

立法會
Legislative Council

LC Paper No. CB(1)2545/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

**Minutes of special meeting
held on Friday, 19 December 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LEE Wing-tat (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members attending** : Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Public officers attending** : Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Kevin CHOI
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

**Attendance by
invitation**

: Broadcasting Authority

Ms Maisie CHENG
Principal Executive Officer

Mr PO Pui-leong
Secretary

Asia Television Limited

Mr Linus CHEUNG
Executive Chairman

Mr H Y KWONG
Senior Vice President – Corporate Development &
External Affairs

Mr LEUNG Ka-wing
Senior Vice President – News & Public Affairs

Ms Cherry YUEN
Corporate Lawyer

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 2

Ms Annette LAM
Senior Council Secretary (1)3

Ms Debbie SIU
Legislative Assistant (1)6

I. Issues relating to changes in the senior management of Asia Television Limited

(LC Paper No. CB(1)459/08-09(01) -- Administration's letter dated 18 December 2008

LC Paper No. CB(1)444/08-09(01) -- Hon WONG Yuk-man's letter dated 16 December 2008 (Chinese version only)

LC Paper No. CB(1)459/08-09(02) -- Hon Cyd HO Sau-lan's letter dated 18 December 2008 (Chinese version only)

LC Paper No. CB(1)459/08-09(03) -- Extract of relevant provisions of the Broadcasting Ordinance (Cap. 562)

LC Paper No. CB(1)459/08-09(04) -- Extract of the TV Programme Code

LC Paper No. CB(1)459/08-09(05) -- Press statement issued on 17 December 2008 by Asia Television Limited

LC Paper No. CB(1)459/08-09(06) -- Relevant newspaper cuttings dated 18 December 2008

LC Paper No. CB(1)462/08-09(01) -- Opening remarks of Permanent Secretary for Commerce and Economic Development and Technology (Communications and Technology) (*tabled at the meeting and subsequently issued on 19 December 2008*)

Introduction

At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCT) briefed members on the current licensing and monitoring regime for free-to-air television broadcasting in Hong Kong and actions taken by the Administration in respect of the recent changes in the senior management of Asia Television Limited (ATV). A copy of his speech was tabled at the meeting (LC Paper No. CB(1)462/08-09(01)).

2. Mr Linus CHEUNG, Executive Chairman of ATV, apologized for the changes in the senior management of ATV which had aroused much public concern. He stressed that ATV would continue to uphold the freedom of speech and expression, and would make the necessary reforms to provide the viewing public with more choices of quality television programme service including news,

entertainment and information.

Discussion

Changes in the senior management of Asia Television Limited (ATV)

3. Ms Emily LAU expressed grave concern about the confusion arising from the sequence of events leading to the changes in the senior management of ATV. She noted that despite media report of Mr Ricky WONG's resignation as the Chief Executive Officer (CEO) of ATV, Mr WONG himself denied having tendered his resignation. She queried whether Mr WONG was dismissed instead of having resigned of his own accord, and whether the Board of Directors (the Board) of ATV was aware of Mr WONG's resignation. She said that the management of ATV owed the public an explanation so as to restore public confidence in the management's capability to effectively operate the free-to-air station and make efficient use of frequency spectrum which was a scarce public resource. In this connection, Mr Paul TSE also sought clarification on whether the Board was aware of Mr WONG's appointment and resignation as CEO of ATV.

4. Mr Linus CHEUNG expressed his apology for causing public concern and confusion over the changes in the senior management of ATV. Referring to the formal announcement made by ATV on 17 December 2008, he highlighted that the Board of ATV was fully aware of Mr WONG's appointment and resignation as CEO and his appointment as an Adviser to ATV. He said that he respected Mr WONG as he was an outstanding management expert and an innovative entrepreneur. He had known Mr Wong for 10 years and had personally recommended to the Board the appointment of Mr WONG as CEO of ATV. However, it turned out that he and Mr WONG differed greatly in their management style and he regrettably accepted Mr WONG's resignation.

5. Mr Paul TSE questioned the reasons behind Mr Ricky WONG's resignation. He asked whether Mr Linus CHEUNG had felt pressurized by key shareholders or directors that Mr WONG should be asked to resign. Mr TSE also asked whether Mr CHEUNG could assure members that there would be no more senior management changes in the future, as there were rumours that Mr CHEUNG would stay on only temporarily to deal with the aftermath.

6. Mr WONG Yuk-man referred to the widespread speculation that Mr Ricky WONG's appointment as CEO was brought to an abrupt end because the Central People's Government (CPG) was upset with Mr WONG's remarks that ATV should not become a China Central Television (CCTV). He questioned whether the resignation or the dismissal of Mr WONG was a political decision under the pressure of the CPG.

7. Referring to Mr Ricky WONG's denial of having tendered his resignation made publicly on 15 December 2008, and noting that the denial came shortly after Mr Linus CHEUNG's announcement that ATV had accepted Mr WONG's resignation, Ms Audrey EU considered that the management of ATV should inform

the general public that Mr WONG's abrupt departure was not due to political pressure.

8. In response, Mr Linus CHEUNG denied that the abrupt departure of Mr Ricky WONG was due to political pressure. He reiterated that Mr WONG was not dismissed and had never been pressurized to resign. Neither had he been pressurized by the CPG or the Liaison Office of the CPG to seek Mr WONG's resignation. The acceptance of Mr WONG's resignation was an administrative decision. He assured members that Mr WONG's resignation and changes in the senior management of ATV would not affect ATV's operation and undermine its right to freedom of expression and editorial independence.

9. In response to Dr Samson TAM's enquiry about the role of the Board of ATV and Mr Linus CHEUNG in making the final decision in the event of conflicts of opinion between the Executive Chairman and CEO, Mr CHEUNG replied that the Executive Chairman worked closely with CEO and would decide on matters that had to be reported to the Board.

10. In response to Mr Jeffery LAM's and Ms Emily LAU's enquiries about the selection of a new CEO, Mr Linus CHEUNG advised that a search committee would be formed to look for a suitable candidate, and the new CEO would be appointed by the Board of ATV. Mr LAM asked whether Mr CHAN Wing-key, who was the predecessor of Mr Ricky WONG, would be invited to assist the operation of ATV during this difficult transition period prior to the appointment of the new CEO. Mr CHEUNG replied that he would bring up the matter to the Board for consideration.

11. Ms Emily LAU, Mr WONG Yuk-man, Ms Cyd HO and Mr Paul TSE shared the view that the management of ATV owed the public an explanation on the reason behind Mr Ricky WONG's sudden departure so as to restore public confidence in ATV's management capability. Ms LAU was of view that ATV should provide copies of the minutes of the Board meeting and relevant documents to show that the Board had knowledge of Mr Ricky WONG's appointment and resignation as ATV's CEO.

12. Mr LEE Wing-tat said that ATV had failed to take timely action to avoid causing confusion to the public about the changes in ATV senior management, and this had affected the public's confidence in the operation of ATV. Referring to the licence condition requiring the licensee to notify the Broadcasting Authority (BA) any change of key personnel (including directors or principal officers) within seven days, he opined that such an arrangement was highly undesirable and the seven-day notification period was too long. The BA should have the power to proactively inquire into such a matter and demand a formal notification in writing from the broadcaster concerned on important issues such as changes in senior management.

13. In response, PSCT said that the notification requirement was only one of the measures of the monitoring mechanism. As a commercial entity, the broadcaster (ATV in the present case) should be given time to sort out their internal

affairs before notifying the regulator. As regards the ATV case, while the Administration had been informed of the senior management changes, it was not for the Administration to convey information about the company's internal matters to the public. He highlighted that the Administration had all along maintained regular contacts with TV broadcasters to ensure that they were capable of providing services that were in compliance with the prevailing broadcasting regulatory requirements to the viewing public.

Issues relating to the licensing and monitoring of Asia Television Limited

14. Mr LEE Wing-tat questioned ATV's competency in competing with the other free TV licensee and in providing the viewing public with alternative choices of quality free-television services. Given the low audience ratings of ATV's programmes, he said that Hong Kong people were generally dissatisfied with ATV's performance, and that the Government should consider introducing more competition in the free-television market.

15. In response, PSCT said that the two free-to-air television stations had been competing effectively. ATV had been providing television programmes in accordance with the statutory and licensing requirements and had been investing in their businesses as scheduled, particularly in respect of the rollout of digital service in the past years. The ATV management had pledged to continue to provide a full range of services in compliance with their licensing obligations and the provisions of the Broadcasting Ordinance (BO) (Cap. 562). He highlighted that the Government had always been maintaining close communications with the broadcasting licensees while the BA would continue to enforce the BO and the broadcasting licence conditions.

16. Referring to media reports that the CHA family, who had a controlling stake in ATV, might consider giving up the licence if the final capital injection of \$300 million failed to turn the station around, Mr LEE Wing-tat expressed concern about ATV's financial difficulty and chronic shortage of money. He questioned whether ATV had sufficient capital to operate effectively and to retain quality professionals. He urged the Government to clarify with ATV whether its key shareholders were still interested in running the business with commitment to inject new capital to continue its operation. Noting that the licences of ATV and TVB might be reviewed by the Chief Executive in Council (CE in Council) within such period after 1 December 2009, he urged the Administration to commence the review as soon as possible and to solicit public views on the two broadcasters' performance. In the event that ATV was found to fall short its performance commitment or did not have sufficient capital to maintain an effective operation, the Government should seriously consider not renewing its licence or bringing in new investors/competitors to provide the public with more choices of free TV services, so that the frequency spectrum as a scarce public resource would be put to optimum use.

17. Ms Emily LAU and Mr Jeffrey LAM expressed concern about ATV's financial soundness in continuing its operation if the key shareholders were not

prepared to inject new capital and decided to pull out and surrender the licence. Mr Paul TSE raised a similar concern about major shareholders' commitment in making further capital investment, and possible changes in ATV's management and shareholding structure which might have an impact on its future operation. He asked whether and under what circumstances the Government would consider withdrawing ATV's licence, and whether there was any contingency plan in case ATV was unable to operate efficiently due to the lack of funding or changes in senior management.

18. In response, PSCT advised that an established licensing and monitoring regime under the BO was in place to ensure the effective use of spectrum and free-to-air television operators' compliance with the prevailing broadcasting requirements. The conditions for the grant and renewal of licence were clearly stipulated in the BO. Licensees were required to comply with all the relevant statutory requirements under the BO and meet all the provisions in their licence conditions. To monitor licensees' performance, the licensees would be required to submit annual returns on their audited accounts, a statement regarding their compliance with residence requirements, as well as a declaration by their key personnel on compliance with various statutory requirements.

19. On the mid-term review, PSCT explained that the domestic free television programme service licences held by ATV and TVB were last renewed on 1 December 2003 with a 12-year licence term. Pursuant to section 4 of Schedule 4 to the BO and the relevant licence conditions, the licences of the two broadcasters might be reviewed by the CE in Council, within such period after 1 December 2009. In the mid-term review, the Government and the BA would examine the concerned licensees' corporate competence, financial, technical and programming capability as well as compliance with statutory requirements, licensing conditions and codes of practice. The licensees would be required to submit their plan for capital and programming investment for the coming six years (2010 to 2015) for BA's assessment. Any change to the licensee's commitment required the approval of the BA. Public consultation exercise would be conducted to solicit public views on the licensees' performance. He highlighted that the capability of ATV to operate, both in terms of provision of service and financial position, was one of the key issues to be examined in the mid-term review. Should the Government and the BA consider the performance or the future investment plans of the licensees not satisfactory, appropriate follow-up action could be taken. The Government and the BA would consider carefully all views put forward by various parties during the mid-term review to be held in the middle of the year, and would brief the Panel on the details of the review exercise in due course.

20. As regards members' concern about the change in ATV's shareholding structure, PSCT supplemented that licensees were required to notify and obtain BA's approval of any proposed change in shareholding and ownership structure according to the established procedures. He affirmed that the Television and Entertainment Licensing Authority (TELA) held close and regular liaison meetings with the licensees and relevant contingency plan was in place to deal with possible circumstances.

21. Ms Emily LAU and Ms Cyd HO expressed concern whether the management of ATV was "fit and proper person" to manage the operation of ATV. The Principal Executive Officer of the Broadcasting Authority advised that the definition of "fit and proper person" was stipulated in the BO, under which the licensees were required to make an annual declaration on compliance with various statutory requirements by their key personnel (i.e. whether they were fit and proper and comply with disqualified person requirements).

22. Ms Emily LAU said that there were press reports that ATV was losing around \$2 million a day and that if the business was not turned around, the station would incur losses of as much as \$730 million over the next 12 months. She sought clarification from Mr Linus CHEUNG on such figures. In response, Mr Linus CHEUNG said that ATV was in the red in 2008 and would not expect a turn-around within a short period of time. He estimated that ATV would need about \$1 billion for its operation in the next three years, assuming that the loss could be trimmed down in the years to come. If there was no improvement in its finances over the next two or three years, the total loss could be greater than \$1 billion. In this regard, the Board had been working hard to secure new and longer-term capital to strengthen the financial position of the company. He said that the injection of new capital by the CHA family as well as the reform and changes of ATV under the leadership of the Executive Chairman and CEO reflected the shareholders' commitment to turn ATV around. He assured members that he and the staff of ATV would strive to serve the community with quality programmes.

23. In response to Ms Audrey EU's enquiry about ATV's plan for future development, Mr CHEUNG said that ATV would need to re-position itself differently to survive amid keen market competition. Innovative and bold reforms were necessary to boost audience ratings and expand audience base. To attract young people who tended to spend more time browsing Internet rather than watching TV, ATV would make use of multi-media technologies to turn itself into a multi-media TV station. In terms of programming, less investment would be put in drama series while more informational type of programmes would be produced. He assured members that while ATV, as a commercial entity, would need a steady increase in revenue for its continued operation, the station would strive to provide the viewing public with quality programme choices in fulfillment of its social responsibility to help enhance the quality of community living.

Issues relating to freedom of press under the new management of Asia Television Limited

24. Referring to press reports that two news chiefs of ATV, namely Mr LEUNG Ka-wing and Mr KWAN Wai, had resigned to express their dissatisfaction with Mr Ricky WONG after he held a meeting with the News Department during his term of appointment as CEO of ATV, Ms Cyd HO expressed concern about the future operation of ATV News Department, particularly its right to freedom of press and editorial independence, under the new management. She asked Mr LEUNG Ka-wing the reason of his resignation and whether he had been subject to any

political or commercial pressure to resign. She also asked whether Mr LEUNG, as the Chief of the News Department, had discussed with the management about the problem prior to his resignation. Ms HO was of the view that ATV, as a free-to-air broadcaster, should bear public accountability for the management's news policy in respect of editorial independence and press freedom.

25. Mr WONG Yuk-man said that he had worked with ATV News Department at different periods in the past, during which ATV had always upheld the freedom of press as could be seen in his talk show programme produced by ATV. He asked Mr LEUNG Ka-wing whether editorial independence of the News Department had been compromised after the meeting with Mr Ricky WONG.

26. In reply, Mr LEUNG Ka-wing clarified that he had already tendered his resignation when Mr WONG visited the News Department to talk about his concept on news reporting. Mr LEUNG stressed that he had not been under any pressure to resign, although he and Mr Ricky WONG had major differences over the academic theory and philosophy of news reporting. In fact, Mr WONG had asked him to stay on, and he had served two months' notice before leaving the News Department.

27. Referring to the public's general perception of ATV as a pro-China TV station, Mr LEE Wing-tat raised concern about the possible influence on ATV's news policy by its Board which had close ties with CPG. Ms Cyd HO observed that ATV had downplayed pro-democracy news and only gave brief coverage of June 4 candle-light vigil and July 1 rally. In this connection, Ms Emily LAU said that ATV was just like a CCTV and that Mainland news from CCTV were recapped increasingly in ATV newscasts. She opined that ATV should produce more current affairs programmes and news forum of its own on matters of public policy or controversial issues of public concern.

28. Mr LEUNG Ka-wing denied having downplayed the June 4 candle-light vigil and July 1 rally by ATV. He said that there was live coverage of the 20th June 4 candle-light vigil and that the importance of a piece of news should not be assessed merely on the length of airtime. He welcomed members to review all ATV newscasts to judge for themselves whether the station had downplayed pro-democracy news. On ATV's news policy, he stressed that the station's editorial independence had not been compromised. During his 18-months' work in the News Department as its head, he had never felt any pressure from the Board and the management on the station's editorial policy. He said that ATV newscasting from 6:00 pm to 6:40 pm was longer than that of the other free-to-air TV station. He and Mr KWAN Wai as well as the duty editor enjoyed full editorial independence on what news items should be featured for the respective airtime. However, in view of the insufficient airtime, sometimes certain piece of news had to be cut short or withdrawn from the newscasts. If more airtime for newscasting was available, ATV would be able to diversify the news coverage and broadcast more local, Mainland and international news to meet the needs and expectations of the viewing public. In view of the demand of Hong Kong people for more news on China affairs, it was unfair to judge ATV's editorial stance by the

frequency of use of CCTV news. He assured members that he and his colleagues would always make their best effort to enhance the credibility of the News Department. Moreover, as a free-to-air television station, the orientation and news policy of ATV were open to public scrutiny. The public and Legislative Council Members were welcome to give views and suggestions to ATV in this respect.

29. Mr Linus CHEUNG noted members' concern about the news policy of ATV. He said that he had great respect for press freedom and the professionalism of his colleagues in the News Department. In fact, he had discussed with Mr LEUNG Ka-wing about the future development of news programmes including the feasibility of extending the airtime of newscasting. He stressed that he had not and would not in any way interfere with the work of the News Department. He assured members that the News Department would be given a free hand and more room for development.

30. Mr Jeffery LAM said that editorial independence and press freedom were core values of Hong Kong that should be treasured and preserved. He was of the view that the allocation of airtime should be flexible, depending on what happened on that day. Instead of fixing the airtime ratio for local, mainland and international news, those in charge of the News Department should have full editorial independence in striking a right balance in the coverage of political and economic news of different places. He commended ATV for its detailed news programmes and called on the News Department to upkeep its tradition of quality reporting to cater for the needs of Hong Kong people.

31. Dr Priscilla LEUNG commended the ATV News Department and its staff for their hard work and quality news coverage. She considered that ATV should make the necessary reforms and properly discharge the function of a free-to-air television station in serving the Hong Kong community. She noted some reports that ATV had been changing its news policy with a view of making news more entertaining, and expressed disagreement with such a change as news reporting should be factual, accurate and professional.

32. Dr LEUNG expressed disappointment at ATV's discriminatory advertising policy as there were rumours that ATV did not welcome advertising placed by mainland enterprises. She urged ATV management to review its advertising policy and discard the parochial "big Hong Kong" mentality. Instead of limiting itself to a "Hong Kong TV station", ATV should look beyond Hong Kong and raise its profile in news coverage in the global arena. Acknowledging Dr LEUNG's view, Mr Linus CHEUNG said that he would review the advertising policy to maintain a balanced approach.

33. Ms Emily LAU said that she had heard of a "blacklist" that some people could not appear in news during some sensitive times, and also stories of tycoons exerting undue influence on news reporting by threatening to withdraw advertisement. She was concerned that these would compromise editorial integrity. Mr LEUNG Ka-wing stressed that he had never been pressurized into changing his decision on the treatment of news items. The colleagues of the News

Department had worked hard and upheld their professional ethics to present news with accuracy and impartiality.

34. Mr Albert CHAN said that while he had no objection to ATV broadcasting Mainland news, he was keen to ensure that ATV, as a free-to-air television station, would not become a sub-station of CCTV. In view of the confusion caused by the recent changes in senior management, he was concerned that the Board and the management of ATV might exert pressure on the future operation of the News Department. He asked what mechanism was in place to ensure preservation of press freedom and editorial independence under the new management. Mr WONG Yuk-man said that media control could take the form of political control, economic control, internal control, self control and community control. He asked how ATV News Department could exercise self control and avoid self-censorship from the management.

35. Mr Linus CHEUNG stressed he would uphold non-interference with press freedom and editorial independence of ATV News Department. Mr LEUNG Ka-wing said that he and his colleagues would abide by the professional ethics of news workers and fulfill the social responsibility of presenting news in a fair and impartial manner. He said that the News Department had enjoyed a high degree of editorial independence and freedom so far. He believed that such independence would not be compromised in the future.

Cross-media ownership and the establishment of a unified regulator for broadcasting and telecommunications services

36. Mr WONG Yuk-man noted that in an article entitled "檢討現行廣播政策正合時宜" published in Hong Kong Economic Journal on 19 December 2008, Mr Albert CHENG had suggested that in the event of ATV closing down, the Administration should consider bringing in competition by allowing pay TV such as Cable TV and NOW TV to also provide free television programme service. Mr WONG invited the Administration's views on Mr CHENG's suggestion.

37. PSCT replied that the cross-media ownership rule under BO generally restricted a pay television licensee from controlling a free-television licensee, and vice versa. He said that the key issue at stake was the use and allocation of the available frequency. The matter would be examined in the context of the use of frequency spectrum for digital TV, digital radio broadcasting, and mobile TV.

38. Dr Samson TAM said that the appointment of Mr Linus CHEUNG and Mr Ricky WONG as the Executive Chairman and CEO of ATV had raised the industry's concern about cross-media ownership. In the light of technological and market convergence in the electronic communications sector that had been blurring the boundaries between broadcasting, telecommunications and information technology, the present arrangements of separate statutory regulators for broadcasting and telecommunications services was not sustainable in the long term. There was general industry support for merging the BA and the Telecommunications Authority into a unified regulator to avoid ambiguity and grey

area. In this regard, he enquired about the progress of the review of the BO and the Telecommunications Ordinance (TO) (Cap. 106) and the establishment of the Communications Authority to oversee the entire electronic communications sector.

39. In response, PSCT advised that having regard to market and technological convergence, work was underway to prepare for the establishment of a unified regulator to enhance regulatory co-ordination and efficiency which was conducive to the further development of the electronic communications industry.

II. Any other business

40. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
4 September 2009