

Press Release

ATV fined for contravention of Broadcasting Ordinance

The following is issued on behalf of the Broadcasting Authority:

The Broadcasting Authority today (July 10) announced that a financial penalty of \$250,000 had been imposed on Asia Television Limited (ATV) for contravention of the relevant provisions in the Broadcasting Ordinance (Cap. 562) (BO) by allowing nine disqualified persons to exercise control of ATV by virtue of their association with a newspaper as defined in the BO, viz Phoenix Weekly Magazine, without approval of the Chief Executive in Council (CE in C) during the period from July 7, 2000 to June 1, 2005.

The BA noted that the disqualified person restriction (please see Annex for the background of the restriction) is a fundamental safeguard in the BO against the risks of media concentration and editorial uniformity. Section 39(2) of the BO requires a domestic television programme service licensee to submit annually a statutory declaration showing whether or not any disqualified person exercised any control in the licensee during the previous year. The burden of compliance is therefore placed on the licensees. ATV's failure to report the nine persons in their annual statutory declarations during the five years in question reflects gross negligence on the part of the management of ATV and a repeated failure to exercise due diligence in reminding the shareholders, directors and principal officers of ATV about the requirements of the law. The sanction has taken into consideration the fact that in this case the effect of the breach on media concentration and editorial plurality appeared to be limited as the magazine concerned had a small circulation in Hong Kong.

Apart from the financial penalty, the BA also considered it necessary for ATV to put in place a compliance mechanism to prevent similar breaches in future. The BA therefore directed ATV to submit a proposal to enhance its internal monitoring system to the BA within one month.

In June 2006, the BA also considered two complaint cases concerning nine public complaints. The first case was about the television advertisement, "The Apex" ("雍雅軒"廣告), broadcast on ATV Home, TVB Jade, Cable News 2 and

Cable Finance Info Channels between February and March 2006. The BA considered that "location" was crucial in the appeal of a real property advertisement. The slogan which appeared in all versions of the advertisement claiming that "The Apex" (雍雅軒) was situated in Kowloon was an advertising claim, and that its presentation, in particular, the specific reference to the real property concerned being located in Kowloon but in fact it was located in Kwai Chung, was misleading. With reference to the official definition of the New Territories provided by the Lands Department, the BA considered that it was inaccurate to regard Kwai Chung as a part of Kowloon despite its proximity to Kowloon. ATV, TVB and HKCTV were advised to observe more closely the relevant provisions in the Code of Practice on Television Advertising Standards on misleading claims and misrepresentation of location of property.

The second case was about inaccuracy or absence of subtitles in various programmes broadcast on ATV Home and ATV World during the period from February 2006 to April 2006. The BA considered that ATV's repeated lapses into inaccuracy and absence of subtitles in various programmes within a short period of time could not be considered as trivial. The BA was of the view that accuracy of subtitles, especially in news and financial programmes, was very important as the broadcast of erroneous information might have a great impact on viewers. ATV was strongly advised to observe more closely the relevant condition of the First Schedule to the domestic free television programme service licence of ATV, the BA's direction on subtitling, and the relevant provisions of the Generic Code of Practice on Television Programme Standards on accuracy of news and the factual content of news related programmes.

The BA also noted that in June 2006, the Commissioner for Television and Entertainment Licensing dealt with 73 cases (152 complaints) under her delegated authority, of which four cases (four complaints) were classified as minor breaches, and 48 cases (119 complaints) as unsubstantiated, under section 11 of the Broadcasting Authority Ordinance (BAO); and 21 cases (29 complaints) were outside section 11 of the BAO. Please refer to the BA website: www.hkba.hk for details of the complaints.

Annex Background

Under the BO, individuals or companies engaged in or associated with certain types of businesses are not allowed to hold a domestic free or pay television

programme service licence or exercise control of such a licensee unless the CE in C is satisfied that public interest so requires and approves otherwise. These individuals or companies, who are defined as "disqualified persons" under the Ordinance, are -

- (a) another television programme service licensee;
- (b) a sound broadcasting licensee;
- (c) an advertising agency;
- (d) a proprietor of a newspaper (including magazine) printed or produced in Hong Kong;
- (e) persons exercising control of (a) to (d) above; and
- (f) associates of (a) to (e) above.

The purpose of imposing such a restriction on disqualified persons in the BO is to safeguard against media concentration and editorial uniformity.

Ends/Monday, July 10, 2006
Issued at HKT 16:05

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