

立法會
Legislative Council

LC Paper No. CB(4)336/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Monday, 2 December 2013, at 5:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon WONG Yuk-man (Chairman)
Dr Hon Elizabeth QUAT, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members attending : Hon James TIEN Pei-chun, GBS, JP

Members absent : Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public officers attending : Agenda item I

Mr Gregory SO, GBS, JP
Secretary for Commerce and Economic
Development

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Agenda item II

Commerce and Economic Development Bureau

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Communications Authority

Mr Ambrose HO, SC, JP
Chairman
Communications Authority

Mr Adrian WONG Koon-man, MH, JP
Chairman, Broadcast Complaints Committee
Communications Authority

Office of the Communications Authority

Miss Eliza LEE, JP
Director-General of Communications
Office of the Communications Authority

Mr Vincent LIU, JP
Deputy Director-General (Broadcasting)
Office of the Communications Authority

Mr Eric CHAN
Assistant Director (Film, Newspaper & Article
Administration)
Office of the Communications Authority

Agenda item III

Commerce and Economic Development Bureau

Miss Susie HO, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Communications Authority

Mr Ambrose HO, SC, JP
Chairman
Communications Authority

Mr Adrian WONG Koon-man, MH, JP
Chairman, Broadcast Complaints Committee
Communications Authority

Office of the Communications Authority

Miss Eliza LEE, JP
Director-General of Communications
Office of the Communications Authority

Mr Vincent LIU, JP
Deputy Director-General (Broadcasting)
Office of the Communications Authority

Miss Katy FONG
Assistant Director (Broadcasting)
Office of the Communications Authority

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (4)3

Miss Mandy LAM
Legislative Assistant (4)2

I. Issues relating to the applications for domestic free television programme service licences

(File Ref: CTB(CR)9/3/10 -- Legislative Council Brief on Applications for Domestic Free Television Programme Service Licences issued by the Commerce and Economic Development Bureau on 15 October 2013

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|--------------------------|-------|--------|--|
| LC
CB(4)39/13-14(01) | Paper | No. -- | Letter from the Administration dated 15 October 2013 on the applications for a domestic free television programme service licence |
| LC
CB(4)68/13-14(05) | Paper | No. -- | Press releases on domestic free television programme service licence applications issued by the Administration on 15, 16, 20 and 21 October 2013 |
| LC
CB(4)122/13-14(07) | Paper | No. -- | Press release on the Government's further explanation on the Chief Executive in Council's decision on free TV licence applications issued by the Administration on 5 November 2013 |
| LC
CB(4)132/13-14(02) | Paper | No. -- | Letter from the Communications Authority dated 7 November 2013 |
| LC
CB(4)192/13-14(03) | Paper | No. | Letter from the Chairman of the Communications Authority dated 28 November 2013 |
| LC
CB(4)178/13-14(05) | Paper | No. -- | Joint letter from Hon Cyd Sau-lan, Hon Charles Peter MOK and Hon SIN Chung-kai dated 21 November 2013
<i>(Chinese version only)</i> |
| LC
CB(4)188/13-14(01) | Paper | No. -- | Paper on applications for domestic free television programme service licences prepared by the Legislative Council Secretariat (Updated background brief) |

The Chairman said that as the Chairman of the Communications Authority ("CA") had declined the Panel's invitation to attend the special meeting on 8 November 2013, the Panel had scheduled this special meeting to continue to follow up issues relating to the applications for domestic free television programme service licences ("free TV licences"), and requested the Chairman of the CA to attend the meeting to answer members' questions in

this respect. However, the Chairman of the CA informed the Panel in writing on 28 November 2013 that insofar as the processing of the three free TV licence applications were concerned, the CA had duly completed its task and duty under the Broadcasting Ordinance ("BO") (Cap. 562). Being a statutory authority charged with functions that were separate from those of the Chief Executive in Council ("CE in Council"), the CA was not in a position to comment on how the CE in Council had processed the applications or what factors the CE in Council had taken into account in the course of taking the decision. Such matters were not within the knowledge of the CA and were matters that went beyond the CA's statutory functions. As such, the CA had nothing further to add to the issues to be discussed by the Panel under this issue, and the CA would not be represented at the meeting for this agenda item.

2. The Chairman also said that Hong Kong Television Network Limited ("HKTV"), Hong Kong Television Entertainment Company Limited ("HKTVE"), Fantastic Television Limited ("Fantastic TV"), Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB") had declined the Panel's invitation to attend the meeting for this agenda item. The Chairman added that Ms Jenny NG of Spectrum Value Partners, who was responsible for the consultancy study on the free TV market, had declined the Panel's invitation to attend the meeting as she was away from Hong Kong.

Presentation by the Administration

3. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") refuted the allegations that the information paper (LC Paper No. CB(4)132/13-14(02)) provided by the CA for the special meeting on 8 November 2013 was a rebuttal of the explanations provided by the Administration on the Chief Executive ("CE") in Council's decision on the granting of free TV licences. He advised that under the BO, the former Broadcasting Authority or the CA would consider applications for free TV licences and make recommendations thereon to the CE in Council. By virtue of section 10(1) of the BO, after considering the recommendations made by the former BA or the CA, the CE in Council might grant a free TV licence, subject to such conditions as he thought fit specified in the licence. It was up to the CE in Council to accept or reject the recommendations of the former BA or the CA and make the final decision. He stressed that the CE in Council's decision was based on much broader issues and updated data, including but not limited to the consultancy reports and the CA's recommendations.

4. SCED also refuted the consultant's allegations that the Administration had misquoted the consultancy reports on issues relating to the free TV market to justify the rejection of HKTV's application. He said that the consultant had openly expressed some personal views on the CE in Council's decision based on incomplete or incorrect information which confused the public. The consultant had disregarded its professional ethics by commenting on the study without the Administration's consent. In fact, the Administration had neither asked the consultant to comment on the gradual and orderly approach of introducing competition or whether the three applications should be approved, nor said that the decision was based on the consultant's recommendation. The Administration deeply regretted the comments made by the consultant in this respect.

Discussion

Role of the consultant

5. Ms Claudia MO and Mr Charles Peter MOK were of the view that the consultant had steadfastly upheld its professional ethics by telling the truth, and had made a righteous move to stand out in protest against the Administration's attempt to mislead the public by distorting the findings of the consultancy report.

6. In response, SCED pointed out that the consultant had disregarded its professional ethics by failing to observe the basic requirements of neutrality and objectivity in making biased remarks in public on the CE in Council's decision. He added that the consultant should not have participated in any open discussion on the items which they were commissioned to study or issues relevant to those items, let alone getting involved in the relevant political discussions which might call its objectiveness and neutrality into question. The Administration considered such action inappropriate and found it in conflict with the role of a consultant.

7. Ms Emily LAU noted that according to the CA, it had not received request from the CE in Council to submit further comments on the three applications or to reconsider the CA's recommendations since February 2013. She expressed concern about the CE in Council's lack of consultation with the CA during this critical phase of processing of the free TV licence applications. Sharing a similar view, Mr SIN Chung-kai sought explanation on the comment that "the consultant's remarks were probably based on incomplete information" made by the Administration.

8. SCED reiterated that the Administration had never requested the consultant to make any recommendation on the gradual and orderly approach

in introducing competition or whether approval should be granted to the three applications. Apart from matters in relation to the consultant's reports, the consultant was not involved in other procedures in processing the three applications. He added that the consultant did not take part in rounds of representations submitted by the applicants on matters such as the consultant's reports and relevant assessments, as well as the Administration's inclination to adopt a gradual and orderly approach in introducing competition into the free TV market. SCED stressed that the consultant's reports were but one of the many factors that the CE in Council took into account in assessing the three applications. As such, the Administration considered that the consultant's remarks were probably based on incomplete information and misunderstandings about the consultant's role and the CE in Council's decision.

Gradual and orderly approach

9. Mr CHAN Chi-chuen opined that the Administration had not been able to explain clearly and with strong grounds the CE in Council's decision to adopt the "gradual and orderly approach" and select only two out of the three applicants for granting approvals-in-principle ("AIPs"). He sought further clarification on the issue. In this regard, Ms Cyd HO opined that the selection of two out of three applicants for granting of AIPs was contradictory to the stated policy of introducing more competition to the free TV market. Mr Christopher CHEUNG also opined that the Administration should provide a fuller explanation of the CE in Council's decision in order to stop the controversy sparked off since the announcement of the decision.

10. SCED advised that according to the analyses contained in the consultancy reports, the market would be able to sustain the operation of three operators (including the two existing licensees), and perhaps four operators under favourable market conditions, but it could hardly sustain a total of five players. Holding the view that a gradual and orderly approach should be adopted in introducing competition to the free TV market, the CE in Council made the decision to select two out of the three applicants. In response to Ir Dr LO Wai-kwok's enquiry on the basis of adopting the "two out of three" approach, SCED advised that the CE in Council made the decision after a holistic consideration of all relevant factors and updated information. The consultant had never been consulted on the issue of selection of two out of the three applicants. He added that if the two applicants who had obtained AIPs were granted with licences, it would be the first time in 40 years that new licensees were introduced into the free TV market, and the number of licensees would double.

Follow-up work relating to the licence applications

11. Mr MA Fung-kwok and Dr CHIANG Lai-wan enquired about the timetable for the licensing procedure of the two applicants to whom AIPs were given, namely HKTVE and Fantastic TV. Mr MA also asked whether requirements for strengthening local drama productions would be incorporated in the licence conditions of the applicants in order to help nurture local talents in drama production.

12. Deputy Secretary for Commerce and Economic Development (Communications and Technology) ("DSCED") advised that there was no pre-set timetable for the further processing of the applications to whom AIPs were given. The CA was seeking further information as necessary from Fantastic TV and HKTVE, and discussing with them the proposed licence conditions. The CA would then further consider Fantastic TV's and HKTVE's applications, and submit to the CE in Council recommendations on whether a free TV licence should be formally granted under sections 8(1) and 10(1) of the BO. The CE in Council would further review Fantastic TV's and HKTVE's abilities to meet the licensing criteria as well as each and every relevant aspect of their free TV licence applications before making a final decision. In view of strong public expectation, the Administration would process the applications expeditiously. SCED added that the draft licences for Fantastic TV and HKTVE would contain general terms and conditions similar to those of the licences held by existing free TV licensees, with specific provisions relevant to them, and the CA would submit its recommendations to the CE in Council in this regard.

Other issues

13. Mr Charles Peter MOK noted with astonishment that the CA had decided in late November 2013 to formalize the capacity sharing arrangement of the Multiple Frequency Network ("MFN") for ATV and TVB after imposing a financial penalty on the broadcasters for unequal sharing of the MFN earlier in the same month. He suggested that the Administration should reallocate the radio spectrum concerned to the two free TV licence applicants to whom AIPs had been granted, instead of allowing the two existing broadcasters to hold onto the unequal sharing arrangement.

14. SCED advised that taking into account its statutory duty to promote the efficient allocation and use of radio spectrum, as well as the interest of the viewing public who would continue to enjoy the enhanced picture quality of two TVB channels in high definition ("HD") format, the CA had decided to vary the capacity sharing arrangement of the MFN for ATV and TVB. The arrangement was separate from the current exercise of granting free TV

licences which would not involve the allocation of radio spectrum.

15. The Chairman said that the Panel would discuss the issues relating to the unequal sharing of the MFN for digital terrestrial television services by ATV and TVB at the regular meeting to be held on 13 January 2014.

16. Noting media reports that the Government had granted HKTV a site in Tseung Kwan O to build its production centre in preparation for the provision of free TV service, Mrs Regina IP enquired about the possible impact of the CE in Council's decision on the construction of production centre by HKTV. To support the local creative industry, she suggested that the Administration should encourage Hong Kong's free TV licensees to follow the overseas practice of engaging the service of independent production houses.

17. SCED advised that the leasing of the site to HKTV by the Hong Kong Science and Technology Parks Corporation for the construction of a multimedia production centre was separate from the Administration's processing of HKTV's application for free TV licence. He added that one of the free TV licence applicants granted with AIPs was considering the engagement of the service of independent production houses.

II. Communications Authority's findings of the investigation into the alleged violations of the competition provisions of the Broadcasting Ordinance by Television Broadcasts Limited

(LC Paper
CB(4)178/13-14(01)

No. -- Press release on the alleged violations of the competition provisions of the Broadcasting Ordinance by Television Broadcasts Limited issued by the Communications Authority Secretariat dated 19 September 2013

LC Paper No. CB(4)178/13-14(02) -- Executive summary of the investigation report on the alleged violations of the competition provisions of the Broadcasting Ordinance by Television Broadcasts Limited issued by the Communications Authority dated 19 September 2013

- LC Paper No. CB(4)192/13-14(01) -- Paper on complaint against Television Broadcasts Limited's violations of the competition provisions of the Broadcasting Ordinance issued by the Office of the Communications Authority in November 2013
- LC Paper No. CB(4)188/13-14(02) -- Paper on issues relating to the broadcasting services of Asia Television Limited and Television Broadcasts Limited prepared by the Legislative Council Secretariat (background brief))

Presentation by the CA

18. At the invitation of the Chairman, Chairman of the Communications Authority ("C of CA") briefed members on the findings of the CA's investigation into the complaint lodged by Asia Television Limited ("ATV") against the violations of the competition provisions of the Broadcasting Ordinance ("BO") by Television Broadcasts Limited ("TVB"), and the remedies imposed by the CA on TVB, including the imposition of a fine of \$900,000 on TVB. Details of the briefing were set out in the Administration's paper (LC Paper No. CB(4)192/13-14(01)).

19. C of CA advised that certain conducts of TVB were found to be in violation of sections 13 and 14 of the BO. Such conducts included, inter alia, prohibiting artistes or singers who had serial-based, one-show, or singer contracts with TVB from, or requiring such artistes or singers to seek consent from or notify TV for, appearing on or providing services to other TV stations in Hong Kong, prohibiting artistes who had serial-based or one-show contracts with TVB from appearing on other TV stations in their original voices or attending promotional activities, and requiring its singers and artistes to refrain from speaking Cantonese on other TV stations in Hong Kong.

Discussion*Results of the investigation*

20. Ms Emily LAU enquired why it had taken the CA four years to complete the investigation since ATV lodged complaint in 2009. Noting that TVB had filed an appeal after paying the fine, she considered that the fine of \$900,000 was too low to have any deterrent effect. In this regard, Ms Claudia MO, Ms Cyd HO and Mr LEUNG Kwok-hung considered that the penalty imposed by the CA had no effect on the change of market dominance of TVB. Sharing a similar view, Mr Charles Peter MOK enquired if the CA would take into account past contraventions of licence conditions of the existing domestic free television programme service ("free TV") licensees when considering their applications for renewal of licence.

21. C of CA advised that the investigation was complicated as it involved a number of legal and procedural fairness issues. In December 2011, the former Broadcasting Authority ("BA") completed its investigation and invited TVB to make representations on the BA's draft investigation report. It was only after rounds of representations by TVB that the CA was able to issue to TVB in January 2013 a revised draft investigation report and invite its representations. Following more rounds of representations by TVB on the revised draft investigation report in 2013, the CA was eventually able to finalize its investigation report for publication.

22. As regards the penalty level, the C of CA advised that the fine imposed on TVB was close to the statutory maximum fine of \$1 million in order to reflect the severity of the contravention. He added that the competition provisions in the BO would be repealed upon commencement of the Competition Ordinance ("CO") (Cap. 619). Apart from financial penalty, TVB was required to take a series of remedial measures, including communicating with all artistes and singers who had occasional use contracts with TVB that TVB would abandon the infringing exclusive contractual clauses and policies, and issuing a public statement to declare that TVB would not require singers and artistes which it engaged to refrain from speaking Cantonese on other TV stations in Hong Kong. However, the CA noted that TVB had never admitted that the "no Cantonese policy" existed. Moreover, TVB was required to provide a report within four months describing the steps taken by it to comply with the CA's direction.

23. C of CA added that TVB had the statutory right to appeal to the CE in Council against the decision of the CA even after paying the fine. Until and unless the CA's decision was overruled by the CE in Council, TVB must comply with the CA's decision. In response to Mr Charles Peter MOK's

enquiry, C of CA advised that past performance of free TV licensees, including records of non-compliance with statutory requirements and licence conditions, would be taken into account when the CA considered the applications for licence renewal.

24. Noting the unfairness of the serial-based, one-show and singer contracts between artistes and TVB, Mr CHAN Chi-chuen enquired whether the CA would investigate the full time contracts between artistes and TVB for similar unequal provisions. C of CA advised that the current findings and decision of the CA focused on TVB's occasional use artiste contracts which the CA found them violated the competition provisions of the BO. The full time contracts of employment between artistes and TVB were not covered in this investigation because the CA considered that artistes under full time contracts were fully engaged by TVB with fixed salaries amongst other benefits and the exclusive clauses included in their contracts appeared to be proportionate.

TVB's conduct

25. Dr Elizabeth QUAT enquired whether TVB's ban on Next Media would constitute a contravention of the competition provisions of the BO. In this regard, Mr SIN Chung-kai and Mrs Regina IP enquired about the regulation of anti-competitive conduct across different media sectors under the CO.

26. Chairman of the Broadcast Complaints Committee of the Communications Authority ("CBCC of CA") confirmed that the Broadcast Complaints Committee was processing a number of complaints relating to TVB's ban on Next Media. C of CA added that TVB's ban on Next Media did not constitute a contravention of the competition provisions of the BO as the BO only regulated conducts in the television programme service market. The competition provisions under the CO, which had yet to commence operation, would be a cross-sector competition law prohibiting anti-competitive conduct in all sectors. Under the CO, a Competition Commission ("CC") would be set up to investigate and prosecute infringements before a yet to be established Competition Tribunal which would act as the adjudicative body. In the telecommunications and broadcasting sectors, the CC would have concurrent jurisdiction with the CA. The CA would also have the power to investigate alleged violations as well as prosecute alleged offences in those sectors.

III. Communications Authority's findings of the investigation into the control and management of Asia Television Limited

(LC Paper No. -- Press release on the control
CB(4)178/13-14(03) and management of Asia
Television Limited issued by
the Communications
Authority Secretariat dated 23
August 2013

LC Paper No. CB(4)178/13-14(04) -- Executive summary of the
investigation report on the
control and management of
Asia Television Limited
issued by the
Communications Authority
dated 23 August 2013

LC Paper No. -- Paper on investigation into the
CB(4)192/13-14(02) control and management of
Asia Television Limited
issued by the Office of the
Communications Authority in
November 2013

LC Paper No. CB(4)188/13-14(02) -- Paper on issues relating to the
broadcasting services of Asia
Television Limited and
Television Broadcasts Limited
prepared by the Legislative
Council Secretariat
(background brief))

Presentation by the CA

27. At the invitation of the Chairman, Chairman of the Communications Authority ("C of CA") briefed members on the findings of the Communications Authority ("CA") investigation into the role played by Mr WONG Ching, the major investor of Asia Television Limited ("ATV"), and the remedies imposed by the CA on ATV. C of CA said that Mr WONG who was neither a shareholder, a director nor a principal officer of ATV and therefore did not have any capacity or rights under the Broadcasting Ordinance ("BO") (Cap. 562) to exercise control over ATV. In the course of the investigation, Mr WONG was found by the CA to have exercised control

in the control and management of ATV, in breach of Condition 10.1 of ATV's licence which provided that, "unless otherwise approved by the Authority (i.e. CA), the licensee shall comply with the Licensee's Proposal, including statements and representations regarding the control of the licensee". Details of the briefing were set out in the paper provided by the Office of the Communications Authority ("OFCA") (LC Paper No. CB(4)192/13-14(02)).

Discussion

Regulatory framework

28. Ms Claudia MO welcomed the decision of the CA to impose a financial penalty on ATV for breaching Condition 10.1 of its licence regarding the control of the licensee by an unauthorized person. She enquired about measures to prevent the recurrence of similar breaches by ATV in future. Sharing a similar view, Ms Emily LAU and Mr LEUNG Kwok-hung expressed grave concern over the corporate governance of ATV, and considered that more stringent punishment, such as suspension or even revocation of licence, should be considered. In this regard, Mr Charles Peter MOK considered that there was no provision under the existing BO to penalize non-office bearers of free TV licensees such as Mr WONG Ching who was found exercising de facto control over ATV. He also enquired about the follow up actions taken in relation to the provision of misleading information to the CA by Mr James SHING, who was required by the CA to cease acting as a person exercising control (including directorship) of ATV by 2 September 2013 as he was no longer a "fit and proper person" under the BO.

29. C of CA advised that the CA attached great importance to requiring the domestic free television programme service ("free TV") licensees to maintain good corporate governance. Apart from the imposition of a maximum fine of \$1 million on ATV for breaching Condition 10.1 of its licence regarding the control of the licensee, the CA also required ATV to take immediate action to ensure that its management should not be performed by any persons other than its directors and principal officers and duly authorized persons. In this regard, Mr James SHING was required to cease exercising control of ATV as he was no longer a "fit and proper person", and Mr WONG Ching was required to refrain from exercising de facto control of ATV.

30. C of CA further advised that ATV had to submit a proposal setting out the steps that it should take to improve its corporate governance standards, and submit annual progress reports until the CA was satisfied that the proposed improvement measures had been fully implemented. The CA

would continue to monitor the progress of ATV in implementing its direction, including conducting an assessment on ATV's proposed measures to improve its corporate governance. C of CA added that while there were provisions under the BO governing the conduct of the board of directors and principal officers of a free TV licensee, there was no provision governing its investors. As regards the provision of misleading information to the CA by Mr James SHING, the case had been referred to the police but no further action was taken due to the lack of evidence.

31. Apart from examining the "fit and proper person" status of Mr WONG Ching and Mr James SHING, C of CA advised that the CA had also considered the "fit and proper person" status of ATV as a licensee. Despite the CA's concern over the poor corporate governance of ATV, ATV had been delivering broadcasting services in line with the scope of its licence. Conscious of the requirement to meet a high threshold commensurate with any adverse finding on the "fitness and properness" of a licensee, the CA considered that ATV should not be adjudged as failing to be a "fit and proper person" on the basis of the evidence collected for the investigation concerned. He stressed that past performance, including records of non-compliance with licence conditions, as well as public opinion on the broadcasting services provided by the free TV licensees would be taken into account when the CA considered their applications for renewal of licence.

32. Dr Elizabeth QUAT enquired about the criteria adopted by the CA to assess compliance with the "fit and proper person" requirement. C of CA advised that section 21(1) of the BO required that a television programme service licensee and any person exercising control of the licensee should be and remain a fit and proper person. Section 21(4) of the BO also sets out the factors to be taken into account in determining whether a licensee or person exercising control over the licensee was a fit and proper person, including the person's business record, the person's record in situations requiring trust and candour, and criminal record in respect of offences involving bribery, false accounting, corruption or dishonesty.

33. Noting that ATV had lodged a statutory appeal by way of petition to the Chief Executive ("CE") in Council against the CA's decision, Mr SIN Chung-kai enquired if the CA considered it necessary to review the existing appeal mechanism so that such appeals should be filed to a court of law in future, similar to the Competition Tribunal to be established under the Competition Ordinance (Cap. 619).

34. C of CA advised that under the BO, appeals against the decisions of the CA should be directed to the CE in Council. This did not stop any aggrieved party to lodge appeal to the court direct, though normally the court

would encourage the party concerned to resort to the appeal mechanism provided under the law first.

IV. Any other business

35. There being no other business, the meeting ended at 8:11 pm.

Council Business Division 4
Legislative Council Secretariat
7 February 2014