

**For discussion on
10 December 2012**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Issues Relating to the Live Broadcast of
“Concern about the Future of Hong Kong” by
Asia Television Limited**

Purpose

The Communications Authority (“CA”) is investigating over 2 100 complaints concerning the programme “Concern about the Future of Hong Kong”¹ (「關注香港未來」) broadcast on the Home and Asia Channels of Asia Television Limited (“ATV”) on 11 November 2012. This paper briefs Members on the relevant requirements in the Broadcasting Ordinance (Cap. 562) (“the Ordinance”), codes of practice² issued by the CA and licence conditions, and on the latest progress in the CA’s investigation.

Background

2. The CA, as the regulator of the broadcasting industry, respects the independent operation of broadcasters as well as their editorial independence in the production of programmes, including current affairs and news programmes, and does not preview or pre-censor any broadcast materials. The editorial responsibility lies with the broadcasters, who nonetheless have the responsibility to ensure that their programmes comply with all relevant legislation, licence conditions and codes of practice concerning the television broadcast issued by the CA. Upon receipt of complaints, the CA will initiate an investigation to ascertain

¹ The English programme title used by ATV is “Caring Hong Kong’s Future”.

² The CA has, pursuant to the power conferred upon it by section 3 of the Ordinance, issued the Generic Code of Practice on Television Programme Standards, the Generic Code of Practice on Television Advertising Standards and the Generic Code of Practice on Television Technical Standards. These codes are applicable to holders of a domestic free television programme service licence.

whether the licensees under complaint are in breach of any relevant statutory provisions, codes of practice or licence conditions. Depending on the severity and nature of the breach, the CA may impose a range of sanctions on the offending licensees, including an advice, a warning, a financial penalty or suspension of licence.

Domestic Free Television Programme Service Licence of ATV

3. In November 2002, the Chief Executive in Council renewed the licence of ATV, with a validity period of 12 years from 1 December 2003 to 30 November 2015 (both dates inclusive). In June 2010, the Chief Executive in Council concluded the mid-term review of the licence of ATV. The Panel was briefed on the results by the Administration in July 2010. As a domestic free television programme service licensee, ATV is required to comply with all regulatory requirements applicable to it under the Ordinance, the codes of practice issued by the CA and its licence conditions.

Complaints about ATV's Programme "Concern about the Future of Hong Kong"

4. As at 30 November 2012, the CA has received close to 2,200 complaints against ATV's broadcast of a rally held by Asia Club (「亞洲會」) outside the Central Government Offices on its Home and Asia Channels on 11 November 2012. The main allegations against the programme included: it distorted the facts and misled the public; its contents were biased as there were only one-sided views against the issuance of additional free television programme service licences by the Government; it did not provide suitable opportunities for others to respond; ATV abused the spectrum to promote its interests, making use of the public resources for its private purpose; the programme title was not related to the contents of the programme; and ATV forced its staff members to join the rally.

5. Some complainants also alleged that the broadcast of the programme might be in breach of sections 13 and 14 of the Ordinance governing competition in television markets.

(I) Complaints against the Programme Contents

Relevant provisions relating to programme contents complaints

6. According to the provisions in Chapter 9 of the Generic Code of Practice on Television Programme Standards (“TV Programme Code”) regarding accuracy, impartiality and fairness, the licensees shall make reasonable efforts to ensure that the factual contents of current affairs programmes or personal view programmes are accurate. For factual programmes (such as current affairs programmes) on matters of public policy or controversial issues of public importance in Hong Kong, the licensees must ensure that due impartiality shall be preserved (except personal view programmes which are dealt with in accordance with the provisions summarised in paragraph 7 below). Due impartiality requires the licensees to deal with the relevant discussion even-handedly so that the principal viewpoints can be included as far as possible in order to seek balance. The licensees also have a responsibility to avoid unfairness to individuals or organisations in factual programmes, in particular through the use of inaccurate information or distortion, or misleading the audience.

7. Paragraph 17 of Chapter 9 of the TV Programme Code stipulates that “personal view programmes” are programmes in which the programme hosts and individual contributors put forward their own views. The nature of a personal view programme on matters of public policy or controversial issues of public importance in Hong Kong must be identified clearly at the start of the programme. Facts must be respected and the opinion expressed should not rest upon false evidence. A suitable opportunity for response to the programme should also be provided and there is a need for a sufficiently broad range of views to be expressed in any series of personal view programmes. Extracts of the relevant provisions in the TV Programme Code are at **Annex A**.

Progress of investigation

8. The CA is handling the complaints against the contents of the programme as set out in paragraph 4 above in accordance with the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) and the established procedures. The CA will consider whether ATV was in breach of the relevant provisions of the TV Programme Code as set out in paragraphs 6 and 7 above, including whether ATV had made all reasonable efforts to ensure that the concerned programme had complied with the provisions governing accuracy, impartiality and fairness of

factual programmes and whether suitable opportunities had been provided for the expression of a sufficiently broad range of views in the concerned programme. The CA is making its efforts to process investigation of the complaints. After provisional findings of the complaints are made, the CA will, in accordance with the established procedures, invite ATV to make further representations. Following its deliberation on any representations received, the CA will reach a final decision on the complaints and will make an announcement as soon as possible.

(II) Competition Complaints against the Programme

Relevant provisions relating to the competition complaints

9. The competition provisions of the Ordinance are stipulated in sections 13 and 14. Section 13 mainly targets anti-competitive conduct, which includes collusive conduct of licensees reaching an agreement to fix price or share television programme service markets, or licensee's conduct of preventing or restricting the supply of goods or services to competitors, or limiting or controlling production, markets, technical development or investment. A licensee will be in breach of section 13 if the CA considers the conduct engaged by the licensee as having the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.

10. Section 14 stipulates that a licensee in a dominant position in a television programme service market shall not abuse its position. The conduct targeted by section 14 includes a licensee in a dominant position engaging in predatory pricing, price discrimination not based on differences in the costs, or discrimination in the supply of services to competitors. A licensee in a dominant position in a television programme service market will be in breach of section 14 if the CA considers that the licensee has engaged in conduct which has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market. Extracts of the relevant provisions of the Ordinance are at **Annex B**.

Progress of investigation

11. The CA will, in accordance with its established procedures, process the public complaints against the live broadcast of the programme "Concern about the Future of Hong Kong" by ATV alleging that it was in breach of the competition provisions of the Ordinance. Generally

speaking, this entails examining whether the complaints are related to conduct that may fall within the scope of the competition provisions in the Ordinance, and whether the complaints are supported by any specific and relevant evidence, before we decide whether further action is warranted.

Conclusion

12. The CA is gravely concerned about the large volume of complaints and controversies arising from ATV's programmes recently. The CA has made its efforts to launch investigations with a view to completing the processing of the complaints as soon as possible, as well as to announce its decision.

13. Members are invited to note the latest progress of the above investigations.

Office of the Communications Authority
December 2012

Extracts from the Generic Code of Practice on Television Programme Standards

Chapter 9 Accuracy, Impartiality and Fairness

Accuracy

1A. The licensees shall make reasonable efforts to ensure that the factual contents of news, current affairs programmes, financial programmes, personal view programmes, documentaries, programmes adopting an investigative style of reporting, children's programmes with educational purpose, programmes dealing with medical and health issues, and contests are accurate.

Impartiality

General

2. The licensees must ensure that due impartiality is preserved as respects news programmes and any factual programmes or segments thereof dealing with matters of public policy or controversial issues of public importance in Hong Kong (except personal view programmes which are dealt with separately under paragraph 17 below). Factual programmes are non-fiction programmes which are based on material facts. They can take the form of news, current affairs programmes, personal view programmes, documentaries and programmes adopting an investigative style of reporting.

3. Due impartiality requires the licensees to deal even-handedly when opposing points of view are presented in a programme or programme segment. Balance should be sought through the presentation, as far as possible, of principal relevant viewpoints on matters of public importance. Programmes or programme segments under concern should not be slanted by the concealment of facts or by misleading emphasis.

4. In achieving due impartiality, the term “due” is to be interpreted as meaning adequate or appropriate to the nature of the subject and the type of programme or programme segment. Due impartiality does not mean that “balance” is required in the sense of equal time or an equal number of lines in the script being devoted to each view, nor does it require absolute neutrality on every controversial issue. Judgement will always be called for by the licensees.

5. A programme host should encourage the widest possible airing of views. He/She should also be alert to the danger of unsubstantiated allegations being made by participants in live programmes. Where necessary, the programme host should correct the factual errors to the best of his/her knowledge.

Impartiality Over Time

6. Although it is desirable, it is not always possible for principal opposing viewpoints to be reflected in a single programme or programme segment. Sometimes a series of programmes or programme segments may be considered as a whole. At other times, a narrower range of views may be appropriate within individual programmes or programme segments. This is an issue which calls for editorial judgement based on particular circumstances. In achieving impartiality over time, it is not always necessary to ensure that in a single programme or programme segment all sides have an opportunity to speak.

(...)

Fairness

General

9. The licensees have a responsibility to avoid unfairness to individuals or organisations featured in factual programmes, in particular through the use of inaccurate information or distortion. They should also avoid misleading the audience in a way which would be unfair to those featured in the programme.

(...)

Right of Reply

15. Licensees should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organizations. Licensees should take all reasonable care to satisfy themselves that all material facts are so far as possible fairly and accurately presented.

16. Where a factual programme reveals evidence of iniquity or incompetence, or contains a damaging critique of an individual or organization, those criticized should be given an appropriate and timely opportunity to respond.

Personal View Programmes

17. “Personal view programmes” are programmes in which the programme hosts and, sometimes, individual contributors put forward their own views. The following rules apply to all personal view programmes on matters of public policy or controversial issues of public importance in Hong Kong:

- (a) The nature of a personal view programme must be identified clearly at the start of the programme, for example, by an announcement in the following terms, “This programme only reflects the personal views of the programme host(s) and/or the individual contributor(s).”
- (b) Facts must be respected and the opinion expressed, however partial, should not rest upon false evidence.
- (c) A suitable opportunity for response to the programme should be provided.
- (d) Licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of personal view programmes.

**Extracts from the
Broadcasting Ordinance (Cap. 562)**

Section 13: Prohibition on anti-competitive conduct

(1) Subject to subsections (4) and (5), a licensee shall not engage in conduct which, in the opinion of the Authority, has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.

(2) The Authority may consider conduct to fall within subsection (1) as including, but not limited to –

- (a) direct or indirect agreements to fix the price in a television programme service market;
- (b) conduct preventing or restricting the supply of goods or services to competitors;
- (c) direct or indirect agreements between licensees to share any television programme service market between them on agreed geographic or customer lines;
- (d) limiting or controlling production, markets, technical development or investment;
- (e) applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing them at a competitive disadvantage;
- (f) making the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements.

(3) Subject to subsection (4), a provision in an agreement is void in so far as it provides for or permits, whether directly or indirectly, conduct which contravenes subsection (1).

(4) The Authority may –

(a) on an application made to it in the specified form by a licensee;

(b) on a prescribed ground; and

(c) by notice in writing served on the licensee,

exempt conduct specified in the application from subsection (1) subject to such conditions as the Authority thinks fit specified in the notice.

(5) Subsection (1) shall not apply to –

(a) any restriction imposed on the inclusion in a television programme service of a television programme produced wholly or substantially by the licensee of the service; or

(b) any prescribed restriction.

(6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.

Section 14: Prohibition on abuse of dominance

(1) A licensee in a dominant position in a television programme service market shall not abuse its position.

(2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers.

(3) In considering whether a licensee is dominant, the Authority shall have regard to relevant matters including, but not limited to –

- (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 into the relevant television programme service market;
- (d) such other relevant matters as may be stipulated in guidelines concerning the test of dominance issued under section 4 by the Authority in consultation with the licensees in the relevant television programme service market.

(4) A licensee who is in a dominant position is deemed to have abused its position if, in the opinion of the Authority, the licensee has engaged in conduct which has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.

(5) The Authority may consider conduct to fall within the conduct mentioned in subsection (4) as including, but not limited to –

- (a) predatory pricing;
- (b) price discrimination, except to the extent that the discrimination only makes reasonable allowance for differences in the costs or likely costs of supplying the service or other matter;
- (c) making the conclusion of agreements subject to acceptance by other parties of terms or conditions which are harsh or unrelated to the subject of the agreement;
- (d) discrimination in the supply of services to competitors.