

立法會
Legislative Council

LC Paper No. CB(4)188/13-14(02)

Ref. : CB4/PL/ITB

Panel on Information Technology and Broadcasting

Special meeting on 2 December 2013

**Background brief on issues relating to the broadcasting services of
Asia Television Limited and Television Broadcasts Limited**

Purpose

This paper provides background information on the broadcasting services of Asia Television Limited ("ATV") and Television Broadcasts Limited ("TVB"), 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 licenses are granted under the Broadcasting Ordinance ("BO") (Cap. 562) and are valid for 12 years. In general, the licenses will be reviewed every six years in the mid-term review. The current domestic free TV programme service licenses of ATV and TVB run from 1 December 2003 to 30 November 2015 (both dates inclusive).

3. 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, license conditions and codes of practice promulgated by the 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

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

public consultation exercise in 2009, including a territory-wide household opinion survey, three public hearings and seven discussion sessions with interested groups.

4. In July 2010, the Administration announced that the Chief Executive in Council had accepted the recommendations of the former BA in respect of the licenses 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
- (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

Competition

6. 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 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 license of ATV if such requirements were not met.

7. 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.

8. On enhancing competition, some Panel members were keen to ensure that the Administration would consider granting additional domestic free television programme service licenses 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.

Complaints against ATV

9. 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.

10. 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 was initiated as a separate exercise.

11. 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 CE in Council for the revocation of its television programme service license. 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 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.

12. 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. 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.

Recent developments

13. On 23 August 2013, CA announced the outcome of the investigation into the role played by Mr WONG Ching in the control and management of ATV. According to CA, Mr WONG had unduly interfered with the day-to-day management and operations of ATV, and in so doing exercised de facto control of ATV. CA decided to impose, among others, a financial penalty of \$1,000,000 on ATV for breaching Condition 10.1 of ATV's license 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".

14. On 19 September 2013, CA announced the outcome of the investigation into the complaint lodged by ATV against the alleged violations of the competition provisions of the BO by TVB. According to CA, some of the allegations were substantiated and TVB had abused its dominant position by engaging in anti-competitive practices in contravention of sections 13 and 14 of the BO. Accordingly, the CA decided to impose, among others, a financial penalty of \$900,000 on TVB.

Latest position

15. The Administration and the CA will brief the Panel on 2 December 2013 on the outcome of CA's investigation into the competition complaints against TVB and the outcome of the CA's investigation into the control and management of ATV.

Relevant papers

16. 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

Council Business Division 4
Legislative Council Secretariat
29 November 2013