

**For discussion
on 2 December 2013**

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

**Investigation into the Control and Management of
Asia Television Limited**

Purpose

The Communications Authority (formerly the Broadcasting Authority, collectively referred to as the “Authority” hereinafter¹) has completed its investigation into the role played by Mr Wong Ching (王征) in the control and management of Asia Television Limited (“ATV”), a domestic free television programme service licensee. This paper briefs Members on the findings of the investigation and the remedies imposed by the Authority on ATV.

Background

Regulatory framework

2. The Broadcasting Ordinance (Cap. 562) (“BO”) provides for the regulatory framework governing the ownership and corporate control of domestic free television programme service licensees and any person exercising control of such licensees. In particular, section 21 of the BO requires that a licensee and any person exercising control of the licensee shall be and remain a “fit and proper person”².

¹ Since 1 April 2012, the Broadcasting Authority has been disbanded and its statutory functions have been taken over by the Communications Authority, which is a unified regulatory body tasked with overseeing the broadcasting and telecommunications sectors.

² Section 21(4) of the BO provides that, in determining whether a licensee or a person exercising control over the licensee is a “fit and proper person”, account shall be taken of –

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which if, done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c) above.

3. Condition 10.1 of ATV's domestic free television programme service licence ("the Licence") provides that, unless otherwise approved by the Authority, the licensee shall comply with the Licensee's Proposal, including statements and representations regarding the control of the licensee.

The role of Mr Wong Ching in ATV

4. Mr Wong Ching has been a major investor of ATV. He is neither a shareholder, a director nor a principal officer of ATV. He therefore does not have any capacity or rights under the BO to exercise control over ATV.

5. In June 2010, ATV sought the Authority's approval of a shareholding change involving the acquisition of 52.4% of ATV's voting shares by Mr Wong Ben Koon (黃炳均). In support of this application, Mr Wong Ching indicated to the Authority that he had a strong commitment to provide financial support to ATV and confirmed that he would not be in a position to exercise any voting control over ATV once the shareholding change had been completed. In September 2010, the Authority approved the new shareholding structure of ATV. As one of the approving conditions, the Authority requested and Mr Wong Ching agreed to provide a letter of undertaking the terms of which were finalised on 19 October 2010 to the effect that, following the completion of the shareholding change, Mr Wong Ching would not be "entitled to exercise *de facto* control over ATV" ("No-control Undertaking"). As this undertaking constituted part of the Licensee's Proposal of ATV, ATV has an obligation to comply with it at all times and failure to do so would constitute a breach of Condition 10.1 of ATV's Licence.

The investigation

6. The investigation was initiated by the Authority in July 2011 in view of public concerns over the alleged improper participation of Mr Wong Ching in the day-to-day management and operations of ATV, and the public complaints received by the Authority. 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 BO.

7. 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 (盛品儒), the then Executive Director of ATV, and Mr Wong Ching.

8. On 23 August 2013, the Authority announced the findings of the investigation. The executive summary of the report on the investigation is at **Annex**. 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 2012³ 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 this investigation.

Findings of the investigation

9. Based on the evidence collected, the Authority concluded that –

- (a) Mr Wong Ching 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 Ching'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;

³ 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.

- (ii) Mr Wong Ching’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 Ching on their work; and
- (iii) the broad rights given to Mr Wong Ching 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 Ching’s conduct constituted a clear breach of the terms of the No-control Undertaking made to the Authority in October 2010, that he would not be entitled to exercise *de facto* control over ATV. ATV as a licensee was also in breach of Condition 10.1 of its Licence for failing to comply with the No-control Undertaking contained in the Licensee’s Proposal;

- (b) Mr James 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 James Shing to allow Mr Wong Ching, 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 James Shing provided misleading information to the Authority in the investigation in an attempt to conceal the nature and extent of Mr Wong Ching’s involvement within ATV’s management;
- (c) it was unable to reach the conclusion that Mr Kwong Hoi Ying (鄺凱迎) as a then principal officer of ATV⁴ 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 Hoi Ying, 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 James Shing and an employee of ATV when performing his role in the management of ATV and in his deliberations with the Authority;

⁴ Mr Kwong Hoi Ying retired from ATV in July 2013.

- (d) as Mr Wong Ching had flouted the No-control Undertaking he made to the Authority, it would be justified for the Authority to further find that Mr Wong Ching 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 Ching were to apply to be a voting controller, director or principal officer of a television programme service licensee in the future; and
- (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 propriety” 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 the investigation up to June 2012 as well as the findings on matters being investigated in the investigation.

Decision of the Authority

10. Given the above, the Authority decided to –
- (a) impose a financial penalty of \$1,000,000 on ATV for breaching Condition 10.1 of its Licence; and
 - (b) issue a direction under section 24 of the BO that ATV shall –
 - (i) require Mr James Shing to cease acting as a person exercising control (including directorship) of ATV by 2 September 2013 as he is no longer a “fit and proper person”;
 - (ii) ensure that Mr Wong Ching would refrain from exercising *de facto* control of ATV;
 - (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

- (iv) submit by 26 November 2013 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, the first to be submitted by 26 August 2014, until the Authority is satisfied that the proposed improvement measures have been fully and effectively implemented.

Actions by ATV

11. Pursuant to the Authority's direction, ATV confirmed on 1 September 2013 that Mr James Shing had resigned from all positions he previously held at ATV with effect from 31 August 2013. On 16 September 2013, ATV also settled the financial penalty of \$1,000,000. On 26 November 2013, ATV submitted a proposal to the Authority on the steps that it would take to improve its corporate governance standards.

12. On 23 September 2013, ATV lodged a statutory appeal by way of petition to the Chief Executive in Council, pursuant to section 34 of the BO⁵, against the decision of Authority on matters covered under the investigation.

13. The Authority will continue to closely monitor the progress of ATV in implementing the Authority's direction, including conducting an assessment on ATV's proposed measures to improve its corporate governance.

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⁵ Section 34(1) of the BO stipulates, among others, that a licensee aggrieved by a decision of Authority in the exercise of a discretion conferred on it under the BO may appeal by way of petition to the CE in C, not later than 30 days beginning on the date of the relevant decision.

**FINAL REPORT
OF THE COMMUNICATIONS AUTHORITY**

**INVESTIGATION INTO THE CONTROL AND
MANAGEMENT OF ASIA TELEVISION LIMITED**

EXECUTIVE SUMMARY

INTRODUCTION

The Communications Authority¹ (formerly Broadcasting Authority, collectively referred to as the “**Authority**” hereafter) has investigated and considered the role played by Mr Wong Ching (王征) in the control and management of Asia Television Limited (**ATV**), a domestic free television programme service licensee. The investigation was initiated in 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**).

2. This executive summary highlights the major issues and findings of the investigation, and the decision of the Authority. It is provided for general reference only and must not be taken as substituting, modifying or varying any part of the final investigation report (**Final Report**) nor does it form part of the Final Report². For the avoidance of doubt, the Final Report reflects the Authority’s findings and conclusion in respect of ATV based on the evidence collected up to June 2012 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.

BACKGROUND

Regulatory Framework

3. The BO provides for the regulatory framework governing the ownership and corporate control of domestic free television programme service

¹ Since 1 April 2012, the Broadcasting Authority has been disbanded and its statutory functions have been taken over by the Communications Authority, which is a unified regulatory body tasked with overseeing the broadcasting and telecommunications sectors.

² The Final Report is published on the Authority’s website: www.coms-auth.hk.

licensees and any person exercising control of such licensees. In particular, section 21 of the BO requires that a licensee and any person exercising control of the licensee shall be and remain a “fit and proper person”.

4. Condition 10.1 of ATV’s domestic free television programme service licence (**ATV’s Licence**) provides that, unless otherwise approved by the Authority, the licensee shall comply with the Licensee’s Proposal, including statements and representations regarding the control of the licensee.

The Role of Mr Wong Ching in ATV

5. Mr Wong Ching has been a major investor of ATV. He is neither a shareholder, a director nor a principal officer of ATV. He therefore does not have any capacity or rights under the BO to exercise control over ATV.

6. In June 2010, ATV sought the Authority’s approval of a shareholding change involving the acquisition of 52.4% of ATV’s voting shares by Mr Wong Ben Koon (黃炳均). In support of this application, Mr Wong Ching indicated to the Authority that he had a strong commitment to provide financial support to ATV and confirmed that he would not be in a position to exercise any voting control over ATV once the shareholding change had been completed. In September 2010, the Authority approved the new shareholding structure of ATV. As one of the approving conditions, the Authority requested and Mr Wong Ching agreed to provide a letter of undertaking the terms of which were finalised on 19 October 2010 to the effect that, following the completion of the shareholding change, Mr Wong Ching would not be “entitled to exercise *de facto* control over ATV” (**No-control Undertaking**). As this undertaking constituted part of the Licensee’s Proposal of ATV, ATV has an obligation to comply with it at all times and failure to do so would constitute a breach of Condition 10.1 of ATV’s Licence.

THE INVESTIGATION – THE PROCESS

7. In June 2011, the Authority received a complaint letter requesting it to investigate whether Mr Wong Ching had been exercising control of ATV. There were wide public concerns over the role played by Mr Wong within ATV, particularly after the misreporting of Mr Jiang Zemin (江澤民)’s death in July 2011. As a result, the Authority decided in July 2011 to conduct an investigation under the BO to look into whether Mr Wong was exercising *de facto* control of ATV.

8. From July 2011 to June 2012, the Authority collected information from those whom it had reasonable grounds to believe would have information relating to the matters being investigated. The Authority has also requested ATV to submit representations, conducted interviews with relevant persons (**Interviewees**)

including former executives of ATV, and invoked its statutory powers to obtain information and documents from them as well as from ATV's management. The Authority has carefully assessed the evidence collected for the investigation to reach its findings.

9. On 21 June 2012, the Authority invited ATV to make representations on a revised draft investigation report compiled by the Authority. ATV did not take the opportunity to make representations and instead, on 26 June 2012, it decided to challenge by way of judicial review the Authority's procedural decisions in relation to this investigation³. On 19 October 2012, the Court of First Instance (CFI) decided in favour of ATV and the Authority lodged an appeal against the judgement to the Court of Appeal (CA). On 15 May 2013, the CA reversed the judgement of the CFI and ruled in favour of the Authority. The judicial review proceedings were brought to an end when the application by ATV for leave to appeal to the Court of Final Appeal (CFA) was dismissed by the Appeal Committee of the CFA on 15 August 2013. As a result of the judicial review proceedings initiated by ATV, the conclusion of the investigation and the publication of the decision of the Authority have been postponed for more than a year.

THE INVESTIGATION – CONTROL AND MANAGEMENT OF ATV

The No-control Undertaking of Mr Wong Ching

10. In the No-control Undertaking submitted to the Authority, Mr Wong Ching undertook that he would not be "entitled to exercise *de facto* control over ATV". The history of formulating of the No-control Undertaking (see paragraph 6 above) clearly shows that the Authority was concerned about Mr Wong's possible attempt to unduly interfere with the management and operations of ATV and in so doing, exercise *de facto* control of ATV from the outset. In considering whether *de facto* control exists, the Authority has taken into account, in the present context given in particular the history of formulating the No-control Undertaking and the concerns relating to the corporate governance of ATV, all relevant circumstances and has come to its determination on the basis of the facts gathered.

³ In gist, ATV challenged the Authority's decisions of refusing to disclose the identities of the Interviewees and the full transcripts of the interviews.

Initial Representations of ATV

11. In its initial representations to the Authority, ATV submitted that –
- (a) Mr Wong Ching was a main investor of ATV and he had a legitimate interest to be concerned with the day-to-day management and operations of ATV; and
 - (b) Mr Wong Ching's participation in the day-to-day management and operations of ATV was only in the capacity of a personal consultant to Mr James Shing (盛品儒), the Executive Director of ATV, under a consulting agreement between Messrs Shing and Wong dated 15 April 2010 (**Consulting Agreement**), and that the participation of Mr Wong within ATV was limited to his role as such.

Evidence Relating to Mr Wong Ching's Involvement in ATV's Management and Operations

12. In the course of the investigation, the Authority has identified various incidents and occasions when Mr Wong Ching participated in the day-to-day management and operations of ATV.

ATV's Weekly Management Meetings⁴

13. There is clear evidence from the records of ATV's weekly management meetings held between 4 January 2010 and 5 September 2011 that Mr Wong Ching repeatedly participated in these meetings –

	Mr Wong Ching's attendance at ATV's weekly management meetings	
	2010	2011 (up to 5 September)
Per minutes supplied by ATV and the Interviewees ⁵	14 of 47	4 of 32

14. There is also clear evidence from the minutes of ATV's weekly management meetings that Mr Wong Ching had active and direct involvement in

⁴ In response to the Authority's request, ATV submitted documentary information which included the minutes of the weekly management meetings held in 2010 and 2011 (**Minutes Supplied by ATV**). A number of Interviewees also supplied to the Authority copies of minutes of ATV's weekly management meetings in 2010 and 2011 retained by them (**Minutes Supplied by Interviewees**).

⁵ According to the Minutes Supplied by ATV and the Minutes Supplied by Interviewees, there were a total of 47 and 32 weekly management meetings held in 2010 and 2011 (up to 5 September) respectively.

various aspects of the day-to-day management and operations of ATV. Some notable examples include –

- (a) 王征先生訓示所有參加每周會議者，必需依時出席會議，未能出席者，須事先申請。
- (b) 王征先生表示要加強藝員的管理，規矩要嚴格執行，賞罰要分明。
- (c) 王征先生指示要將某人士在港出席活動的情況製作成某節目的專輯，並指定專輯的播出時間。
- (d) 某選舉節目的候選人名單由王征先生作最後確定。
- (e) 王征先生訓示不能隨便承諾客戶播出日期，需向客戶明確講明亞視要保證節目的質量。
- (f) 王征先生訓示日後需按公司的規矩辦事並需於限期內完成某項目，要有完善的管理制度。
- (g) 對於某節目的籌辦及贊助，王征先生以短訊指示不能讓步。

Statements and Documentary Information Provided by the Interviewees

15. The Authority has taken into account statements and documentary information given by the Interviewees that are consistent with and reinforce the evidence from the minutes of the weekly management meetings that Mr Wong Ching had active and direct involvement in the day-to-day management and operations of ATV. Notable examples are –

- (a) 2010年4月開始，王征先生在亞視有自己的辦公室，並直接召見部門主管，在日常運作上提出很多要求和命令，例如節目編排、宣傳口號及宣傳重點等。
- (b) 王征先生出席(每周管理層例會)之時，會主導整個會議，不按議程，只討論他想批評的事。
- (c) 盛品儒先生雖為簽署文件及主持會議的人，但在行政會議上作決定的人是王征先生，而盛品儒先生從來不作決定。
- (d) 王征先生曾指令、指示及要求亞視員工跟從他的指示。王征先生並會責備部份亞視員工沒有跟從他的指示或員工所犯的錯誤。

- (e) 王征先生所給的指示非常廣泛，由員工紀律、節目、銷售、製作、節目編排，以至行政事宜均有作出指示。
- (f) 2011年4月，鄭凱迎先生主持行政例會時發出指示，表明任何有關《走進上市公司》節目製作的決定，均需先請示王征先生。
- (g) 王征先生會邀請亞視員工去他在亞視的辦公室，或他的公寓開會，提出想做某些節目，並要求與會員工找時段播放該等節目。
- (h) 亞視的收視情況雖然並不理想，但王征先生仍決定大幅提高亞視的廣告收費。
- (i) 2010年底，王征先生在一次管理層例會上表明，亞視不應再沿用舊有的收視調查方式。亞視之後不跟原本聘用的收視調查公司續約，改聘一所大學每周替亞視進行收視調查。

Mr Wong Ching as Mr James Shing's Personal Consultant

16. Mr Wong Ching is engaged by Mr James Shing under the terms of the Consulting Agreement to give advice, recommendations, assistance and support to Mr Shing in relation to the management, operations and business of ATV. The scope of work of Mr Wong as the personal consultant to Mr Shing is neither project-specific, nor time-limited. It does not identify the expertise that Mr Wong possesses and for which he is to be appointed as a "personal consultant".

17. The Consulting Agreement also obliges Mr Shing to give Mr Wong access to all confidential and commercially sensitive information of ATV and to ATV's staff and advisors as Mr Wong may reasonably request to perform his duty as Mr Shing's personal consultant. It also provides that a monthly fee is to be paid by Mr Shing to Mr Wong.

Further Representations of ATV and Mr Wong Ching

18. The management of ATV and Mr Wong Ching provided further representations to deny the direct involvement of Mr Wong in ATV's management and operations. The salient points are set out below –

- (a) it was Mr James Shing's decision to engage Mr Wong as his personal consultant. The terms and arrangement contemplated under the

Consulting Agreement were then approved and ratified by the ATV's board of directors (**ATV Board**) in March 2012⁶;

- (b) it was Mr Shing who always made the ultimate decisions. Mr Wong would only offer advice if asked to do so. No principal officers of ATV had ever been instructed to report to Mr Wong on their work;
- (c) where the minutes of ATV's weekly management meetings stated that Mr Wong had directed or instructed certain matters to be done, they were simply the choice of words of the notes taker;
- (d) Mr Wong's involvement in the weekly management meetings of ATV was limited. Based on the Minutes Supplied by ATV, Mr Wong only attended 21.4% and 12.5% of the meetings held in 2010 and 2011 until September respectively; and
- (e) the statements and information provided by the Interviewees were not credible as they were biased against ATV and Mr Wong given their "vested interests, prejudiced motives and/or improper motives".

The Authority's Assessment and Conclusion

19. The Authority has carefully considered the representations made by ATV and Mr Wong Ching on his involvement in ATV's management and operations, and does not accept their explanations mainly because –

- (a) the Minutes Supplied by Interviewees indicate that Mr James Shing seldom made decisions at the weekly management meetings of ATV, but Mr Wong's directions during these meeting were clearly recorded;
- (b) the explanation that no principal officers of ATV had ever been instructed to report to Mr Wong on their work is not consistent with the evidence collected from several Interviewees. In fact, Mr Shing's own evidence is that the principal officers had indeed been asked to report to Mr Wong, albeit on Mr Shing's instructions;
- (c) the statistical analysis submitted by ATV confirms that Mr Wong had participated in ATV's weekly management meetings. The frequency of

⁶ In response to the Authority's provisional findings, the ATV Board met on 26 March 2012 and resolved that the Consulting Agreement between Messrs James Shing and Wong Ching and the terms and arrangement contemplated thereunder and all actions taken by them pursuant to the Consulting Agreement were approved, confirmed and ratified in all aspects, and that Mr Shing was authorized to disclose to Mr Wong all information relating to ATV.

Mr Wong's attendance at such meetings does not fully reflect the extent of his involvement in ATV's control and management⁷;

- (d) according to the statements of the Interviewees, Mr Shing did not in fact play a prominent or leading role in ATV. In contrast, Mr Wong was allowed to play a prominent role in various matters concerning ATV. The instructions of Mr Wong were decisive in the management and operations of ATV. These allegations are supported by and/or consistent with the Minutes Supplied by Interviewees or by ATV;
- (e) the rights of Mr Wong under the Consulting Agreement are far beyond those that would normally be expected of a personal consultant;
- (f) Mr Shing had not paid any fees to Mr Wong for the consulting service provided since April 2010 notwithstanding the terms of the Consulting Agreement. This calls into question whether the agreement is a genuine contractual relationship between the two parties or merely a disguise;
- (g) the resolutions of the ATV Board passed on 26 March 2012 (see paragraph 18 (a) above) neither altered the factual happenings in ATV in 2010 and 2011 nor did they address the Authority's concerns about the true nature of the Consulting Agreement which are described in sub-paragraphs (e) and (f) above; and
- (h) the Authority is fully aware of the relationship between the Interviewees and ATV. It primarily relies on the undisputed documentary evidence collected from ATV and the Interviewees during the investigation and those parts of the evidence of the Interviewees that are consistent with and/or reinforce the documentary evidence.

20. Based on the evidence mentioned above, the Authority considers that Mr Wong Ching was allowed to play a prominent role in various matters concerning ATV and his instructions were decisive in the management and operations of ATV. Such evidence shows –

- (a) Mr Wong's extensive participation in ATV's weekly management meetings between 4 January 2010 and 5 September 2011;

⁷ For example, Mr Wong had his own office at ATV and he also arranged meetings with ATV's senior management.

- (b) Mr Wong's advice on and direct involvement in various aspects of the day-to-day management and operations of ATV;
- (c) the directions which Mr Wong gave at ATV's weekly management meetings and the deference given to his "advice" by Mr James Shing, taking also into account that there was no functioning ATV Board at the time and Mr Shing, on his own admission, was the only person who could handle the daily operations of ATV;
- (d) the principal officers of ATV reported to Mr Wong on their work;
- (e) that Mr Wong had his own office at ATV and he also arranged meetings with ATV's senior management;
- (f) the prominent role played by Mr Wong in, for example, the "programme project scheme", the launch of the "ATV Hong Kong Loving Hearts Campaign" and the decision regarding CSM's Ratings Result;
- (g) the broad rights given to Mr Wong by the Consulting Agreement (under which he received no fees) and in particular the extensive access he was granted to confidential and commercially sensitive information about ATV and to ATV's staff and advisers;
- (h) the attempts of Mr Shing to play down the actual involvement of Mr Wong in the weekly management meetings by the amendments to the minutes;
- (i) the absence of an effective ATV Board which had not met for a long period of time⁸; and
- (j) Mr Wong's behaviour in receiving delegations and visitors to ATV and giving his vision on the development of ATV, which was a role that one would normally expect of someone in charge of ATV to assume.

While there may be different explanations or interpretation for Mr Wong Ching's interference on individual occasions, what is important is that when the totality of the evidence is taken into consideration, the cumulative effect of his conduct shows clearly that he has unduly interfered with the management and operations, and in so doing exercised *de facto* control, of ATV.

⁸ ATV Board met on 23 March 2010 and resolved by the majority of directors that Mr James Shing be appointed as the Executive Director of ATV. From late 2010 to September 2011, no Board meetings of any kind were convened. Some of ATV's directors have been denied access to ATV's documents and records. Hence, ostensibly all the powers and decision-making of the ATV Board in relation to the management, operations and business of ATV rested with Mr Shing.

21. Having regard to all circumstances, and taking into account the cumulative effect of Mr Wong's activities, the Authority finds, on a balance of probabilities, that **Mr Wong Ching has been exercising *de facto* control of ATV**. Accordingly,

- (a) Mr Wong Ching has breached the terms of the No-control Undertaking; and
- (b) ATV is in breach of Condition 10.1 of the ATV Licence for failing to comply with its Licensee's Proposal.

THE INVESTIGATION – “FIT AND PROPER PERSON” REQUIREMENT

Question of Misleading the Authority

22. In the course of the investigation into the role of Mr Wong Ching in ATV, the Authority has become concerned about whether ATV and certain officers of ATV remained “fit and proper” as required under the BO. The Authority notes –

- (a) the material discrepancies in the minutes of weekly management meetings held in 2011 – 16 of the 32 sets of Minutes Supplied by ATV were different from those supplied by the Interviewees, with all material discrepancies relating to the involvement of Mr Wong in ATV between January and September 2011. Six out of the 16 sets contained material discrepancies in content involving deletions which have the effect of downplaying the involvement of Mr Wong in the deliberations;
- (b) the omission of five other sets of minutes of weekly management meetings held in 2010 – The Authority obtained from the Interviewees copies of the minutes of five weekly management meetings which were omitted from the Minutes Supplied by ATV. The Authority noted from the content of these minutes that Mr Wong had played a particularly prominent role at all these meetings; and
- (c) Mr Kwong Hoi Ying (龔凱迎) as “Acting CEO of ATV” – ATV submitted that Mr Kwong (the then Senior Vice President of ATV⁹) was never appointed as “Acting CEO” or “Acting Vice CEO” of ATV. However, certain Interviewees believed that Mr Kwong had been

⁹ Mr Kwong Hoi Ying retired from ATV in July 2013.

promoted to “Acting CEO” of ATV and they considered that Mr Kwong had been exercising power in that capacity.

Representations of Relevant Officers of ATV

23. Relevant officers of ATV submitted representations in response to the above. The salient points are set out below –

The Material Discrepancies in the Minutes of Weekly Management Meetings held in 2011

- (a) the minutes were merely summaries of the matters discussed at the weekly management meetings. If Mr James Shing considered the minutes did not accurately reflect what were discussed at the meetings, he might allow amendments to be made for the record. The amended minutes needed not be re-circulated if the amendments were not important;
- (b) the signature on the Minutes Supplied by Interviewees appeared to be Mr Shing’s signature. He signed on the minutes only to signify his approval for circulation of these minutes to the participants;
- (c) Mr Shing made amendments to the minutes upon the suggestion of a director of ATV, who considered that the references to Mr Wong might not reflect correctly the facts that Mr Wong participated in these meetings merely as a personal consultant of Mr James Shing;
- (d) Mr Shing did not re-circulate the six sets of revised minutes to the participants. He explained that the amendments were made weeks after the relevant meetings were held and many of the matters discussed at such meetings had been overtaken by events. However, Mr Shing claimed that it was necessary to revise these minutes so that the records in ATV’s internal filing system were accurate without creating any misunderstanding;

The Omission of Five Other Sets of Minutes of Weekly Management Meetings held in 2010

- (e) records of the Minutes Supplied by ATV might not be complete due to changes in the personnel who kept records;
- (f) the signature on the five sets of Minutes Supplied by Interviewees seemed to be that of Mr Shing;

- (g) although Mr Shing was not able to advise on whether the 2010 minutes in the copies supplied by the Interviewees were true copies of the minutes of the relevant meetings, Mr Kwong Hoi Ying confirmed that they were the same copies he received from the notes taker;

Mr Kwong Hoi Ying as “Acting CEO of ATV”

- (h) Mr Kwong was never appointed as the Acting CEO of ATV, although Mr Shing had sought Mr Kwong’s assistance to effect coordination among those senior officers of ATV when Mr Shing was absent. This did not confer Mr Kwong the real executive power to make his own instructions and decisions;
- (i) Mr Shing only asked Mr Kwong to use the designation of “Acting CEO” for the limited purposes of receiving guests from the Mainland. Such titles were not used internally; and
- (j) Mr Kwong’s former secretary had mistakenly used the title “Acting CEO” for Mr Kwong in a piece of correspondence with a local university regarding a lecture that he had participated.

The Authority’s Assessment and Conclusion

(1) “Fit and Proper Person” Status of Mr James Shing

His Role in the Management of ATV

24. The entry by Mr James Shing into the Consulting Agreement and the practical operation of this arrangement has raised serious concerns as to whether he is a “fit and proper person” to be exercising control of ATV. The Authority considers that it is improper for Mr Shing to allow Mr Wong Ching, who has 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.

Provision of Misleading Information

25. The Authority considers there is strong evidence suggesting that Mr James Shing misled the Authority by providing it with “corrected” versions of the minutes of certain weekly management meetings held in 2011. The factors taken into account by the Authority in coming to this view include –

- (a) all material discrepancies identified in the 16 sets of the Minutes Supplied by ATV were related to Mr Wong Ching;

- (b) Mr Shing had admitted that the Minutes Supplied by Interviewees bore signatures that appeared to be his. His signature on the relevant minutes containing references to the participation of Mr Wong should indicate his approval and agreement to their content;
- (c) if the minutes containing references to the participation of Mr Wong were inaccurate, Mr Shing could have amended their wording to make the correction. However, he chose to simply delete all references related to Mr Wong from those minutes; and
- (d) Mr Shing has made conflicting representations to the Authority about the purpose of amending the minutes. On the one hand, he stated that there was a need to amend the 2011 minutes to reflect what actually happened at the meetings and to make sure the records in the internal filing system were accurate without causing any misunderstanding. On the other hand, he stated that the minutes were not important records and the minutes were amended probably weeks after the relevant meetings had taken place. He did not re-circulate the revised minutes to the participants. This being the case, ATV would not be able to clarify the alleged misunderstanding with the participants. This is against the normal practice that one would have expected from a company for maintaining its internal records.

26. In respect of ATV's failure to submit the minutes of five weekly management meetings held in 2010 where Mr Wong Ching had given a series of instructions to the staff, there is strong reason to suggest that Mr James Shing might have withheld these minutes in an attempt to conceal the nature and extent of Mr Wong's involvement at those meetings. It is rather convenient that ATV has lost precisely these sets of minutes as a result of personnel changes when it could easily have obtained copies from Mr Kwong Hoi Ying.

27. In view of the above, the Authority **finds that Mr James Shing is no longer a "fit and proper person" for the purpose of section 21 of the BO.**

(2) "Fit and Proper Person" Status of Mr Kwong Hoi Ying

28. Given that Mr Kwong Hoi Ying held one of the most senior positions in ATV at the material times, Mr Kwong's behaviour in allowing himself to be described as "Acting CEO" and acting in collaboration with Mr James Shing in permitting Mr Wong Ching to unduly interfere in the management and operations, and in so doing exercise *de facto* control, of ATV raise concerns on whether he was "fit and proper" to be a principal officer of a licensed broadcaster. Nevertheless, in view of the highly unusual corporate environment of ATV, the Authority could not discount the possibility that Mr Kwong 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. The Authority is therefore unable to infer from Mr Kwong's answers that he had failed to properly perform his role in the management of ATV and had misled the Authority in its investigation. In view of the above, **the Authority is unable to reach the conclusion that Mr Kwong Hoi Ying as a then principal officer was not a "fit and proper person"**.

(3) "Fit and Proper Person" Status of Mr Wong Ching

29. As the Authority considers that Mr Wong Ching is in breach of the No-control Undertaking, it would be justified for the Authority to further find that he **would not have met the criteria for a "fit and proper person" if an assessment were to be made**. The Authority could 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.

(4) "Fit and Proper Person" Status of ATV as a Licensee

30. Despite the Authority's repeated advice to ATV to adopt appropriate standards of corporate governance, **it is regrettable that the ATV Board has failed to discharge its duty in the management of ATV** and as a consequence the irregularities identified in the investigation were allowed to occur. Between late 2010 and September 2011, ATV did not convene any Board meetings. The lack of oversight from the ATV Board allowed Mr James Shing to engage a personal consultant whose rights are far beyond that would normally be expected of a personal consultant. This should not be the situation if proper governance is in place.

31. Despite the Authority's concern over the poor corporate governance of ATV, ATV has been delivering broadcasting services in line with the scope of its Licence and has largely complied with its financial and programming commitments. Conscious of the requirement to meet a high threshold commensurate with any adverse finding on the "fitness and properness" of a licensee, the Authority considers that ATV should not be adjudged as 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.

32. In order to address the problems created by the lack of effective corporate governance in ATV, the Authority considers it necessary for ATV to submit within three months a proposal for the Authority's approval setting out the steps ATV must take to improve its corporate governance and thereafter submit annual progress reports. The Authority will take into account the progress made by

ATV to improve its corporate governance in considering whether it should continue to be regarded as a “fit and proper person” to hold its Licence.

THE AUTHORITY’S DECISION

33. On the basis of the above, the Authority has decided to –
- (a) impose a financial penalty of \$1,000,000 on ATV for breaching Condition 10.1 of ATV’s Licence;
 - (b) issue a direction under section 24 of the BO that ATV shall require Mr James Shing to cease acting as a person exercising control (including directorship) of ATV, within seven days from the service of the Final Report upon ATV, on the ground that Mr Shing has been determined by the Authority to be no longer a “fit and proper person” within section 21(1) of the BO; and
 - (c) issue a direction under section 24 of the BO requiring ATV to –
 - (i) ensure that Mr Wong Ching will refrain from exercising *de facto* control of ATV;
 - (ii) take immediate rectification action to ensure that the management of ATV shall not be performed by any persons other than the directors and principal officers of ATV and persons duly authorised by ATV; and
 - (iii) submit to the Authority for its approval, within three months from the service of the Final Report upon ATV, a proposal 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. Thereafter, ATV shall submit annual progress reports, the first to be submitted one year after the service of the Final Report, setting out the progress that it has made to improve its corporate governance, until the Authority is satisfied that the proposed improvement measures have been fully and effectively implemented and ATV is operating according to appropriate standards of corporate governance.