

**Details of the Case – Television Programme “ATV Focus” (ATV 焦點) broadcast on the Home and Asia Channels of ATV from 3 to 7 September 2012 at 6:40pm – 6:45pm<sup>1</sup>**

Over 42,000 members of the public complained against various Episodes of the captioned programme (the “Episodes”). Most of the complaints were against the Episode broadcast on 3 September 2012. The main allegations were –

*Concerns over the presentation of the Episodes*

- (a) the Episodes were characterized by ATV as personal view programmes (“PVP”), which “are programmes in which the programme hosts, and sometimes, individual contributors put forward their own views” (paragraph 17 of Chapter 9 of the Generic Code of Practice on Television Programme Standards) (“TV Programme Code”). However, no information about the Episodes’ host, the commentator, the script writer, or the production team was provided. As the identity of the speaker was not disclosed, the viewer would not know whether the speaker had a conflict of interest in relation to issues being discussed;
- (b) in the absence of an announcement that the views presented in the Episodes were not those of ATV, the viewers were given the impression that they were. This was a violation of the journalist’s code of practice and the principle that a domestic free television programme service licensee should adopt a neutral stance in the discussions of controversial issues;

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<sup>1</sup> The Episodes were repeated at various timeslots including 10:55pm – 11:00pm on the same day and at 8:40am – 8:45am on the next day.

- (c) although the Episodes were characterised by ATV as PVP, they might be regarded as a news or current affairs programmes. The Episodes took the form of essays read out by a voice-over, with the relevant news footage shown on the screen, and were broadcast immediately after the main news bulletin. They failed to comply with the requirement that news should be presented with due impartiality;

***Inaccuracy and partiality***

- (d) the Episodes contained inaccurate, misleading and unsubstantiated accusations against Scholarism (學民思潮), and individuals who supported the protest against the introduction of national education and pan-democratic groups;
- (e) by presenting unsubstantiated allegations, the Episodes were partial and biased against Scholarism;

***No opportunities for response***

- (f) the Episodes were unfair to Scholarism and the pan-democratic groups as the individuals, organisations, or groups being criticised were not given an opportunity to respond;

***The lack of a broad range of views***

- (g) the Episodes presented one-sided opinions and failed to present a broad range of views;

***Possible breach of election provisions***

- (h) the Episodes, broadcast just several days before the 2012 Legislative Council (“LegCo”) Election, appeared to favour pro-establishment groups and amounted to canvassing for them. This violated the principle of fairness in elections;

***Political or Election advertisements***

- (i) the Episodes amounted to political advertising for certain political parties and candidates in the 2012 LegCo Election, and could constitute a possible breach of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); and

***Political agenda***

- (j) the Episodes were produced with a political agenda to brainwash the viewers, disunite the community and incite hatred in society.

**The CA’s Findings**

In line with its established practice, the CA considered the complaint case and the representations of ATV in detail. The CA took into account the relevant aspects of the case, including (amongst others) the following –

***Details of the concerned programme***

- (a) the five Episodes could be identified as a PVP by the announcement at the start of each Episode that it only reflected the views of the host(s) or individual contributor(s) (本節目內容只反映主持人或個別參與節目人士之意見，敬請留意);

- (b) in the five Episodes, a voice over commented not only on current significant issues in Hong Kong, such as the protest against the introduction of national education, the imminent 2012 LegCo Election, but also on complaints that had been made about previous Episodes. Corresponding news footage, intercut with flip cards, was shown on the screen;
- (c) in the Episodes broadcast on 3 and 4 September 2012, no information was given regarding the host and commentator or the contributor of the content of the Episodes. In the Episodes broadcast on 5, 6 and 7 September 2012, the pseudonym of the script writer (“撰文：唐文”) was displayed at the start of each Episode together with the Episode title; and
- (d) starting from the Episode broadcast on 5 September 2012, a flip card was displayed at the end of each Episode which included a caption that viewers could express their opinions on the Episode through a forum on the station’s website (要重溫或對節目有任何意見可上亞視網站 [www.hkatv.com](http://www.hkatv.com) 《ATV 焦點》節目討論區表述). No end credit or information on the production team was ever given in the five Episodes.

### ***Relevant Provisions of the TV Programme Code***

The relevant provisions of the TV Programme Code are:

- (a) paragraph 1 A of Chapter 9 – a licensee shall make reasonable efforts to ensure that the factual contents of news, current affairs

programmes and PVP, etc. are accurate;

- (b) paragraph 17(a) of Chapter 9 - the nature of a PVP in which the programme hosts, and sometimes, individual contributors put forward their own views on matters of public policy or controversial issues of public importance in Hong Kong, must be clearly identified at the start of the programme;
- (c) paragraph 17(b) of Chapter 9 - facts must be respected and the opinion expressed, however partial, should not rest upon false evidence in a PVP;
- (d) paragraph 17(c) of Chapter 9 - a suitable opportunity for response to the programme should be provided in a PVP; and
- (e) paragraph 17(d) of Chapter 9 - licensees should be mindful of the need for a sufficiently broad range of views to be expressed in any series of PVP.

The CA, having regard to the relevant facts of the case, considered that –

***Whether the editorial-like programme could be accepted as a PVP***

- (a) There was no “person” present in the five Episodes putting forward his/her own views on the issues concerned. The five Episodes were broadcast using the station’s name in the programme title, “ATV Focus” (ATV 焦點). The views were expressed by a voice-over throughout the five Episodes, no information was given about the production team, and only a pseudonym was given for the script writer in the Episodes starting 5 September 2012. Accordingly,

viewers were given the strong impression that the five Episodes amounted to an editorial representing the stance of ATV. However, there was no announcement that the five Episodes were an editorial representing the views of ATV. Strong public concerns were expressed about ATV's broadcast of an editorial-like programme of this kind;

- (b) The CA noted that the TV Programme Code did not expressly prohibit a licensee from expressing its views in a PVP and was silent on the format and the presentation of a PVP. The CA noted that there was or were individual contributor(s), although they were unnamed, putting forward his or their own opinions in the five Episodes, and that this was in line with the definition of a PVP in paragraph 17 of Chapter 9 of the TV Programme Code. Each Episode was also clearly announced as PVPs, as required under paragraph 17(a) of the same chapter of the TV Programme Code. Taking all the above factors into account, the CA conceded that this was a marginal case in which the five Episodes could be regarded as a PVP and thus they would not be subject to the rule of due impartiality applicable to news and current affairs programmes;

***Conflict of interest of programme presenters***

- (c) the requirement for disclosure of any potential conflict of interest of programme presenters did not apply as the five Episodes did not have a presenter;

***Inaccurate or misleading factual contents***

- (d) most of the remarks alleged by the complainants to be inaccurate could be regarded as the writer's perception and speculation. The

exceptions to this were the two factual errors in the Episodes broadcast on 5 September<sup>2</sup> and 6 September 2012<sup>3</sup>. The CA considered that these factual errors constituted a breach of paragraph 1A of Chapter 9 of the TV Programme Code;

***Impartiality of the programme***

- (e) as the programme was labelled as a PVP, and could be marginally accepted as such, it was not subject to the rule of due impartiality applicable to news and current affairs programme. The partial views presented were acceptable as long as they were not based upon false evidence. Although the two factual errors mentioned in (d) above did not appear to have significantly influenced the views expressed, the broadcasting of such inaccurate or misleading content was still in breach of paragraph 17(b) of Chapter 9 of the TV Programme Code;
  
- (f) regarding fairness, no particular individuals, groups or organisations, except Scholarism, were expressly named in the programme, and the criticism which was made in the five Episodes did not have the effect of damaging the reputation of any specific individuals or organisations;

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<sup>2</sup> The remark “蔡元培當然也反過政府。當他不滿政府時，其(蔡元培)抗議的辦法不是「你不撤回我就死給你看的絕食，而是辭職” (Mr Cai Yuan-pei had also opposed the government. Nonetheless, his means of opposition was not hunger strike, a threat to the government with his own life, but resignation) from the Episode broadcast on 5 September 2012 was inaccurate as it was well-documented that Mr. Cai was on hunger strike for three days to urge Mr Chiang Kai-shek (蔣介石) to co-operate with the Chinese Communist Party in the war against Japan in 1937.

<sup>3</sup> The juxtaposition of a picture of Voltaire and the quote 「我不同意你的觀點，但我誓死捍衛你說話的權利。」 (I disapprove of what you say, but I will defend to the death your right to say it) in the Episode broadcast on 6 September 2012 might mislead viewers into thinking that it was a quote from Voltaire. The quote was in fact to be attributed to Evelyn Beatrice Hall.

***Provision of a suitable opportunity for response***

- (g) the Episodes did not make it known to the viewing audience before 5 September 2012 that there would be any opportunity to respond. Moreover, the channel of response, which was through a forum on ATV's website, was not appropriate. The channel of response should at least be provided on the same platform (namely on television) and targeting the same audience if it could not be provided within the same programme. Accordingly, ATV had failed to provide a suitable opportunity for response to the five Episodes as required under paragraph 17(c) of Chapter 9 of the TV Programme Code;

***The lack of a broad range of views***

- (h) despite ATV's representations that different views were presented in two Episodes of the programme back in July 2012, the opinions expressed in the five Episodes which were broadcast on five consecutive days from 3 to 7 September 2012 appeared to be along the same line of accusing some politicians of manipulating the protest against the introduction of national education to gain support in the 2012 Legislative Council Election, of alleging that Scholarism was a pawn of the politicians and claiming that the supporters of the protest could not accept opposing opinions;
- (i) ATV also submitted that a broad range of views on the protest against the introduction of national education were delivered in its programme "News Bar Talk" (把酒當歌) broadcast from 10 to 13 September 2012. The CA noted that while the topic of discussion was "Debate on National Education and Analysis on Post-election



Situation” (國教辯論及選後分析) in the four episodes of “News Bar Talk”, the main focus of the discussion was actually on election tactics. More importantly, as the protest against the introduction of national education ended on 9 September 2012, the broadcast of such views after the protest could not be regarded as evidence of ATV having been mindful of the need for a sufficiently broad range of views to be expressed in the five Episodes;

- (j) as different opinions were expressed in the forum on ATV’s website, rather than in the form of a television broadcast, this could not be considered as ATV having met the requirement under paragraph 17(d) of Chapter 9 of the TV Programme Code for there to be a sufficiently broad range of views in the five Episodes ;

***Election advertisements or breach of election provisions***

- (k) the election-related complaints had been referred to the relevant enforcement agency, the Electoral Affairs Commission (“EAC”). According to the EAC, there was no evidence to suggest that the five Episodes had breached the relevant election regulations or guidelines under its purview; and

***Advertisement of a political nature & political agenda***

- (l) the five Episodes commenting on the protest against the introduction of national education should not be regarded as an advertisement of a political nature as they did not have the effect of promoting the interests of any specific political person, group, organisation or party. As for the allegations in relation to political agenda, they were outside the jurisdiction of the CA.

## **Decision**

Having considered the full circumstances of the case and the provisions of the TV Programme Code, the CA decided that the complaints in respect of inaccurate or misleading factual content, failure to provide a suitable opportunity to respond and the lack of a broad range of views on the controversial issues being considered in the five Episodes were **substantiated** and that ATV should be **warned** to observe more closely the requirements of paragraphs 1A, 17(b), 17(c) and 17(d) of Chapter 9 of the TV Programme Code.

In reaching its decision, the CA is conscious of the strong public concern about the presentation of the Episodes which gave viewers a strong impression that they were an editorial representing ATV's stance on the national education issue in which the views expressed were one-sided and partial. The CA on the other hand attaches great importance to freedom of expression and would respect the licensee's editorial autonomy in programme production. For the reasons that the five Episodes were accepted as PVP (albeit marginally), the rule of due impartiality applicable to news or other factual programmes did not apply to the five Episodes in this case.

Nevertheless, as ATV holds a domestic free television programme service licence which allows it to use spectrum, which is a scarce public resource, to provide its broadcasting service, it should provide a television programme service which meets the aspirations of the community as a whole. Whilst the CA has adhered strictly to the relevant provisions of the TV Programme Code as well as having regard to the need to treat all parties fairly and to preserve freedom of expression when considering the complaints, it remains mindful of the serious public concern about programmes presenting the views of a licensee in the form of a PVP. Accordingly, the CA will be reviewing the relevant parts of the TV Programme Code as a matter of priority in order to address the concern.