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Panel on Information Technology and Broadcasting

Meeting on 9 February 2015

**Background brief on issues relating to the operation and latest
developments of Asia Television Limited**

Purpose

This paper summarizes previous discussions by Members on issues relating to the operation and latest developments of Asia Television Limited ("ATV").

Background

2. The existing licence of ATV for domestic free television programme service ("free TV"), which commenced on 1 December 2003, will expire after 30 November 2015. ATV submitted an application to the Communications Authority ("CA") for renewal of its licence in November 2013. Pursuant to section 11(3) of the Broadcasting Ordinance (Cap. 562) ("BO"), the CA shall submit recommendations to the Chief Executive in Council ("CE in Council") on ATV's licence renewal application. For this purpose, the CA had conducted a public consultation exercise from 4 February to 3 April 2014 on the services provided by ATV and Television Broadcasts Limited ("TVB"), so that the CA could take public views into account when formulating recommendations to the CE in Council. The CA has submitted its recommendations for the free TV licences renewal applications of ATV and TVB to the CE in Council for consideration in November 2014.

Previous discussions

Panel on Information and Broadcasting

Inaccurate news reporting by ATV

3. 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 on Information Technology and Broadcasting ("the Panel") held two meetings on 19 September and 12 December 2011 to follow up issues relating to the editorial independence of the News Department of ATV. The Panel noted that the former Broadcasting Authority ("BA") (replaced by the CA on 1 April 2012) 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 paragraphs 1A and 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.

4. 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

5. 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".

6. 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

7. 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.

8. 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.

9. 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.

10. Some Panel members considered it inappropriate for the CA to have sanctioned ATV and TVB for contravention of the licence 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, the CA should consider imposing heavier

penalties on the licensees, including non-renewal of licence.

11. 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 licences.

Renewal of the domestic free television programme service licences

12. At the Panel meeting on 10 March 2014, members were briefed on the procedure and criteria by which the CA would process the licence renewal applications of ATV and TVB. At the special meeting on 15 March 2014, the Panel met with deputations and members of the public to receive views on the issue. Members noted that the majority of the deputations attending the meeting expressed concern about the poor quality of the programmes broadcast by ATV and TVB, and the frequent re-run of programmes by ATV, as well as the lack of competition in the free TV market.

13. Some Panel members opined that ATV's performance did not measure up to the CA's standards in respect of the three major factors to be considered in assessing the performance of the two licensees, namely compliance with regulatory requirements, financial commitment of the licensee and public views on the performance of the licensees. They also opined that the CA should take into account the persistent loss and low audience rate sustained by ATV. Requirements for local productions should be applied to the two licensees when considering their renewal applications, so as to widen programming choice for the audience. A penalty points system for non-compliance with licence conditions and/or the BO should also be introduced. Some other members were of the view that consideration should be given to retrieving certain transmission capacity from the radio spectrum assigned to ATV and TVB, and redistributing such transmission capacity to other prospective free TV licensees. Competition should also be introduced in the free TV market by putting up the TV spectrum to auction so that all interested parties would be allowed to bid for the spectrum on a level playing field.

14. Some Panel members were concerned that the CA's recommendations on renewal of the free TV licences would be overruled, similar to the case of granting additional free TV licences in October 2013. These members urged the Administration to take measures to avoid a recurrence of the incident. Noting that the CA would collate the views collected during the public consultation and make its recommendations to the CE in Council for consideration by November 2014, the Panel passed a

motion to urge the CE in Council, before making a final decision on the renewal of the licences of ATV and TVB, to prudently consider the professional integrity and conduct of the licensees, including whether they had in any manner abused the use of TV spectrum and public resources for private purposes.

Council meetings

15. At the Council meeting on 7 January 2015, Hon Albert HO raised a written question on, inter alia, the assessment criteria for the renewal of free TV licence of ATV by the CE in Council and whether the relevant considerations would include the incidents of defaults on payments of wages to its employees by ATV. The Administration advised that in processing ATV's application, the CE in Council would give regard to all relevant factors, including the licensee's operational capability and financial condition, etc., before making a decision.

16. At the Council meeting on 28 January 2015, Hon SIN Chung-kai raised an oral question on, inter alia, whether the incidents of defaults on payments of wages to ATV's employees and on payment of its free TV and carrier licence fees would be regarded by the CA as non-compliance with the requirements of its free TV licence, the circumstances under which the CA would suspend the free TV licence of ATV and when the authorities would expect to announce the outcome of the free TV licence renewal application of ATV. The Administration advised that it had repeatedly made open appeals urging ATV to resolve the overdue wages to its staff. The Labour Department would strictly enforce the law and initiate further prosecution action with sufficient evidence.

17. Regarding the default on payments of the fixed free TV licence fee and the annual carrier licence fee by ATV, the Administration advised that the CA was considering the representations from ATV before making its final decision in accordance with established procedures. The CA would handle any offence of ATV in accordance with the relevant legislation to consider licence suspension upon examination of the nature and seriousness of the offences. On processing ATV's application for renewal of free TV licence, the CA had submitted its recommendations to the CE in Council on 4 November 2014 and the outcome would be announced after the CE in Council had made a decision.

Recent development

18. At the Panel meeting on 12 January 2015, some members opined that in view of the recent default in wage payments by ATV, the Panel should follow up issues relating to the operation and free TV licence renewal application of ATV. The Administration's written response regarding the latest developments of ATV was tabled at the meeting and circulated to members vide LC Paper No. CB(4)345/14-15(01) on 13 January 2015.

Latest position

19. The Panel will follow up issues relating to the operation and latest developments of ATV on 9 February 2015.

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.info.gov.hk/gia/general/201501/07/P201501070401.htm>

<http://www.info.gov.hk/gia/general/201501/28/P201501280482.htm>

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