

立法會
Legislative Council

LC Paper No. CB(1)2618/01-02
(These minutes have been
seen by the Administration)

Ref : CB1/PL/ITB/1

Legislative Council
Panel on Information Technology and Broadcasting

Minutes of special meeting
held on Monday, 29 July 2002, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Howard YOUNG, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Dr Hon Philip WONG Yu-hong
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon MA Fung-kwok, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon YEUNG Yiu-chung, BBS
Dr Hon LAW Chi-kwong, JP
Hon Timothy FOK Tsun-ting, SBS, JP
- Non-Panel members** : Hon Cyd HO Sau-lan
Attending : Hon Fred LI Wah-ming, JP

Public officers attending : Agenda Items I & II

Ms Eva CHENG, JP
Acting Permanent Secretary for Commerce,
Industry and Technology
(Information Technology and Broadcasting)

Mr Eddy CHAN, JP
Commissioner for Television and
Entertainment Licensing

Mr Eddie CHEUNG
Principal Assistant Secretary (A Division)
Commerce, Industry and Technology
(Information Technology and Broadcasting)

Miss Vega WONG
Assistant Commissioner for Television and
Entertainment Licensing (Broadcasting)

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Advisor 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

I Issues relating to the proposed acquisition of the shares of Asia Television Limited (ATV) by Tom.com Limited
(LC Paper Nos. CB(1)2345/01-02(01), (02) and CB(1)2347/01-02(01))

1. At the invitation of the Chairman, the Acting Permanent Secretary for Commerce, Industry and Technology (Information Technology Branch) (PSCIT(ITB)) briefed members on the relevant provisions under the Broadcasting Ordinance ("BO") regarding the ownership and corporate control of a domestic free television programme service licensee. She confirmed that so far, the Administration had not received any application from ATV in relation to the change of the ownership of its shares currently held by Lai Sun Development Company Limited.

Declaration of pecuniary interests

2. In response to Mr Albert CHAN's enquiry on whether members should declare any donations received by them or by their political parties when discussing the present agenda item, the Chairman was of the view that generally speaking, members should declare any direct or indirect pecuniary interests on their own accord as the principle was that a member's pecuniary interest in a matter should be declared if it might reasonably be thought by others that such interest might influence the member's speeches on the matter.

3. Ms Emily LAU further enquired about the relevant provisions in the Council's Rules of Procedures. Referring to Rule 83A of the Rules of Procedure which stipulated that "in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest", the Assistant Legal Adviser 3 advised that the key issue to be considered was the nature of "direct" and "indirect" pecuniary interests covered by the Rule. The Clerk added that the disclosure obligation under Rule 83A was applicable to individual Members. However, on Mr Albert CHAN's question on whether donations received by a Member's political party would constitute an "indirect" pecuniary interest which should be disclosed under Rule 83A, members acknowledged that the matter would warrant further study. Ms Emily LAU suggested and members agreed that the Committee on Members' Interests should be invited to examine the issue further.

Clerk

Restrictions on cross media ownership

4. Noting that some overseas regulators would take into consideration market share, audience share and/or percentage of shareholding in concerned media corporations when exercising restriction on cross media ownership, Mr Howard YOUNG asked whether consideration would be given to adopting the criterion of market share in determining whether cross media ownership should be approved. He opined that as Tom.com did not have a majority stake in Metro Broadcast Limited, its proposed acquisition of ATV's shares might not necessarily increase its market share to the extent of a major player in the media sector. On the contrary, he was of the view that the proposed acquisition might boost ATV's competitiveness, improve the quality of local TV programmes, and counter-balance the current market dominance by the other free TV broadcaster.

5. In response, PSCIT(ITB) advised that pursuant to section 3(3) of Schedule 1 to the BO, in considering whether an application for cross media ownership should be approved on grounds of "public interest", the Chief Executive (CE) in Council would take account of, but not limited to, the four

factors as stipulated in the Ordinance including the effect on competition in the relevant TV market. When considering the effect on competition, CE in Council would take into account factors including the number of market players, market entry barriers, plurality of market ownership and effective safeguards to ensure that the disqualified person and the licensee would operate at arm's length and as independent entities.

6. On the question of market share, Mr Howard YOUNG asked whether the Administration had made reference to market surveys in ascertaining the market share of individual broadcasters. In reply, the Commissioner for Television and Entertainment Licensing (C for T&EL) informed members that the existing two domestic free television programme service licensees had subscribed to the television audience measurement reports from AC Nielsen Media International. As far as sound broadcasting services were concerned, PSCIT(ITB) referred to a recent survey commissioned by the Broadcasting Authority (BA) with a sample size of 3000 households.

7. Referring to current restrictions on persons or companies engaged in or associated with certain types of business to hold a domestic free or domestic pay television programme service licence, Mr Fred LI conveyed the worries of frontline journalists that they were specifically cautioned against making critical comments on the corporation which had control of their organization. Such overriding commercial interest would result in uniformity of views and hamper the freedom of expression. As none of the approved cases in relation to disqualified persons since 1995 had involved cross media ownership, Mr LI urged that CE in Council must consider the present case with extra care. He did not support the granting of approval for any prospective application involving the acquisition of ATV's shares by Tom.com.

8. In this regard, PSCIT(ITB) assured members that in considering whether approval should be granted for disqualified persons, the CE in Council would have due regard to, inter alia, the effect on competition in the relevant TV market and the extent to which viewers would be offered more diversified television programme choices. These factors aimed at safeguarding the diversity and freedom of opinion.

9. Noting that approval had been given in May 1998 for Mr LIU Chang-le, Chairman and CEO of Phoenix Satellite Television Holdings Ltd. (Phoenix TV), to exercise control of ATV on the condition that he could not hold more than 15% of the voting shares of ATV, Ms Emily LAU queried why approval was granted on 11 July 2002 to allow Mr LIU to acquire up to 46% of ATV's voting control.

(post-meeting note: The Administration supplemented that Mr LIU Changle was the beneficial owner of 42.9% of the voting shares of ATV. On 11 July 2002, the BA approved ATV's

application for Mr LIU, an unqualified voting controller, to acquire, exercise 46% of the voting control of ATV.)

10. In reply, PSCIT(ITB) clarified that in 1998, being an associate of Phoenix TV which was a programme supplier, Mr LIU Chang-le was a "disqualified person" under the then Television Ordinance. However, following the enactment of BO in 2000, content providers were no longer classified as "disqualified persons". She pointed out that BA's approval granted on 11 July 2002 was in respect of unqualified voting controllers, i.e. voting controllers who did not meet the residence requirement under BO.

Public hearing

11. Mr Fred LI enquired about the approval procedures involved once a domestic free television programme service licensee notified the Administration or the BA of a change in its control and management structure, in particular whether public hearings would be conducted.

12. Ms Emily LAU was of the view that since there was nothing in law to prohibit the conduct of public hearings, they should be held for gauging the views of the community at large on such an important issue of public concern. Ms Cyd HO shared Ms Emily LAU's view.

13. In reply, PSCIT(ITB) explained that in accordance with relevant provisions in BO, the authority to grant approval in relation to disqualified persons rested with CE in Council. As the BA was the statutory body responsible for broadcasting matters, the Administration would consult the BA on such applications before submitting them to the CE in Council for consideration. She pointed out that under the existing BO, it was a statutory requirement to conduct a public hearing only for licence renewal or extension. However, she undertook to reflect members' concern about conducting public hearings to the Secretary for Commerce, Industry and Technology for further consideration.

Admin

14. Upon the Chairman's request, PSCIT(ITB) undertook to notify the Panel as soon as the Administration had received an application from ATV relating to Tom.com's proposed acquisition. Regarding the confidentiality requirement, PSCIT(ITB) anticipated that while the Administration might be able to confirm to the Panel the receipt of the application, it might not be in a position to disclose full details of the application in view of section 27 of the BO. Nevertheless, the Administration would carefully assess the extent of information which could be disclosed.

Admin

15. Ms Cyd HO enquired about the time frame in processing an application from ATV, if any, in relation to the change in ownership of its shares and whether some time would be allowed for the public to express their

Action

views. She suggested that the Panel might also invite the Administration and deputations to give views on the matter by holding a special meeting. In response, PSCIT(ITB) said that it was difficult to advise on the time frame as no application had been received. However, the time frame in processing such an application might depend, to a large extent, on the completeness of the information provided. She also reiterated her undertaking to inform the Panel upon receipt of an application, if any, from ATV.

Public interest considerations

16. Mr Eric LI opined that some of the criteria specified under section 3(3) of Schedule 1 to the BO relating to "public interest" consideration in granting approval might not be compatible with each other. He pointed out that after tremendous efforts, the licensee concerned which had been granted approval by CE in Council might be able to acquire a significant market share to the extent of market dominance. This might run counter to the objective of promoting competition. He asked whether there were any remedial measures to deal with such a situation. In this connection, the Chairman asked whether special conditions (such as approval valid for a limited number of years) could be attached to the approval granted for disqualified persons.

17. While acknowledging that it was necessary to balance the various criteria specified under section 3(3) of Schedule 1 to the BO, PSCIT(ITB) confirmed that in case CE in Council granted approval, detailed explanation on the underlying consideration would be provided. She assured members that there were provisions under the BO to prevent anti-competitive acts and abuse of market dominance. However, Mr Eric LI was concerned that the relevant statutory provisions might not apply to market dominance arising from cross media ownership. Regarding the imposition of conditions, PSCIT(ITB) confirmed that existing legislation did not stipulate that CE in Council could prescribe conditions upon granting approval in relation to "disqualified persons". However, she considered that subject to the agreement of the parties concerned, it might be in order to attach specific conditions to the approval.

18. Ms Cyd HO considered it necessary to review how far the disqualified persons, who had been approved by the CE in Council to exercise control of domestic free television programme service licensees, had been able to meet the "public interest" consideration based on which the approval was granted. She also requested the Administration to provide details of the approval, if granted on grounds of "public interest" involving disqualified persons. In the case of the proposed acquisition of ATV's shares by Tom.com, she sought clarification on the assessment of "whether there were sufficient safeguards to ensure that the disqualified person and the licensee would operate at arm's length and as independent entities".

19. In response, PSCIT(ITB) stressed that details on the "public interest" consideration underpinning each approval involving disqualified persons were and would be provided, together with additional conditions, if any. For instance, additional firewall conditions had been imposed on the licences of Television Broadcasts Limited (TVB) and Galaxy Satellite Broadcasting Limited (Galaxy) to prevent any possible cross-subsidization, undue preference or other anti-competitive practices when approval was given to allow TVB and Galaxy to continue to have certain common directors and shareholders during Galaxy's application for a domestic pay television programme service licence in July 2000.

20. Ms Emily LAU noted that section 3(3) of Schedule 1 to BO, i.e., the overall benefits to the economy, concerned the extent to which the proposal would contribute to the creation of new job opportunities and the promotion of Hong Kong as a regional broadcasting, telecommunications and information technology hub. She referred to her letter dated 11 July 2002 to the CE in which she expressed concern about the widespread influence of the business activities of Mr LI Ka-shing and his family in various sectors of the economy. She asked whether possible monopolization by a certain business group would also be taken into consideration in connection with the proposed acquisition of ATV's shares by Tom.com.

21. In response, PSCIT(ITB) pointed out that the BO had stipulated the requirements in relation to cross media ownership and common ownership of the same mass medium. Except those businesses set out in Part 2 of Schedule 1 to BO in which the persons engaged would be classified as disqualified persons, the BO did not restrict the nature and spectrum of businesses currently undertaken by a prospective licensee or his family. Nevertheless, she welcomed members' views on issues relating to "the overall benefits to the economy".

22. In probing the legislative intent of regulating cross media ownership, Mr Albert CHAN believed that public interest considerations also included wider concerns such as the freedom of expression enjoyed by the community and the quality of public opinion. Although the Administration had not yet received any application from ATV for the proposed acquisition of shares by Tom.com, Mr CHAN was gravely concerned that if such an application was received, the Administration would grant approval readily without any public consultation.

23. On the legislative intent, PSCIT(ITB) reiterated that restrictions on disqualified persons were imposed to minimize conflict of interest, encourage competition in media markets and avoid editorial uniformity. In fact, the definition of "disqualified persons" had been revised over the years. Following the 1998 Review of Television Policy and the enactment of the BO in 2000, telecommunications operators and content providers were no longer

regarded as "disqualified persons" in the light of technology developments. She stressed that the Government would not grant blanket approval to applications involving changes in the ownership of shares. Instead, the Administration would follow the statutory procedures and examine each application on its merits having regard to the relevant criteria stipulated in BO.

24. In this connection, Mr Albert CHAN pointed out that according to his knowledge, some large corporations might withdraw their advertisements or commercials from a media company in case the latter published critical comments/reports on the corporations concerned. As advertising was a major source of income for the media, such acts might compel the media to censor its own views and shed its monitoring role. He further cautioned that any deterioration in freedom of expression and media independence would affect Hong Kong's international image in the longer term.

25. PSCIT(ITB) stressed that one of the key objectives of the current regulatory framework was to promote competition. Programmes or reports that reflected only a single viewpoint would unlikely be welcomed by the public. As such, it was important for the mass media to maintain plurality of views and offer diversity of content in order to stay viable. She added that as far as broadcasting services were concerned, the Administration had not received any complaint from the journalist profession about withdrawal of advertisements or commercials following critical reports or coverage. Notwithstanding, Mr Albert CHAN urged the administration to examine his concerns and include in its submission to the Executive Council the influence of large enterprises on the mass media.

26. Ms Cyd HO expressed serious concern about the management and control of free domestic TV stations as currently, there were only two licensees. She referred to the printed media and pointed out that some media groups were functioning as the publicity arm of its controlling company and were therefore defending the interests of the latter. She said that as no universal competition law was in place, measures should be taken to ensure that the controlling company and the media would operate as independent entities in order to safeguard against monopolization and to ensure editorial independence.

27. In response, PSCIT(ITB) advised that to prevent an enterprise from using a media group as its publicity arm in furtherance of its own interest, the scope of "disqualified persons" for domestic free television programme service licensees under BO included other television programme service licensees, sound broadcasting licensees, advertising agencies and proprietors of newspapers printed or produced in Hong Kong. On editorial independence of news programmes, PSCIT(ITB) said that one of the Codes of Practice issued by BA had spelt out relevant guidelines on the subject.

The way forward

28. Summing up, the Chairman concluded that as agreed, the Administration would notify the Panel upon receipt of the application from ATV relating to the proposed acquisition by Tom.com. He would then decide on the Panel's next course of action. The Chairman also requested the Administration to consider seriously some members' suggestion that a public hearing should be held to gauge public views on the proposed acquisition.

(post-meeting note : Tom.com and ATV had announced their agreement to terminate the Memorandum of Understanding for the acquisition of ATV's shares by Tom.com on 19 August 2002.)

II Any other business

- Letter from Hon Emily LAU on issues relating to the management and control of ATV
(LC Paper Nos. CB(1)2345/01-02(03), (04), CB(1)2347/01-02(02), (03), (04), (05), CB(1)2362/01-02(01) and CB(1)2369/01-02)

29. Members noted that a notice issued by ATV in various newspapers on 29 July 2002 was tabled at the meeting. Ms Emily LAU recapitulated her concerns stated in her letter of 23 July 2002 addressed to the CE (CB(1)2345/01-02(03)) and queried if the BA had examined the financing arrangements made by ATV's shareholders before it gave approval on 11 July 2002 for Mr LIU Chang-le, an unqualified voting controller, to further acquire ATV's shares. Referring to the deliberations of the former Bills Committee on Broadcasting Bill (minutes of meeting held on 6 May 2000), Ms LAU enquired whether the licensee had the responsibility to notify BA of the financing arrangements such as those undertaken by Mr LIU.

30. In response, PSCIT(ITB) briefed members on the objectives of the current broadcasting policy, the regulatory framework and the licence conditions applicable to domestic free television programme service. She pointed out that apart from complying with relevant statutory requirements, licence conditions and codes of practice, individual licensees were also required to make financial and investment commitments so as to provide an adequate and comprehensive service. For this purpose, they were at liberty to make the necessary financing arrangements. The Administration/BA would not micro-manage the daily operation of the licensee company as a business organization, unless its operation raised regulatory concerns or was in breach of certain licence conditions or statutory requirements.

(post-meeting note: The speaking note of PSCIT(ITB) was subsequently issued to members on 5 August 2002 vide LC Paper No. CB(1)2404/01-02.)

31. Regarding the aforesaid approval by the BA on ATV's application for a change in its shareholding structure involving unqualified voting controllers, PSCIT(ITB) said that the prime consideration was whether ATV, as the licensee, would continue to comply with the regulatory requirements. In approving the acquisition of 46% of ATV's voting control by Mr LIU Chang-le who did not meet the residence requirement, BA was satisfied that notwithstanding such approval, ATV would remain to be controlled by persons and companies which were sensitive to Hong Kong viewers' taste and interests. As regards recent media reports on the mortgaging of ATV's shares by Mr LIU and the change of its management personnel, PSCIT(ITB) said that the BA would examine the updated information received from ATV about its control and management to ensure its continued compliance with the statutory requirements. She confirmed that as long as the ATV shareholder in question remained as the legal and beneficial owner of the relevant voting shares, the mortgaging of such shares was regarded as a normal financing activity and the licensee was not required to notify the BA under the BO.

(post-meeting note: The press release issued by BA on 8 August 2002 confirming that ATV met the statutory requirements under the BO was circulated to members on 9 August 2002 vide LC Paper No. CB(1)2424/01-02.)

32. Referring to the deliberations of the Bills Committee on Broadcasting Bill, C for T&EL recapped that provisions on "fit and proper persons" were incorporated into the BO enacted in 2000 for the purpose of ensuring the credibility of the licensee or any person exercising control over the licensee. Factors to be taken into consideration included the person's business record, criminal record and other records of the licensee or person in situations requiring trust and candour. Moreover, the licensee was also required under BO to provide information to BA annually to establish and verify whether the licensee or a person exercising control over the licensee was a fit and proper person.

33. In his opinion, Mr Howard YOUNG considered that mortgaging shares to banks was primarily a normal business activity. He pointed out that if Members and the Administration were to probe into Mr LIU Chang-le's mortgaging of ATV's shares, then, all banks, irrespective of whether they were overseas or Mainland banks, should be considered on an equal footing. Noting that certain key corporate posts were not included as principal officers in ATV's notice of 29 July 2002, he enquired whether those officers listed in the notice could meet the requirements of "principal officer" as defined in the

BO.

34. In reply, C for T&EL referred members to the definition of "principal officer" in Schedule 1 to the BO. In the case of ATV, Mr CHAN Wing-kee and Mr YU Tung-ho were directors and at the same time principal officers by virtue of their position as Chief Executive Officer and Chief Operating Officer respectively. Other officers listed in the notice were answerable to them. As such, they were principal officers within the meaning of the BO.

35. Referring to part (B) of ATV's notice of 29 July 2002, Ms Emily LAU sought the Administration's confirmation as to whether there had been no change to the management of ATV. In reply, PSCIT(ITB) clarified that the statement reflected the staffing position since 11 July 2002 after BA had granted approval for Mr LIU Chang-le's increased shareholding in ATV. C for T&EL supplemented that prior to 11 July 2002, the positions of Messrs. CHAN Wing-kee and YANG Chuen-liang were held by Mr FENG Xiao-ping and Mr Steve LO respectively.

36. Ms Emily LAU was concerned that since the residence requirement under BO was not applicable to key posts below the level of principal officers, ATV might not be able to cater for the taste and interests of Hong Kong viewers if such posts were increasingly filled by non-permanent residents.

37. In response, PSCIT(ITB) reiterated that the existing BO only imposed a residence requirement on the directors and principal officers of the domestic free television programme service licensees. The BA would not seek to micro-control the licensees' appointment of suitable personnel in developing their business. Nevertheless, the licensees were required under the relevant licence conditions to cater for the local audience. Should local viewers consider that the programmes broadcast by ATV fell short of such requirements, they could lodge a complaint with BA.

38. Ms Cyd HO was concerned that in the event that Mr LIU Chang-le defaulted repayment of loan, the lending institution might be able to acquire the mortgaged shares and obtain control of ATV. She also enquired about the gap or interim period between acquisition of ATV's shares by the bank in question and pending BA's approval for changes in shareholding and control.

39. In response, PSCIT(ITB) and C for T&EL confirmed that the BO aimed at regulating the voting controllers and not the registered shareholders of the licensees. There was nothing in law to prohibit banks from holding shares of a TV licensee as security. Nevertheless, the bank or other party in question must comply with the requirements under BO such as those relating to disqualified persons or unqualified voting controllers in the event that the bank is exercising control of the licensee. PSCIT(ITB) stressed that a disqualified person/unqualified voting controller could not exercise control over a licensee

in the absence of the necessary approval by CE in Council or BA notwithstanding that it held the relevant shares. In this connection, C for T&EL supplemented that there were provisions in Schedule 1 to the BO to ensure that the total voting control exercised by unqualified voting controllers would not exceed, in the aggregate, 49% of the total voting control exercised by both qualified voting controllers and unqualified voting controllers at any general meeting of the licensee company.

40. There being no other business, the meeting ended at 4:10 pm.

Legislative Council Secretariat

3 October 2002