUF of HK\$175 million. OFTA announced that, after payment of the SUF and submission of the performance bond, China Mobile Hong Kong Corporation Limited would be assigned the spectrum under a 15-year UCL. The licensee would be obliged to provide service coverage to at least 50 per cent of Hong Kong's population within 18 months from licence grant.⁷¹

V THE YEAR IN REVIEW

i Examination of the licence conditions of Television Broadcasts Limited

In May 2017, the CA indicated that it had engaged a Queen's Counsel to examine the licence conditions of, and statutory declarations and deeds of undertakings submitted by, Television Broadcasts Limited (TVB),⁷² Hong Kong's largest free-to-air television broadcaster, and to review its compliance with the Broadcasting Ordinance's provisions regarding ownership and control. The investigation arose following a concern highlighted by the Takeovers and Mergers Panel of the Securities and Futures Commission (Panel) in its ruling dated 10 May 2017 on an application for a waiver of the obligation to make a mandatory general offer (whitewash waiver) for TVB shares under the Takeovers Code (ruling). Specifically, the Panel was of the view that China Media Capital, an indirect shareholder of TVB controlled by Chinese media

69 Framework for Development of Broadcast-type Mobile TV Services in Hong Kong (February 2010) published by the then Communications and Technology Branch of the CEDB.

70 Ibid.

71 Press release of the OFTA dated 29 June 2010.

72 *South China Morning Post*, 'Hong Kong's telecoms regulator to examine TVB's shareholding structure', published on 18 May 2017.

tycoon Mr Li Ruigang, had great influence over the appointment of directors at TVB,⁷³ which appears to be contrary to the stipulation in the Broadcasting Ordinance that only a permanent resident of Hong Kong can be a qualified voting controller of a domestic TV licensee such as TVB.

In the ruling, the Panel referred to various provisions under Schedule 1 to the Broadcasting Ordinance that place restrictions on the ownership and control of domestic free-to-air television licensees, including but not limited to Section 20(1), which provides that an unqualified voting controller is required to obtain prior written approval from the CA if its holding crosses 2, 6 or 10 per cent of the licensee's issued shares; Section 3, which provides that a disqualified person is restricted from holding more than 15 per cent of the licensee's shares; and Section 19, a scale-back provision that restricts the voting control that can be exercised by unqualified voting controllers at the licensee's general meetings.⁷⁴ The Panel recommended that the Securities and Futures Commission provide certain relevant documents and a copy of the ruling to the CA so that the CA may discharge its duties.⁷⁵

TVB applied for leave for judicial review of the ruling seeking, *inter alia*, an order to quash the ruling. The court granted leave for judicial review, quashed the ruling partially and declared that the scale-back provision set out in Section 19 of Schedule 1 of the Broadcasting Ordinance applied to the shareholders' approval of the whitewash waiver.⁷⁶ In particular, the court held that the Panel's decision to make the grant of the whitewash waiver conditional upon the majority votes cast at the general meeting of TVB in favour of the resolution to approve the whitewash waiver without adjustment under the scale-back provision is not permissible under the Broadcasting Ordinance. This in effect calls for a vote by the independent shareholders of TVB on the whitewash waiver, but without applying the scale-back provision. The court remitted the question of whether to grant the whitewash waiver to TVB back to the Takeovers Executive (which is the Executive Director of the Corporate Finance Division of the Securities and Futures Commission and its delegates) for consideration.

In January 2018, it was reported that TVB had decided to abandon its share buy-back plans, which would have helped Mr Li Ruigang to raise his stake in TVB.⁷⁷

ii Recent enforcement trends

On 30 January 2018, OFCA conducted an evening raid into a suspected use of an illegal radio transmitter for FM sound broadcasting by Citizens' Radio at an industrial building in Chai Wan. Pursuant to the authority of a warrant, OFCA officers entered the premises and seized one radio transmitter set during the operation. A person who establishes or maintains a means of telecommunications without an appropriate licence under the TO contravenes Section 8(1) of the TO and may be subject to prosecution. An offender is liable to a fine

73 Takeovers and Mergers Panel's ruling on an application for a waiver of the obligation to make a mandatory general offer for the shares of Television Broadcasts Limited under the Takeovers Code arising from an offer under the Share Buy-backs Code and related matters dated 10 May 2017, Paragraphs 59 and 65.

74 *Ibid.*, Paragraph 7.

75 *Ibid.*, Paragraph 75.

76 *Television Broadcasts Ltd v. The Takeovers and Mergers Panel & Others* [2017] 5 HKLRD 541. Judgment dated 4 October 2017 by the Honourable Lisa Wong J.

77 *South China Morning Post*, 'TVB abandons stock buy-back, dealing a blow to mainland mogul's plan to extend control', published on 23 January 2018.

of HK\$100,000 and five years' imprisonment upon conviction. A person who knowingly participates in the transmission of messages through unlicensed radio transmitters may also commit a criminal offence under Section 23 of the TO and be liable to a fine of HK\$50,000.⁷⁸

iii Mobile numbers with leading digits 4, 7 and 8 made available

To meet the demand for additional mobile phone numbers, OFCA advised the public in February 2018 that about 10.6 million new numbers with the prefixes 4, 7 and 8 would be made available for the provision of mobile services in Hong Kong. These new mobile numbers are now being used by the general public in conjunction with the previously existing mobile numbers with the leading digits 5, 6 and 9.⁷⁹

iv Relaxation of regulations governing indirect advertising

In July 2018, the CA announced its decision to relax the regulation of indirect advertising in television programme services and to lift the prohibition on the broadcast of advertisements for undertaker and associated services. With effect from 27 July 2018, indirect advertising will be permitted in TV programmes except for news programmes, current affairs programmes, children's programmes, educational programmes, and religious service and other devotional programmes. The regulations governing indirect advertising will be relaxed in respect of product placement and unpaid commercial references.⁸⁰

Product placement refers to the inclusion of products or services within a programme in return for payment or other valuable consideration being received by a licensee. So long as the exposure or use of products or services within a programme 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 the products or services, product placement is to be allowed. Licensees are required to clearly inform viewers of the inclusion of product placement at the start of a programme.

Unpaid commercial references involve indirect advertising where no payment or valuable consideration is received by a licensee. For instance, unpaid indirect advertising in acquired programmes and indirect re-transmission channels will be exempted from compliance with the regulations. Licensees are also required to clearly inform viewers of the inclusion of indirect advertising in acquired programmes and indirect retransmission channels.

78 Press release of OFCA dated 30 January 2018.

79 Press release of OFCA dated 5 February 2018.

80 Press releases of CA dated 28 March 2018 and 4 July 2018.

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