

立法會
Legislative Council

LC Paper No. CB(1)2170/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

**Minutes of special meeting
held on Monday, 5 June 2006, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Dr Hon LUI Ming-wah, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Public officers attending : Agenda Item I

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Eddie CHEUNG
Principal Assistant Secretary
(Communications and Technology)A

- Attendance by Invitation :** Agenda Item I
Broadcasting Authority
Ms Lorna WONG
Principal Executive Officer,
Broadcasting Authority

Mr P L PO
Secretary,
Broadcasting Authority

Asia Television Limited
Mr H Y KWONG
Senior Vice President – Programme & External Affairs

Mr Eddy KO
Corporate Lawyer
- Clerk in attendance :** Miss Polly YEUNG
Chief Council Secretary (1)3
- Staff in attendance :** Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

I Issues relating to the management and control of Asia Television Limited (ATV)

- (LC Paper No. CB(1)1634/05-06(01) -- Administration's background note on ownership and corporate control applicable to domestic free television programme service licensees
- LC Paper No. CB(1)1553/05-06(01) -- List of questions prepared by the Secretariat for the Administration's response

- LC Paper No. CB(1)1634/05-06(02) -- Administration's responses to questions prepared by the Secretariat
- LC Paper No. CB(1)1553/05-06(04) -- Letter dated 18 May 2006 from Hon Emily LAU (Chinese version only)
- LC Paper No. CB(1)1662/05-06(01) -- Extract of relevant provisions of the Broadcasting Ordinance (Cap. 562)
- LC Paper No. CB(1)1662/05-06(02) -- Extract of relevant provisions of the Broadcasting Authority Ordinance (Cap. 391))

(A) **Applications by ATV for approval of "disqualified persons" to exercise control of ATV**

(File Ref. CTB(CR)9/5/1(06) Pt.10 -- Legislative Council Brief on Applications by Asia Television Limited (ATV) for approval of "disqualified person" to exercise control of ATV

LC Paper No. CB(1)1553/05-06(02) -- Two press releases dated 16 May 2006)

Introduction by the Administration

At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) (DSCIT(CT)) briefed members on the four areas of ownership and corporate control applicable to a domestic free television programme service (FTV) licensee as set out in the Administration's background note (LC Paper No CB(1)1634/05-06(01)). She also highlighted the decision of the Chief Executive in Council (CE in Council) regarding the applications by Asia Television Limited (ATV) for approval of "disqualified persons" (DPs) to exercise control of ATV as set out in the Legislative Council (LegCo) Brief (File Ref. CTB(CR)9/5/1(06) Pt.10). She said that no retrospective approval from 7 July 2000 to 1 June 2005 would be granted for the nine persons in question (including individuals and companies) to exercise control of ATV. These persons had become DPs by virtue of being controllers of Hong Kong Phoenix Weekly Magazine Limited (Phoenix Weekly), which was a proprietor of a local newspaper as defined in the Broadcasting Ordinance (Cap 562) (BO), or associates of Phoenix Weekly or its controllers. As regards ATV's contravention during the said period, the Broadcasting Authority (BA) might consider issuing administrative warning or imposing regulatory sanction under the

BO and the FTV licence of ATV.

Remarks by ATV

2. Mr H Y KWONG, Senior Vice President – Programme & External Affairs of ATV said that there was a lack of due diligence on the part of ATV's management, resulting in an omission to declare that nine controllers of ATV were concurrently controllers of Phoenix Weekly and Phoenix Satellite Television Company Limited, or associates of these two companies or their controllers. He however stressed that ATV had not intended to contravene BO and the non-compliance was an isolated case. Nevertheless, ATV had offered a sincere apology to BA and had undertaken to strengthen its governance to ensure that similar contravention would not occur again.

Discussion

3. Members noted that as a FTV licensee, ATV was bound by section 39(2) of BO which required a FTV or domestic pay television programme service licensee to submit annual statutory declarations showing whether or not any DP had exercised any control in the licensee during the year to which the return related. As the nine DPs had exercised control of ATV since May 2000, Mr Fred LI queried why the contravention had gone unnoticed by the regulator and the Administration and how section 39(2) of BO was enforced. He found it difficult to accept that the contravention was inadvertent.

4. In response, the Principal Executive Officer of BA (PEO/BA) explained that BA, like other broadcasting regulators overseas, expected the licensees to act in good faith in discharging their obligation to comply with the requirements of the law and their respective licence conditions. Upon receipt of the annual statutory declarations from the licensees, the BA Secretariat would exercise due diligence in scrutinizing the compliance returns submitted by licensees and if it had reasonable doubt on the accuracy of the information submitted, it would verify it with the licensees.

5. Referring to paragraph 21 of the LegCo Brief (File Ref. CTB(CR)9/5/1(06) Pt.10, Mr Fred LI sought clarification on the warning(s) issued to ATV. In response, PEO/BA informed members that the decision to issue a warning to ATV was made at the BA meeting held on 18 March 2006. She further explained that for the period from 12 May 2000 to 6 July 2000 covered by the repealed Television Ordinance, retrospective approval could not be given for the DPs to exercise control of ATV as section 23 of the Interpretation and General Clauses Ordinance (Cap 1) was not applicable to the grant of such approval under the repealed Television Ordinance. BA had considered the matter and found that three DPs had exercised control of ATV without the approval of CE in Council during the said period. As such, the BA had issued a warning to ATV to ensure compliance with the requirements concerning DPs at all times.

6. Regarding section 39(2) of BO, PEO/BA stressed that the onus of complying with the statutory provisions on restrictions in relation to DPs rested with the licensees. If the BA Secretariat reasonably suspected that there might be DPs exercising control of a licensee, it would seek information from the concerned persons or direct the concerned licensee to exercise the power of investigation conferred on it by section 9 of Schedule 1 to BO.

7. Mr Fred LI further noted that according to the Provisional LegCo Brief issued on 26 May 1998 on the application of ATV for change of shareholding and introduction of DP and unqualified voting controller (UVC) to exercise control of the company (File Ref. ITBB(CR)9/5/1(98)Pt. 3), CE in Council had been satisfied at that time that the granting of approval in respect of the appointment of Mr LIU Changle, who was a DP by virtue of his position as the Chairman and Chief Executive Officer of the Phoenix Chinese Channel, as a director of ATV should not give rise to the risks of monopoly build-up, conflict of interest and reducing the diversity of media development. The Government had also believed that ATV would benefit from the injection of new capital and management expertise, and hence, its competitiveness should be improved. Mr LI was concerned about the extent to which ATV had been able to improve its competitiveness over the past eight years during which Mr LIU was a director of ATV.

8. Mr Fred LI also noted paragraph 7 of the aforesaid Provisional LegCo Brief (File Ref. ITBB(CR)9/5/1(98)Pt. 3)) that according to ATV, Phoenix Chinese Channel was a DP because it engaged in the business of transmitting television material. However, paragraph 1 of the Administration's responses to question raised by LegCo Secretariat (CB(1)1634/05-06(02)) dated May 2006 indicated that Phoenix Satellite Television Company Limited (Phoenix Satellite) and its associates were not DPs as long as Phoenix Satellite was not a broadcasting licensee. Mr Li remarked that it was confusing as to whether Phoenix Satellite and its associates were DPs.

(Post-meeting note: According to the information provided by the Administration subsequent to the meeting, under the repealed Television Ordinance, a company engaged in the business of transmitting television material is a DP. However, after a review of television policy in 1998, the Government had decided to further relax the DP restrictions. A company engaged in the business of transmitting television material is no longer a DP under the BO enacted in July 2000.)

9. Members noted that prior to ATV's applications for CE in Council's retrospective approval in relation to Phoenix Weekly, ATV had also applied for the approval of CE in Council for nine DPs to exercise control of ATV, in anticipation that these companies and individuals would become DPs under BO if BA approved Phoenix Satellite's application for a non-domestic television programme service licence. They also noted that BA had approved in principle the application by Phoenix Satellite but the non-domestic television programme service licence would not commence until and unless CE in Council granted an approval for ATV's application for the DPs to exercise control of ATV. The Administration's view was

that, in relation to Phoenix Satellite, allowing the nine DPs to exercise control of ATV would result in Phoenix Satellite taking up a non-domestic television licence for which BA had already granted approval-in-principle. It would facilitate Phoenix Satellite's business plan in Hong Kong and enable it to join the Hong Kong family of television licensees, thereby reinforcing the business-friendly environment of Hong Kong and helping to position Hong Kong as a regional broadcasting and media hub, which was important and conducive to Hong Kong's further development as Asia's World City. Mr Fred LI remained concerned as to why and how the approval of persons in control of a Mainland broadcaster to exercise control of a local broadcaster would enhance Hong Kong's broadcasting industry and strengthen its position as a metropolitan city.

10. Ms Emily LAU considered that it was a right decision on the part of CE in Council to reject ATV's application for retrospective approval for the nine DPs to exercise control of the licensee for the period from 7 July 2000 to 1 June 2005 because granting such an approval would send a wrong signal that Hong Kong was not committed to enforcing the statutory provisions and maintaining the integrity of the broadcasting industry. Ms LAU and Mr Howard YOUNG enquired about the sanctions to be contemplated against ATV for its contravention.

11. In response, PEO/BA advised that possible sanctions by BA included administrative advice or warning to the licensee, financial penalty, directing the licensee to include in its service a correction or apology, or suspension/revocation of licence. PEO/BA added that BA would follow established procedures and take into account all relevant factors when deciding on the appropriate action to be taken. BA would also announce the sanctions to be imposed through its regular press releases. Ms Emily LAU requested the BA to notify the Panel of the sanctions in due course.

(Post meeting note: On 10 July 2006, BA has announced that a financial penalty of \$250,000 had been imposed on ATV for contravention of the relevant provisions in the BO by allowing nine disqualified persons to exercise control of ATV during the period 7 July 2000 to 1 June 2005 without the approval of CE in Council. The relevant press release has been circulated for members' information on 31 July 2006 vide LC Paper No. CB(1)2078/05-06.)

12. Regarding the approval of CE in Council under section 3 of the Schedule 1 to BO in relation to DPs, the Chairman enquired whether CE in Council's approval could be subject to judicial review by a person if he/she considered that the approved acquisition would reduce or had reduced his programme choice. In this regard, the Assistant Legal Adviser 3 advised that with the court's leave, the approval in question could be subject to judicial review. However, the person initiating the judicial review should have sufficient interest in the matter.

(B) Proposed acquisition of ATV's shares by Citic Guoan Group

(LC Paper No. CB(1)1553/05-06(03) -- Newspaper cuttings dated 13 May 2006)

Information relating to past approvals granted to ATV in respect of "disqualified persons" and "unqualified voting controllers" exercising control of ATV

(LC Paper No. CB(1)1569/05-06(01) -- Provisional Legislative Council Brief (File Ref : ITBB(CR)9/5/1(98)Pt.3 "Application by Asia Television Limited (ATV) for change of shareholding and introduction of "Disqualified person" and "Unqualified voting controller" to exercise control of the company")

LC Paper No. CB(1)1569/05-06(02) -- Press release issued on 26 May 1998

LC Paper No. CB(1)1569/05-06(03) -- Legislative Council Brief (File Ref : CTB(CR)9/5/2(03) "Pre-requisite approval for Asia Television Limited to obtain a non-domestic television programme service licence"

LC Paper No. CB(1)1569/05-06(04) -- Press release issued on 25 May 2004)

Past papers issued

(LC Paper No. CB(1)2618/01-02 -- Minutes of Information Technology and Broadcasting meeting held on 29 July 2002

LC Paper No. CB(1)2347/01-02(01) -- Administration's paper on ownership and corporate control applicable to domestic free television programme service

licensee for the meeting on 29 July 2002

LC Paper No. CB(2)2234/99-00

-- Report of the Bills Committee on Broadcasting Bill to the House Committee on 9 June 2000

Remarks by ATV

13. At the invitation of the Chairman, Mr H Y KWONG, Senior Vice President – Programme & External Affairs of ATV confirmed that Citic Guoan Group (CGG), a subsidiary of Citic Group, intended to acquire and subscribe shares in ATV. Mr KWONG also said that ATV had conveyed this major intended commercial transaction to the Commerce, Industry and Technology Bureau (CITB) at the first instance and issued a press release on 12 May 2006 to inform the public. ATV also made it clear that the proposed acquisition would only be completed after relevant approval had been obtained from BA and other relevant authorities pursuant to BO. ATV welcomed the proposed acquisition as CGG could contribute to ATV's future development in many aspects, such as ATV's plan to provide more programme services upon the implementation of digital terrestrial television (DTT) broadcasting. To meet the challenges of the digital era, ATV would relocate to a new production site which would be nine times larger than the existing one. It would also digitalize all its production facilities to improve the technical quality of programmes. Moreover, ATV and Television Broadcasts Limited were working together in rolling out the digitalized transmission network, which was expected to be ready by end 2007. By then, ATV would operate four standard-definition television programme channels and provide high-definition television programmes at prime time slots through the single frequency network (SFN) multiplex assigned to it. Mr KWONG stressed that the investment from CGG would enable ATV to expedite its plan and to provide more programme choices and advanced services for local viewers.

Discussion

Public interest

14. Members noted from section 3 of Schedule 1 to BO that a DP should not become the holder of a licence or exercise control of a licensee unless the CE in Council was satisfied that the public interest so required. The matters that would be taken into account when considering "the public interest" were listed in section 3(3) of Schedule 1 on a non-exhaustive basis. Given the pervasiveness of FTV programme services, Mr Ronny TONG was of the view that in the consideration of public interest, apart from financial considerations, it was also important to assess the political implications, if any, of the proposed acquisition of ATV's shares by CGG which was a Mainland enterprise. He was concerned whether consideration would be given to the impact of the proposed acquisition on the freedom of expression and press freedom, as well as the editorial independence of the broadcaster, if ATV was controlled mainly by individuals and companies with Mainland background after the shares transfer.

15. In response, DSCIT(CT) recapped that Part 2 of Schedule 1 to BO contained provisions on restrictions on DPs for the purpose of dealing with cross-media ownership. In considering whether approval should be given for a DP to hold a FTV licence or to exercise control over a FTV licensee, the Government had to assess from a macro perspective the possible impact brought by a proposed sale or acquisition of the licensee's shares to the existing and future development of the broadcasting industry. This was necessary to avoid the risk of monopoly build-up.

16. Mr Ronny TONG noted from available information that CGG was a wholly owned subsidiary of Citic Group, the latter being one of the major international corporations in the Mainland. He further considered that the existing restriction on the acquisition of the shares of a media organization by non-local persons not "ordinarily resident in Hong Kong" was necessary in order to preserve the broadcaster's domestic nature and operation. Mr TONG also reiterated that as the general public might be worried about the impact of the proposed acquisition, if approved, on the editorial independence of ATV and whether there would be undue political influence on the programming of ATV, the Government should not assess the current application solely on financial considerations. Mr Howard YOUNG however pointed out that the financial benefit, if any, brought about by the proposed acquisition would be crucial to ATV's development and should therefore be given due consideration by the regulator.

17. In response, DSCIT(CT) advised that under BO, a voting controller who was not ordinarily resident in Hong Kong was an UVC. According to section 8(4)(a) of the BO, except with the prior approval in writing of BA, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, was each an individual who was for the time being ordinarily resident in Hong Kong for at least one continuous period of not less than seven years. The purpose of this provision was to ensure that the control and management of the licensee were exercised in Hong Kong.

18. At members' request for clarification on the respective approving authority and related arrangements in respect of DPs and UVCs holding FTV licences or exercising control over a licensee, DSCIT(CT) referred to the Administration's background note on ownership and corporate control applicable to FTV licensees (LC Paper No CB(1)1634/05-06(01)). Under section 3(2)(b) of Schedule 1 to BO, approval of the CE in Council was required for DPs to exercise control of a FTV licensee. In considering whether such an approval should be given in the public interest, account should be taken of, but not limited to, a number of matters set out in section 3(3) of Schedule 1 to BO. For an UVC to acquire voting control over the prescribed threshold, BA's prior approval in writing was required pursuant to section 20 of Schedule 1 to BO. The factors that BA should take into account when considering whether approval should be granted were not specified in legislation. However, DSCIT(CT) said that according to the BA Secretariat, these factors included the financial position of both the applicant and the licensee in question, the benefit to be brought by the applicant to the licensee and the

broadcasting scene, the commitment and residency of the applicant and whether the applicant would maintain and uphold the licensee's freedom of expression and editorial independence.

19. DSCIT(CT) further pointed out that in the absence of detailed information at this stage on ATV's applications, the Administration was not yet in a position to confirm the relevant statutory procedures which would be applicable. However, she indicated that if the proposed acquisition involved DPs and UVCs, it would be necessary to invoke both approval mechanisms.

20. Mr Ronny TONG reiterated his concern that irrespective of whether CE in Council or BA was the approving authority, when considering whether the public interest objective could be met, the political consequence of a proposed acquisition should be given due consideration.

21. Members noted that in the Administration's background paper, it was mentioned that without the prior written approval of the BA, an UVC should not hold, acquire, or exercise, or cause or permit to be exercised, 2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in the aggregate of the total voting control. Mr Ronny TONG remarked that the staggering thresholds were cumbersome and difficult to understand. In response, DSCIT(CT) explained that they were the thresholds of voting control to be exercised by UVCs which required BA's approval as prescribed under section 20 of Schedule 1 to BO.

22. Ms Emily LAU was concerned about the change in shareholding structure after CGG had subscribed shares in ATV. In response, PEO/BA explained that at this stage, pending receipt of detailed information from ATV, it was impossible to provide information on the effective interest in ATV after the transfer of shares, if approved.

23. In this connection, Mr H Y KWONG of ATV referred to the press release issued by the ATV and pointed out that CGG intended to acquire shares in ATV, which in aggregate would constitute 22.22% of all issued share capital of ATV. Highlighting CGG's scope of business which covered cable television network investment and operations, telecommunications value-added business, satellite telecommunication, network communication service, advertising and hi-tech research and development etc, Mr KWONG stressed that the strategic alliance of CGG and ATV would enhance both parties' business development prospects and capital market value. He considered that strengthening ATV's competitiveness would benefit Hong Kong's broadcasting industry.

Programming matters

24. Ms Emily LAU said that Hong Kong and the Mainland differed in the extent of press freedom that could be enjoyed by media organizations. She also highlighted that the programming standards adopted by broadcasters of the two places were different. Noting that ATV might wish to gain greater access to the Mainland market especially after the implementation of DTT broadcasting, Ms

LAU was worried that ATV would henceforth modify its programming strategy to focus on producing programmes which would appeal to the Mainland market instead of local audience. Although ATV did not have a dominant market share in Hong Kong, Ms LAU was keen to ensure that given the pervasiveness of FTV licensees, it was important for ATV to continue to uphold its editorial independence and enjoy freedom of the press, as well as to continue to serve the audience in Hong Kong.

25. On programming requirements, PEO/BA advised that FTV licensees were required to provide a prescribed number of hours of locally produced current affairs, news, documentary and arts and culture programmes, as well as programmes for young persons and senior citizens. By virtue of their domestic licences, FTV licensees had the responsibility to produce programmes to cater for the needs of the local community. Citing examples of some popular programmes recently produced by ATV and highlighting the openness of one of its current affairs programmes "Your Turn to Speak", Mr H Y KWONG of ATV stressed that the investment from CGG would in no way affect ATV's programming policy. It would only serve to make ATV more resourceful and competitive in the local broadcasting market.

26. In this connection, Ms Emily LAU commented that the programme "Your Turn to Speak" was too short and probably viewed by only a small audience because it was broadcast in late hours from 11:45 pm to 11:50 pm. Ms LAU opined that a FTV licensee should place emphasis on producing programmes to cover important public issues such as the review of public service broadcasting and the debate on political reforms. She was very concerned that ATV might have exercised self-censorship and refrained from producing programmes of a controversial or political nature because of its intention to gain greater access to the Mainland market. Ms LAU also reiterated her grave concern that ATV, instead of serving the domestic audience, would become increasingly Mainland-oriented in its programming strategy and operation.

27. Mr H Y KWONG of ATV re-affirmed ATV's commitment to Hong Kong and that Hong Kong was its major market. ATV would continue to produce programmes to cater for the needs of the local audience in accordance with its licence. While ATV had distributed its programme content to many other territories including the Mainland, ATV had no intention or plan to change its programming strategy and standard for the purpose of catering for the needs and interests of audience groups outside Hong Kong. In reply to Mr Howard YOUNG's enquiry on whether ATV would re-package the programmes or make available these programmes intact for overseas markets. Mr H Y KWONG of ATV assured members that ATV was a Hong Kong-based television broadcaster serving the audience in Hong Kong. It would not produce television programmes aimed at serving other audience groups outside Hong Kong. However, to derive value-added profits from its productions, ATV did make available some of its programmes for overseas broadcasting. To cater for the needs or tradition of certain markets, it might edit the programmes, such as deleting scenes depicting violence or mysterious encounters.

28. Mr H Y KWONG of ATV referred to ATV's coverage of events commemorating the June 4th incident and its current affairs programmes on topical subjects ranging from education to poverty, and disagreed that ATV was exercising self-censorship or becoming increasingly Mainland-oriented. Apart from public affairs programmes, he stressed that ATV's other programmes such as drama and entertainment were also targeted at local, not Mainland, viewers although ATV's broadcasts could be received in many parts of China.

ATV's applications for approval and the need for public consultation

29. Members noted that according to the Administration's responses to questions raised by the Panel (LC Paper No CB(1)1634/05-06(02)), BA had not yet received ATV's application relating to the announced acquisition of ATV's shares by the CGG and that BA would consult the public on, among other things, major regulatory issues before making decisions according to the promulgated procedures. Ms Emily LAU was very concerned to note from the LegCo Brief on "Applications by ATV for approval of "DPs" to exercise control of ATV" (File Ref. CTB(CR)9/5/1(06) Pt.10) that when the Administration referred to "public consultation" in paragraph 26, it only meant the consultation with BA. She urged the Administration to conduct bona fide public consultation by seeking the views of the community at large on the proposed acquisition of ATV's shares by the CGG.

30. Echoing Ms Emily LAU's concern, Mr Ronny TONG recapped his view on the need for BA/CE in Council to take into account the public interest consideration when deciding whether to grant approval to ATV's applications. Mr TONG considered that BA or the Administration, where appropriate, should brief the Panel before making a final decision on whether or not to approve the proposed acquisition. In this connection, the Chairman recalled that so far, the Chairman of BA had not attended any of the Panel's meetings.

31. Regarding the processing of ATV's application, if any, for the proposed acquisition, PEO/BA and DSCIT(CT) informed members that on 3 June 2006, ATV had submitted some preliminary information to the Administration and BA in relation to its application for approval of the proposed acquisition. However, to enable further consideration, it would be necessary for ATV to provide more detailed information to substantiate its application. On public consultation, PEO/BA pointed out that BO only required public hearings to be held in connection with the renewal of broadcasting licences. However, given that BA had all along attached great importance to public views, it would certainly take into consideration the views of the public when assessing ATV's application. Ms Emily LAU reiterated her request that BA should conduct public consultation, albeit not required by law. Mr Ronny TONG shared her concern. PEO/BA undertook to reflect members' concerns to BA and revert to the Panel.

BA Sec

32. Mr Ronny TONG queried why the Administration did not inform the Panel at the outset that it had received ATV's preliminary application until at this juncture. In response, DSCIT(CT) clarified that when the Administration prepared the aforesaid written responses, neither BA nor the Administration had received from

ATV any information relating to its application for approval for the proposed acquisition of its shares by CGG. The Principal Assistant Secretary (Communications and Technology) A added that the information provided by ATV on 3 June 2006 was very preliminary. It was necessary for ATV to furnish further detailed information to complete its formal application. Due to the lack of details, it was premature for the Administration or BA to comment on the application at this stage.

33. Mr Ronny TONG maintained his view that to facilitate the Panel's deliberation, the Administration should have been more forthcoming in informing members of the receipt of some preliminary information from ATV regarding the proposed acquisition. The Chairman accepted that at the time of preparing the papers for the meeting, the Administration/BA might not have received any information from ATV regarding the proposed acquisition. However, if subsequent to the issuance of papers, there were changes to the situation depicted in the papers, the Administration should update members, at least verbally, at the start of the meeting in order that members could pursue the discussion in the light of the latest development. He considered it unsatisfactory that the Administration had not apprised the Panel of the up-to-date development. The Deputy Chairman shared the views of the Chairman and Mr TONG and sought the Administration's confirmation that apart from the receipt of some preliminary information from ATV on 3 June 2006, there were no other changes to the information given in the Administration's papers.

The way forward

34. Sharing Mr Ronny TONG's suggestion that the Panel should consider holding another special meeting for members to understand more about the impact on ATV's competitiveness and its editorial independence consequent to the transfer of its shares, if approved, Ms Emily LAU urged the Administration to provide a more detailed paper to the Panel in due course. Members also suggested that the Panel should send a letter to BA requesting it to revert to the Panel before it made a final decision on whether or not to approve the proposed acquisition; as well as to advise the Panel of how it had assessed the various relevant factors, including public views, if any, in the process, and to attend the Panel's meeting to exchange views with the Panel on the subject.

(Post-meeting note : The letter dated 7 June 2006 from the Panel Chairman to BA and its reply thereto have been circulated to all Members on 16 June 2006 vide LC Paper No.CB(1)1776/05-06).

Admin

35. After discussion, members agreed that the Administration should be requested to provide the following information in relation to the proposed acquisition:

- (a) To set out the detailed procedures, both administrative and statutory, involved in considering the application made by CGG, including --

- (i) whether public consultation would be conducted before a decision was made? If yes, how would it be carried out? If no, the reasons for not doing so;
- (ii) to confirm whether the BA was the approving authority for the application in question, and to explain under what circumstances approval by the CE in Council would be required; and
- (iii) to inform the Panel of the related legislation involved in the process.

(b) To advise the Panel on --

- (i) how would the effective interests in ATV be changed after the acquisition of shares by CGG, if approved;
- (ii) the impact of such an acquisition on the broadcasting industry and local economy;
- (iii) whether the change in shareholding would affect ATV's editorial independence and programming policy; and
- (iv) whether and how the proposed acquisition, if approved, would enhance ATV's competitiveness.

(Post-meeting note: The Administration's reply has been circulated to all Members on 7 August 2006 vide LC Paper No. CB(1)2102/05-06.)

II Any other business

36. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2006