

**立法會**  
**Legislative Council**

LC Paper No. CB(4)405/13-14(10)

Ref. : CB4/PL/ITB

**Panel on Information Technology and Broadcasting**

**Meeting on 10 March 2014**

**Background brief on issues relating to applications for renewal of the domestic free television programme service licences**

**Purpose**

This paper provides background information on the application for renewal of the domestic free television programme service ("free TV") licences of Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB"), and a summary of views and concerns expressed by Members on related issues in previous discussions.

**Background**

2. The free TV licences are granted under the Broadcasting Ordinance ("BO") (Cap. 562) and are valid for 12 years. The existing licences of ATV and TVB, which commenced on 1 December 2003, will expire after 30 November 2015. ATV and TVB submitted applications to the Communications Authority ("CA") for renewal of their licences in November 2013.

3. Pursuant to section 11(3) of the BO, the CA shall submit recommendations to the Chief Executive in Council ("CE in Council") on ATV's and TVB's licence renewal applications. For this purpose, the CA is conducting a public consultation exercise from 4 February to 3 April 2014 on the services provided by ATV and TVB, so that the CA can take public views into account when formulating recommendations to the CE in Council.

## **Previous discussions**

### Panel on Information and Broadcasting

#### *Anti-competitive conducts by TVB*

4. At the special meeting of the Panel on Information Technology and Broadcasting ("the Panel") held on 30 June 2009, members discussed the progress of the mid-term review of the free TV licences of ATV and TVB. Representatives of ATV and TVB also attended the meeting. ATV alleged that certain clauses in TVB's contracts with its artistes and singers and certain informal policies and practices pursued by TVB had the purpose or effect of preventing, distorting and substantially restricting competition, thereby violating sections 13 and 14 of the BO, which provided for prohibitions on anti-competitive conduct and abuse of dominance respectively. Members noted that ATV had subsequently filed a formal complaint against TVB on the matter to the former Broadcasting Authority ("BA") (replaced by the CA on 1 April 2012) on 10 December 2009.

5. At the Panel meeting on 2 December 2013, the CA briefed members on the findings of its investigation into ATV's complaint against TVB, and the remedies imposed by the CA on TVB, including the imposition of a fine of \$900,000 on TVB. The Panel noted 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 TVB 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.

6. The Panel also noted that 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. TVB was also required to provide a report within four months describing the steps taken by it to comply with the CA's direction.

7. Some Panel members expressed concern that the fine of \$900,000 was too low to have any deterrent effect as TVB had filed an appeal after paying the fine. These members considered that the penalty imposed by the CA had no effect on the change of market dominance of TVB. The 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. 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.

*Inaccurate news reporting by ATV*

8. 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. 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, and a financial penalty of \$300,000 was imposed on ATV for breaching the relevant provisions in the Generic Code of Practice on Television Programme Standards ("TV Programme Code"), including paragraph 1A, 7 of Chapter 9 governing the accuracy of news. 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. The former BA also found no direct evidence to ascertain the role of Mr WONG Ching, the investor of ATV, in the misreporting incident. Nevertheless, an investigation into the role of Mr WONG in the control and management of ATV was initiated as a separate exercise.

9. At the Panel meeting on 19 September 2011, Mr James SHING, Executive Director of ATV, advised members that the senior management of ATV had never interfered with the editorial independence of the News Department. Neither himself, Mr WONG Ching, nor Mr KWONG Hoi-ying, Senior Vice-President (Corporate Development and External Affairs), was the source of the death news. However, at the Panel meeting on 12 December 2011, the former BA advised members that according to the findings, Mr KWONG Hoi-ying was the source of the death news. While Panel members expressed dissatisfaction with the senior management's interference in the editorial independence of the News Department of ATV, 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 BO. 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. Some other 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 provisions of the TV Programme Code governing the accuracy of news again, a recommendation should be made to the CE in Council for the revocation of its free TV licence.

### *Control and management of ATV*

10. At the Panel meeting on 2 December 2013, the CA briefed members on the findings of its investigation into the role played by Mr WONG Ching, and the remedies imposed by the CA on ATV. The Panel noted that Mr WONG was neither a shareholder, a director nor a principal officer of ATV, and therefore did not have any capacity or rights under the BO 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".

11. The Panel also noted that 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, ATV was required 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. Moreover, 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. Meanwhile, the CA would continue to monitor the progress of ATV in implementing measures to improve its corporate governance. Some Panel members urged the CA to introduce measures to prevent the recurrence of similar breaches by ATV in future. These members 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.

*Other licence contraventions by ATV and TVB*

12. At the Panel meeting on 13 January 2014, the Administration and the CA briefed members on the decision of the CA regarding the joint application of ATV and TVB for an unequal sharing of the transmission capacity in the Multiple Frequency Network ("MFN") for digital terrestrial television ("DTT") services. Members noted that pursuant to the "Implementation Framework for Digital Terrestrial Television Broadcasting" announced by the Administration in 2004, ATV and TVB were assigned a total of three digital multiplexes to provide DTT services to the viewing public. They were required to share one MFN multiplex for the digital simulcast of their four analogue free-to-air television programmes. The former Telecommunications Authority (replaced by the Office of the Communications Authority ("OFCA") on 1 April 2012), following the policy decision, assigned the MFN multiplex to ATV and TVB on an equal sharing basis for digital simulcast of the four analogue free-to-air television programmes in 2007.

13. The Panel noted that Special Condition ("SC") 3.2 of ATV's and TVB's Fixed Carrier Licences ("FCLs") required that "The licensee shall maintain and operate the network for provision of the service in accordance with Schedules 2 and 3 of this licence and any amendments to them as approved by the Authority." Schedule 2(A)(ii) of ATV's and TVB's FCLs further required that the MFN for DTT transmission should be shared equally between ATV and TVB.

14. The Administration advised that in March 2013, OFCA found the transmission capacity in the MFN to have been unequally shared between ATV and TVB in a regular monitoring of the DTT broadcast network. OFCA completed its investigation and submitted its findings to the CA on 6 July 2013. Having considered the findings of OFCA's investigation, and having been satisfied that ATV and TVB had been afforded a reasonable opportunity to make representations, the CA came to the conclusion that ATV and TVB had failed to comply with SC 3.2 and Schedule 2(A)(ii) of their FCLs, by unequally sharing the capacity in the MFN without obtaining the prior approval of the CA. The CA considered the breach a serious one and decided to impose a financial penalty of HK\$200,000 each on both ATV and TVB for the contravention.

15. Some Panel members considered it inappropriate for the CA to have sanctioned ATV and TVB for contravention of the license requirement on equal sharing of MFN transmission capacity by ATV and TVB on the one hand, and allowed ATV and TVB to formalize the unequal sharing

arrangement on the MFN through licence amendments on the other. Some other members considered the unequal sharing of the transmission capacity in the MFN by ATV and TVB without the CA's prior approval a very serious contravention of the licence conditions of the two licensees. These members opined that the sanctions imposed on the two licensees were too lenient to have any deterrent effect. As such, that the CA should consider imposing heavier penalties on the licensees, including non-renewal of licence.

16. The CA advised 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.

### Council meetings

17. At the Council meeting on 9 October 2013, Hon Charles Peter MOK raised an oral question on the renewal of existing free TV licences, including whether the Government would issue free TV licences through open tender upon expiry of the existing free TV licences so as to promote market competition. At the Council meeting on 30 October 2013, Dr Hon LAM Tai-fai raised a written question on, inter alia, the assessment criteria for renewal of existing free TV licences.

18. The Administration advised that the CA would consider all relevant factors when processing the applications, including the licensees' operational, financial, technical and programming arrangements, future commitments, public opinions, and would fully assess the past performance of the licensees concerned in relation to their compliance with the statutory requirements, licence conditions and codes of practice before making recommendations to the CE in Council. The CA and the relevant authorities would also take into account matters in relation to the frequency spectrum when processing the applications for renewal of existing free TV licences.

### **Latest position**

19. The Administration will brief the Panel on 10 March 2014 on the progress of processing the applications for renewal of the free TV licences of ATV and TVB.

**Relevant papers**

20. A list of the relevant papers with their hyperlinks is at:  
[http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb\\_aa.htm](http://www.legco.gov.hk/yr15-16/english/panels/itb/papers/itb_aa.htm)

Council Business Division 4  
Legislative Council Secretariat  
3 March 2014