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Panel on Information Technology and Broadcasting

Meeting on 27 May 2013

Background brief on issues relating to mid-term review of the domestic free television programme service licences

Purpose

This paper provides background information on the mid-term review of the domestic free television ("TV") programme service licences, and a summary of views and concerns expressed by the Panel on Information and Broadcasting ("the Panel") on related issues in previous discussions.

Background

2. The domestic free TV programme service licences are granted under the Broadcasting Ordinance ("BO") (Cap. 562) and are valid for 12 years. In general, the licences will be reviewed every six years in the mid-term review. The current domestic free TV programme service licences of the Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB") run from 1 December 2003 to 30 November 2015 (both dates inclusive). Under sections 4(1)(b) and 4(2)(b)(ii) of Schedule 4 to BO and Condition 3.2 of the licences of ATV and TVB, the Chief Executive ("CE") in Council ordered on 26 January 2010 that the licences of ATV and TVB should be reviewed within the period from 29 January to 28 February 2010.

3. In accordance with the established procedures and practices, the former Broadcasting Authority ("BA")¹ carried out in 2009 a comprehensive assessment on the performance of the two licensees in the past six years (i.e. from 2004 to 2009) in respect of their compliance with the statutory requirements, licence conditions and codes of practice promulgated by the

¹ The Communications Authority ("CA") takes up the function of the BA since 1 April 2012.

former BA, their financial commitments and investment plans for the following six years (i.e. from 2010 to 2015), as well as public expectations on their performance in the provision of TV services. To gauge public views on the services provided by ATV and TVB, the former BA conducted a public consultation exercise in 2009, including a territory-wide household opinion survey, three public hearings and seven discussion sessions with interested groups. The former BA also received other views from the public during the review.

4. Following the deliberations of the Executive Council on 29 June 2010, the Administration issued a Legislative Council Brief (File Ref: CTB(CR)9/2/2(10) in July 2010 announcing that the CE in Council had accepted the recommendations of the former BA in respect of the licences of ATV and TVB. The recommendations with additional conditions to improve the services of ATV and TVB for the period from 2010 to 2015 are as follows–

- (a) ATV and TVB were required to comply with their respective investment plans for 2010 to 2015 and submit by the end of 2011 updated investment plans for the period 2013 to 2015 for the former BA's approval. In addition, ATV would have to increase the amount of locally-produced programmes from 225 hours to 273.5 hours per week from 2010 to 2015;
- (b) ATV and TVB were required to commit to enhanced programme requirements, namely, an additional 120 minutes per week of arts and culture programmes and programmes for senior citizens OR an additional 90 minutes of RTHK programmes per week. In addition, ATV and TVB would have to broadcast an additional 60 minutes per week of RTHK programmes during weekends;
- (c) ATV and TVB would have to increase the amount of high definition television programming, namely, from 14 to 60 hours per week starting from 2010 for ATV and from 20 hours per week to 120 hours per week by 2015 for TVB;
- (d) ATV and TVB would have to step up incrementally the subtitling service;
- (e) ATV and TVB would have to participate in annual public engagement activities (in the form of focus group discussions) to be conducted by the former BA (and now the CA); and

- (f) ATV would have to submit a statement on or before 31 December 2010 to the satisfaction of the former BA on whether it was capable of complying with the investment plan, and demonstrate to the satisfaction of the former BA the means to deliver the investment plan.

5. In January 2012, the former BA approved the updated investment plans of ATV and TVB for the period from 2013 to 2015. In its original six-year plan for 2010 to 2015, ATV was committed to investing a total amount of \$2,332 million on programming and capital expenditure. Taking into account the updated commitments for 2013 to 2015, ATV further submitted that the total amount of investment for 2010 to 2015 would be \$2,351 million, or \$19 million more than its original commitment of \$2,332 million. The increase in the investment commitment was attributable to higher expenditure on local productions and co-productions and related expenses for backup support and administration. As regards TVB, its investment for 2010 to 2015 approved by the former BA remained at an amount of \$6,336 million.

Discussions at the Panel on Information and Broadcasting

Staffing situation and editorial independence of the two licensees

6. At the Panel meeting on 30 June 2009, members raised concern whether ATV and TVB were capable, in terms of corporate competence, financial, technical and programming capability, of providing quality television programme services in accordance with the relevant requirements under the BO and the licence conditions, in view of a number of announcements of staff retrenchments by the two licensees. According to the representatives of ATV and TVB attending the Panel meeting, the retrenchment exercises were mainly due to changes in programming strategy, and mismatch between the skills of the employees and those required for business development. The Administration advised that licence condition provided that the licensees should, inter alia, provide and maintain adequate staff resources to ensure that any interruption to its licensed service was avoided or minimized.

7. Some Panel members expressed concern about editorial independence in news reporting. They asked whether there was self-censorship on the part of programme staff and undue influence from the management on reporting sensitive issues such as commemorative activities of the June Fourth Incident. Some other members considered that TVB had

selectively reported the activities/survey findings of certain political parties. They called on ATV and TVB to maintain political neutrality, uphold the principles of fair and balanced reporting and refrain from sensational reporting.

Programming

8. At the Panel meetings on 30 June 2009 and 12 July 2010, members noted that there was considerable dissatisfaction over the programming of ATV which consisted mainly of imported dramas. There were also calls for more local productions and greater programme diversity. Some other members however considered that outsourcing would provide flexibility and cost-savings for the licensees and offer programme variety to the viewing public.

9. Some Panel members expressed concern whether programme investment could be interpreted in a broad manner so that licensees could practically spend most of the money on importing dramas/programmes instead of investing on locally-produced programmes. They also asked whether there were guidelines to guard against excessive outsourcing and importing dramas/programmes. According to the former BA, imported programmes might not necessarily be of poor quality, and licensees should be allowed greater flexibility in programme management. While it was not practicable to impose restrictive programme requirements on the licensees, the former BA would however closely monitor the programming investment of the two licensees to ensure programme diversity that would meet with public expectation.

10. On gauging public views on the provision of television programme services by the licensees, some Panel members suggested that public hearings and public engagement exercises should be held on an annual basis to enable the licensees to be more attuned to public concern and expectation on programme standard and quality. Some other members suggested that in future the former BA should consult the public on the recommendations drawn up before submission to the CE in Council for consideration. The Administration assured members that in future, the former BA would conduct annual focus group discussions with participation from ATV and TVB on the licensees' performance.

Competition

11. At the Panel meetings on 30 June 2009 and 12 July 2010, some members raised concern whether ATV could effectively compete with TVB

and provide an alternative choice to the viewing public, given its recent financial stringency, changes in the senior management and equity dispute among the shareholders. Some other members urged the Administration to monitor ATV's compliance with all the relevant statutory and licensing requirements, and consider not renewing or withdrawing the licence of ATV if such requirements were not met.

12. Regarding ATV's complaint about unfair competition that TVB had monopolized the majority of local singers and artists in the local entertainment business and advertising field, the Panel urged the Administration to investigate into the matter and provide an update on the progress of the investigation once it was available.

13. On enhancing competition, some Panel members were keen to ensure that the Administration would consider granting additional domestic free television programme service licences to bring in new entrants to the television programme service market, thereby introducing more competition and increasing TV programming choices and quality. The Panel requested the Administration to make reference to the experience of South Korea, and step up efforts in assisting the local television industry to increase the variety of quality programmes and explore the regional markets.

Other relevant issues

14. At the Fourth Legislative Council, the Panel discussed other relevant issues, including digital terrestrial television ("DTT") programmes provided by ATV and TVB, changes in shareholding structure of TVB, and complaints against ATV. A summary of the Panel's deliberation on these issues prepared by the Secretariat in May 2013 is in **Appendix**.

Latest position

15. The Administration and the Communications Authority will brief the Panel on 27 May 2013 on issues relating to the arrangement for collecting public views on the quality and variety of programmes provided by the two domestic free television programme service licensees.

Relevant papers

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 30 June 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb0630cb1-2017-6-e.pdf>

Supplementary paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 30 June 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb0630cb1-2017-7-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 30 June 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/minutes/itb20090630.pdf>

Legislative Council Brief provided by the Administration for the Information Technology and Broadcasting Panel meeting on 12 July 2010

<http://www.legco.gov.hk/yr09-10/english/panels/itb/papers/itb0712-ctbcr92210-e.pdf>

Background brief prepared by the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 12 July 2010

<http://www.legco.gov.hk/yr09-10/english/panels/itb/papers/itb0712cb1-2465-9-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 12 July 2010

<http://www.legco.gov.hk/yr09-10/english/panels/itb/minutes/itb20100712.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 10 January 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/papers/itb0110cb1-932-3-e.pdf>

Background brief prepared by the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 10 January 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/papers/itb0110cb1-932-4-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 10 January 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/minutes/itb20110110.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 11 April 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/papers/itb0411cb1-1796-7-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 11 April 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/minutes/itb20110411.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 19 September 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/papers/itb0919cb1-3010-1-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 19 September 2011

<http://www.legco.gov.hk/yr10-11/english/panels/itb/minutes/itb20110919.pdf>

Background brief prepared by the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 12 December 2011

<http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb1212cb1-587-2-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 12 December 2011

<http://www.legco.gov.hk/yr11-12/english/panels/itb/minutes/itb20111212.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 12 March 2012

<http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb0312cb1-1238-4-e.pdf>

Background brief prepared by the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 12 March 2012

<http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb0312cb1-1238-5-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 12 March 2012

<http://www.legco.gov.hk/yr11-12/english/panels/itb/minutes/itb20120312.pdf>

Council Business Division 4
Legislative Council Secretariat
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Summary of deliberations by the Panel on Information Technology and Broadcasting on issues relating to the two domestic free television programme service licenses

Digital terrestrial television broadcasting

At the Panel meetings on 10 January 2011 and 12 March 2012, some members opined that more programmes of internationally renowned channels should be relayed to increase programme variety. They were concerned about the growing phenomenon of TV stations airing programmes of exclusive broadcast rights through their pay TV channels only. As the existing free-to-air TV service was a major source of information and entertainment for the general public in Hong Kong, these members urged the two free terrestrial TV broadcasters, namely, Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB"), to increase the production and variety of their digital TV programmes, so as to attract more viewers to switch to digital terrestrial television ("DTT") services. The Administration advised that licence conditions had been included requiring ATV and TVB to improve their programme services and to increase the amount of their high definition TV programming.

2. Noting that the frequent re-run of DTT programmes by domestic free television programme licensees would affect the DTT take-up rate, some Panel members opined that provisions governing the frequency of the re-run programmes should be included in the licence conditions of these licensees to prevent the excessive re-run of programmes. The Administration advised that the former BA had drawn attention to one of the licensees' complaints about the frequency of re-run programmes and the need to put precious radio spectrum into optimal use. Nevertheless, the licensees would have the autonomy in programme content.

Changes in shareholding structure of Television and Broadcasts Limited

3. At the Panel meeting on 11 April 2011, members followed up the issues related to the recent application submitted by TVB to the former BA for a change in TVB's shareholding structure. Panel members noted that TVB had made an undertaking to the former BA that the shareholding change would not affect TVB's investment commitment of \$6.3 billion from 2010 to 2015 made in the context of the mid-term review of its licence in 2010.

4. Some members expressed concern whether the former BA had vetted the funding sources of TVB's shareholders to ensure that its editorial independence would not be affected after the shareholding change. According to the former BA, TVB had executed a legally binding Deed of Undertaking to the former BA which provided that following the change in shareholding structure, TVB would continue to uphold the editorial independence of its news, current affairs programmes and other relevant programming included in its domestic free television programme service. The former BA could initiate legal proceedings against TVB in the event of non-compliance with the statutory requirement and the licence conditions by TVB, including its legally binding Deed of Undertaking.

Complaints against Asia Television Limited

5. In the light of an erroneous report by ATV on the death of the former national leader Mr JIANG Zemin on 6 July 2011 and the subsequent resignation of Mr LEUNG Ka-wing, Senior Vice President (News and Public Affairs) of ATV, the Panel held two meetings on 19 September and 12 December 2011 to follow up issues relating to editorial independence of the News Department of ATV.

6. The Panel noted that the former BA found the complaints about the inaccurate news reporting on the matter and late correction of factual errors substantiated. While a financial penalty of \$300,000 was imposed on ATV, the former BA did not consider it advisable, in discharge of its role as regulator, to inquire into the relationship between ATV's management and its News Department, or draw any conclusion regarding the alleged interference by ATV's management in its News Department. As the editorial independence of the news team within ATV was not a matter regulated by the former BA, it made no findings on the issue. As for the role of Mr WONG Ching, the investor of ATV, the former BA found no direct evidence to ascertain his role in the misreporting incident. Nevertheless, an investigation into the role of Mr WONG in the control and management of ATV had been initiated and the investigation was continuing as a separate exercise.

7. Some Panel members considered that more stringent sanctions should be imposed on ATV, including issuing a warning letter to ATV, to the effect that if ATV was found in breach of the TV Programme Code again, a recommendation should be made to the Chief Executive in Council for the revocation of its television programme service licence. Noting that the Senior Vice President (Corporate Development and External Affairs) of ATV

was the source of the death news, Panel members expressed dissatisfaction with the senior management's interference in the editorial independence of the News Department of ATV. As there were conflicting representations about the source of the death news made by ATV to the former BA and the Panel, some members opined that ATV was no longer in compliance with the fit and proper person requirement of a television programme service licensee under the Broadcasting Ordinance (Cap. 562). These members urged the former BA to follow up the issue of fit and proper person in its ongoing investigation into the role of Mr WONG Ching in the control and management of ATV.

8. The Communications Authority ("CA") subsequently advised that ATV initiated judicial review proceedings against the CA in June 2012, when the investigation into the role of Mr WONG Ching in the control and management of ATV was at an advanced stage. The Court of First Instance ordered that its judgement and verdict in these proceedings should not be released to the public and both ATV and the CA were obliged to keep them confidential. The ruling on the case was delivered in October 2012 and an appeal to the Court of Appeal was subsequently lodged against the judgement. As the matter was currently before the Court, it would be inappropriate for the CA to comment on the investigation or the legal proceedings at this stage.