

File reference: CTB(CR)9/5/2(03)

LEGISLATIVE COUNCIL BRIEF

Broadcasting Ordinance (Chapter 562)

Pre-requisite Approval for Asia Television Limited to Obtain a Non-domestic Television Programme Service Licence

INTRODUCTION

At the meeting of the Executive Council on 25 May 2004, the Council ADVISED and the Chief Executive ORDERED that –

- (a) Asia Television Limited (ATV) be approved to hold a non-domestic television programme service licence in addition to its existing domestic free television programme service licence under section 3(2)(a) of Schedule 1 to the Broadcasting Ordinance (BO); and
- (b) subject to any other applicable provisions in the BO, all persons who are from time to time ATV's lawful directors, principal officers, beneficial owners or voting controllers of more than 15% of voting shares of ATV be approved to exercise control of ATV as disqualified persons under section 3(2)(b) of Schedule 1 to the BO to the extent that all such persons are disqualified persons by virtue of (a) above only.

JUSTIFICATIONS

Background

2. ATV, one of the two domestic free television programme service licensees¹, is operating a Cantonese Home channel and an English

¹ There are four categories of television programme service licence under the BO, namely, domestic free, domestic pay, non-domestic and other licensable television programme service licence.

World channel. It plans to launch a pay television service on the Mainland by broadcasting its Home channel across the border via satellite. ATV needs a non-domestic television programme service licence², the issuing authority of which is the Broadcasting Authority (BA), for the proposed cross-border broadcasting venture. At its meeting in March 2004, the BA approved ATV's application for the licence in principle subject to the Chief Executive-in-Council (CE in C)'s pre-requisite approval in relation to the cross-media ownership restrictions as stipulated in the BO.

3. Like other jurisdictions, there are cross-media ownership restrictions in Hong Kong to minimize the risk of media concentration and editorial uniformity. The restrictions applicable to domestic free television programme service licensees are stipulated in Schedule 1 to the BO. In essence, unless the CE in C is satisfied that public interest so requires and approves otherwise, a domestic free television programme service licensee is disqualified from holding another television programme service licence, and disqualified persons³ are prohibited from exercising control of a domestic free television programme service licensee. Therefore, ATV as a domestic free television programme service licensee would require CE in C's exceptional approval to hold a non-domestic television programme service licence. If the CE in C approves of ATV holding both a non-domestic television programme service licence and a domestic free television programme service licence, ATV's directors, principal officers, beneficial owners, voting controllers of more than 15% of voting shares will become disqualified persons exercising control of ATV in its capacity as a domestic free television programme service licensee, by definition in the BO. Therefore, ATV also requires CE in C's concurrent approval for these people to exercise control of ATV.

² Non-domestic television programme services refer to those services not primarily targeting Hong Kong. They are primarily satellite television services uplinked from Hong Kong aiming at the regional or Mainland market. Hong Kong is an ideal location for uplinking satellite television services in the region due to its state-of-the-art external telecommunications infrastructure and proximity to the Mainland. At present, there are 13 non-domestic television programme service licensees in Hong Kong.

³ For the purposes of the Broadcasting Ordinance, disqualified persons refer to television programme service licensees (except that a non-domestic television programme service licensee is not a disqualified person in relation to a domestic pay television programme service licensee), sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, persons exercising control of these persons and the associates of the above.

4. ATV has therefore applied for the CE in C's pre-requisite approval as explained in paragraph 3 above in parallel to its application to the BA for the non-domestic television programme service licence. Pursuant to section 3(3) of Schedule 1 to the BO, in considering the public interest, the CE in C shall take into account of, but not limited to, the following matters –

- (a) the effect on competition in the relevant market;
- (b) the extent to which viewers will be offered more diversified television programme choices;
- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.

Our assessment

5. Our assessment of the public interest considerations in relation to ATV's application is given below –

(a) Effect on competition

6. ATV seeks to beam its Cantonese Home channel into the Mainland to tap the market potential therein and thus requires the non-domestic television programme service licence to satisfy the existing statutory licensing requirement. Since Hong Kong and Mainland are two distinct markets, we are not aware of any probative impact on competition in a television programme service market which may be brought about by ATV's move.

(b) Effect on programme choice

7. As ATV is merely expanding the geographical coverage of its Home channel, there should not be any probative impact on programme choice. Arguably, there is a risk that the selection of programming may be skewed to cater to the taste and interest of Mainland audience at the expense of local audience, amounting to an adverse effect on programme choice. However, we consider such a risk to be rather remote because

ATV is required by its domestic free television programme service licence to provide a domestic television service which is responsive to the needs and aspirations of the community. ATV will be in breach of the licence condition if, in the opinion of the BA, its domestic free television service no longer primarily targets Hong Kong.

(c) Impact on Broadcasting Industry and Overall Benefit to the Economy

8. The overall broadcasting policy objective is to enhance Hong Kong's status as a regional broadcasting hub. Our regulatory regime is meant to be flexible to allow broadcasters to provide television services in different form and manner, targeting the local and regional market, or both.

9. Following Television Broadcasts Limited (TVB) and Hong Kong Cable Television Limited (HKCTV), ATV is the third local broadcaster to tap the Mainland market potential via satellite broadcasting. Granting ATV the pre-requisite approval to obtain the necessary licence is positive to its business by allowing it to cultivate new sources of revenue. More importantly, increased number of local broadcasters expanding their services across the border, which illustrates that they are benefiting from the advantage of proximity to the Mainland, will help enhance Hong Kong's role as the gateway to the Mainland for broadcasters as well as Hong Kong's position as a regional broadcasting hub.

IMPLICATIONS OF THE PROPOSAL

10. The decision is in conformity with the Basic Law, including the provisions concerning human rights. It has no staffing, civil service, productivity, environmental or sustainability implications. The economic implications are set out in paragraphs 6, 8 and 9 above.

Financial implications

11. Upon grant of a non-domestic television programme service licence by the BA, ATV will be required to pay an annual licence fee on a full-cost recovery basis. The annual licence fee applicable to the non-domestic television service licence being sought by ATV, as set out in the Broadcasting (Licence Fees) Regulation, is \$56,600. The additional workload arising from the administration of the new licence will be

absorbed by the Television and Entertainment Licensing Authority.

PUBLIC CONSULTATION

12. We have consulted the BA on ATV's application and the related public interest considerations. The BA agreed that there were sufficient public interest grounds for the CE in C to grant the pre-requisite approval.

PUBLICITY

13. A press release will be issued on 25 May 2004. The new licence will be posted at the Bureau's website. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

14. For enquiries, please contact Mr. Eddie Cheung, Principal Assistant Secretary (A) for Commerce, Industry and Technology (Communications and Technology), at 2189 2236.

Communications and Technology Branch
Commerce, Industry and Technology Bureau

25 May 2004