

## ANNEX

### **Cases of Non-Compliance of Asia Television Limited (“ATV”) with the Statutory and Licence Provisions**

#### ATV’s Failure to Broadcast News Programme in accordance with the Licence Requirement

ATV is required under Condition 4 of the First Schedule to its domestic free television programme service (“free TV”) licence to provide on each language service a minimum of two comprehensive news bulletins, each of not less than 15 minutes in duration, each evening between 6:00 p.m. and 12:00 midnight. On 6 February 2016, ATV informed the Communications Authority (“CA”) that it would, starting from that day, cease to provide the required news programmes on its Home and World Channels. While ATV resumed the broadcast of news programmes on its Home Channel on 20 February 2016, it still ceased to broadcast news programmes on its World Channel in accordance with the licence requirement.

The CA was of the view that ATV’s failure to fulfill the minimum requirement on provision of news programmes was a clear contravention of a serious nature and also a violation of ATV’s fundamental obligation as a free TV licensee to provide free information to the general public. The CA noted that ATV had failed to provide the required news programmes in accordance with the licence requirement for more than two weeks. Though on 20 February 2016, ATV started to resume the broadcast of news programmes on its Home Channel, the contravention continues to date in respect of ATV’s failure to resume the broadcast of its news programmes on its World Channel.

#### ATV’s Failure to Comply with the Residence Requirement in respect of its Directors

Section 8(4)(a)(iv) of the Broadcasting Ordinance (Cap. 562) (“BO”) stipulates that a free TV licence shall not be granted to and held by a company unless, except with the prior approval in writing of the CA, the majority of the directors of the company is each an individual who is for the time being ordinarily resident in Hong Kong as defined in the BO<sup>1</sup>

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<sup>1</sup> “Ordinarily resident in Hong Kong” in respect of an individual means residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years.

and has been so resident for at least one continuous period of not less than 7 years. The residence requirement under the BO seeks to ensure that a free TV licensee is essentially controlled by local residents so that its programmes and services would adequately cater for the interest and taste of local audience.

The information submitted by ATV and its directors revealed that as at 19 February 2016, the remaining two directors of ATV, namely Mr Si Rong Bin and Mr Tsai Shao-Chung, did not satisfy the residence requirement of the BO. The CA considered that the failure by ATV to comply with the residence requirement in respect of its directors was a contravention of a very serious nature and also a violation of ATV's fundamental obligation as a free TV licensee to ensure that the company was essentially controlled and managed by persons who were local residents.

#### ATV's Failure to Pay the Fixed Fee of its Free TV Licence and the related Financial Penalty by the Stipulated Deadline

Under the Broadcasting (Licence Fees) Regulation (Cap. 562A) ("Broadcasting Regulation"), ATV shall pay to the CA the fixed fee of its free TV licence not later than 14 days after the commencement of the licence year (i.e. by 15 December 2015). ATV is also required to comply with any directions issued under the BO applicable to it, and to pay the financial penalty imposed on it under the BO not later than 30 days after the date on which the notice for the financial penalty is served.

The CA determined that ATV's failure to pay the fixed fee of its free TV licence for the period from 1 December 2015 to 1 April 2016 ("licence period") by the statutory deadline of 15 December 2015 constituted a breach of the relevant statutory and licence requirements and had imposed a financial penalty of \$100,000 on ATV for the breach. The CA issued a direction to ATV, directing it to pay the fixed fee of its free TV licence for the licence period together with interest by two instalments on 18 February and 18 March 2016 respectively ("Direction"), with the deadline for the payment of the first instalment of \$809,865 falling on 18 February 2016. ATV was also required by the service of a notice under the BO to pay the financial penalty by 18 February 2016.

The CA has put ATV on notice vide the issue of the Direction that its failure to comply with the Direction and to pay the financial penalty by the stipulated deadline might result in the CA imposing stiffer sanctions on ATV, including invoking the licence suspension procedures. Notwithstanding the clear notice given to ATV

on the consequences of non-compliance, ATV failed to pay the first instalment of the fixed fee of its free TV licence by the stipulated deadline and breached the Direction. It also failed to pay the financial penalty arising from its failure to pay the fixed fee of its free TV licence by the stipulated deadline and breached the statutory provision on financial penalty payment.

#### ATV's Failure to Pay the Financial Penalty in relation to its Audited Accounts

Following the repeated failures of ATV to submit the audited accounts for the accounting year of 2014 ("2014 Audited Accounts") by the stipulated deadlines, the CA decided in December 2015 to impose on ATV, among others, a financial penalty of \$100,000 for its failure to submit the outstanding audited accounts by the extended deadline of 31 October 2015. ATV failed to settle the financial penalty of \$100,000 by the stipulated deadline and breached the statutory provision on financial penalty payment.

#### **The CA Invoking Procedures under the BO to Suspend ATV's Free TV Licence**

Having considered the circumstances of the cases and ATV's representations, the CA decided that the above breaches by ATV amounted to contraventions of a very serious nature of the BO and that a sanction that was commensurate with the severity, nature and duration of the breaches should be imposed.

In accordance with section 31 of the BO, the CA decided to invoke the procedures under the BO to suspend the free TV licence of ATV for a period of 30 days.