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## Press Releases

### Communications Authority Releases Findings of the Investigation into the Control and Management of Asia Television Limited

The Communications Authority (formerly Broadcasting Authority, collectively referred to as the "Authority" hereafter) today (23 August 2013) announced the findings of the investigation into the role played by Mr Wong Ching (Mr Wong) in the control and management of Asia Television Limited (ATV), a domestic free television programme service licensee. Based on the evidence collected, the Authority finds that, amongst other matters, Mr Wong has unduly interfered with the day-to-day management and operations of ATV, and in so doing exercised *de facto* control of ATV.

The investigation was initiated by the Authority in July 2011 in view of public concerns over the alleged improper participation of Mr Wong in the day-to-day management and operations of ATV. In the course of the investigation, which effectively took place between July 2011 and June 2012, the Authority also found it necessary to consider whether ATV and certain officers of ATV remained "fit and proper" as required under the Broadcasting Ordinance (Cap. 562) (BO).

Between July 2011 and June 2012, the Authority collected information from those whom it had reasonable grounds to believe would have information relating to the matters under investigation. The Authority also requested ATV to submit representations, conducted interviews with relevant persons and obtained from them information and documents, and obtained from ATV's management information and documents including the minutes of the relevant management meetings of ATV and the consulting agreement between Mr James Shing (Mr Shing), the Executive Director of ATV, and Mr Wong.

For the avoidance of doubt, the Authority promulgates in its investigation report the findings and conclusion in respect of ATV based on the evidence collected up to June 2012<sup>(Note 1)</sup> as well as the findings on matters covered under the present investigation. ATV's performance as a licensee against other regulatory requirements including programming, advertising and technical matters is outside the scope of the present investigation.

Based on the evidence collected, the Authority concluded that -

- (a) Mr Wong had unduly interfered with the day-to-day management and operations, and in so doing exercised *de facto* control, of ATV. Key evidence included -
  - (i) Mr Wong's extensive participation in ATV's weekly management meetings between 4 January 2010 and 5 September 2011; the directions which he gave at those meetings and the deference given to his "advice" by Mr Shing, taking also into account that the ATV's board of directors was not functioning between late 2010 and September 2011 and Mr Shing was the only person who was authorised to handle the daily operations of ATV;
  - (ii) Mr Wong's advice on and direct involvement in various aspects of the day-to-day management and operations of ATV, and that the principal officers of ATV reported to Mr Wong on their work; and
  - (iii) the broad rights given to Mr Wong by the consulting agreement and in particular, the extensive access he was granted to confidential and commercially sensitive information about ATV and to ATV's staff and advisors.

The Authority considered that the cumulative effect of Mr Wong's conduct constituted a clear breach of the terms of his undertaking made to the Authority in October 2010, that he would not be entitled to exercise *de facto* control over ATV (No-control Undertaking). ATV as a licensee was also in breach of Condition 10.1 of its domestic free television programme service licence for failing to comply with the No-control Undertaking contained in the Licensee's Proposal;

- (b) Mr Shing was no longer a "fit and proper person" within section 21(1) of the BO. The Authority considered that it was not proper for Mr Shing to allow Mr Wong, who had no executive or managerial position of any kind within ATV, to unduly interfere with the management and operations, and in so doing exercise *de facto* control, of ATV, and that there is strong evidence suggesting that Mr Shing provided misleading information to the Authority in the investigation in an attempt to conceal the nature and extent of Mr Wong's involvement within ATV's management;
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- (c) it was unable to reach the conclusion that Mr Kwong Hoi Ying (Mr Kwong) as a then principal officer of ATV was not a "fit and proper person". Given the highly unusual corporate structure of ATV, the Authority could not discount the possibility that Mr Kwong, who held one of the most senior positions in ATV at the material times, could have been constrained by his position as a subordinate of Mr Shing and an employee of ATV when performing his role in the management of ATV and in his deliberations with the Authority;
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- (d) as Mr Wong had flouted the No-control Undertaking he made to the Authority, it would be justified for the Authority to further find that Mr Wong would not meet the criteria for "fit and proper person" if an assessment were to be made. The Authority would take this into account if Mr Wong were to apply to be a voting controller, director or principal officer of a television programme service licensee in the future; and
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- (e) ATV should be required to take prompt and effective steps to improve its corporate governance standards to a level which is expected of a licensee. Despite the Authority's concern over the poor corporate governance in ATV, the Authority was conscious of the requirement to meet a high threshold commensurate with any adverse finding on the "fitness and properness" of a licensee and considered that ATV should not be adjudged to failing or ceasing to be a "fit and proper person" on the basis of the evidence collected for this investigation up to June 2012 as well as the findings on matters being investigated in the present investigation.
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Given the above, the Authority decided to -

- (a) impose a financial penalty of \$1,000,000 on ATV for breaching Condition 10.1 of ATV's licence; and
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- (b) issue a direction under section 24 of the BO (Direction) that ATV shall -
- (i) require Mr Shing to cease acting as a person exercising control (including directorship) of ATV within seven days as he is no longer a "fit and proper person";

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  - (ii) ensure that Mr Wong would refrain from exercising *de facto* control of ATV;

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  - (iii) take immediate rectification action to ensure that the management of ATV should not be performed by any persons other than the directors and principal officers of ATV and persons duly authorised by ATV; and

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  - (iv) submit within three months a proposal to the Authority setting out in detail the steps that ATV should take to improve its corporate governance standards to a level which is expected of a licensee and thereafter submit annual progress reports until the Authority is satisfied that the proposed improvement measures have been fully and effectively implemented.
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The full investigation report and the Authority's Direction to direct ATV to take rectification actions as per section 24 of the BO are published on the Authority's website ([www.coms-auth.hk](http://www.coms-auth.hk)). An executive summary of the investigation report is at [Annex](#).

Communications Authority  
Secretariat

23 August 2013

Notes:

- (1) On 26 June 2012, ATV challenged by way of judicial review the Authority's procedural decisions in relation to the investigation. The judicial review proceedings initiated by ATV were brought to an end when ATV's case was dismissed by the Appeal Committee of the Court of Final Appeal on 15 August 2013. As a result of the judicial review proceedings, the conclusion of the investigation and the publication of the decision of the Authority have been postponed for more than a year.
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