

THE TECHNOLOGY,  
MEDIA AND  
TELECOMMUNICATIONS  
REVIEW

NINTH EDITION

Editor  
John P Janka

THE LAWREVIEWS

THE  
TECHNOLOGY,  
MEDIA AND  
TELECOMMUNICATIONS  
REVIEW

NINTH EDITION

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# PREFACE

This fully updated ninth edition of *The Technology, Media and Telecommunications Review* provides an overview of evolving legal constructs in 26 jurisdictions around the world. It is intended as a business-focused framework rather than a legal treatise, and provides a general overview for those interested in evolving law and policy in the rapidly changing TMT sector.

Broadband connectivity (regardless of the technology used) continues to drive law and policy in this sector. Next-generation wireless connectivity will be provided by a network of networks, with multiple technologies – both wired and wireless, using licensed and unlicensed spectrum – playing an integral role in delivering service to the end user. By way of example, free WiFi service in homes and businesses today carries the majority of the data that is transmitted to smartphones and wireless tablets that also rely on paid service from a wireless carrier. And wireless carriers otherwise rely on a variety of technologies to ultimately connect the customer to the internet or someone on the other end of the phone.

The disruptive effect of new technologies and new ways of connecting people and devices creates challenges around the world as regulators both seek to facilitate digital inclusion by encouraging the deployment of state-of-the-art communications infrastructure to all citizens, and also seek to use the limited radio spectrum more intensively than before. At the same time, technological innovation makes it commercially practical to use large segments of ‘higher’ parts of the radio spectrum for the first time. Moreover, the global nature of TMT companies requires them to engage on these issues in different ways than before.

A host of new demands, such as the developing internet of things, the need for broadband service to aeroplanes, vessels, motor vehicles and trains, and the general desire for faster and better mobile broadband service no matter where we go, all create pressures on the existing spectrum environment. Regulators are being forced to both ‘refarm’ existing spectrum bands and rewrite their licensing rules, so that new services and technologies can access spectrum previously set aside for other purposes that either never developed or no longer have the same spectrum needs. Regulators also are being forced to seek means for coexistence in the same spectrum between different services in ways previously not contemplated.

Many important issues are being studied as part of the preparation for the next World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), to be held in 2019. No doubt, this conference will lead to changes in some long-standing radio spectrum allocations. And the conference also may include some political spectrum allocations that are based on pressures brought by well-heeled industries, rather than logic or sound policy. Indeed, these pressures already exist around the world in decisions being made by national regulators outside of and before the WRC.

Legacy terrestrial telecommunications networks designed primarily for voice are being upgraded to support the broadband applications of tomorrow. As a result, many governments

are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. However, many policymakers still have not solved the problem caused when their incumbent service providers fail to extend service to all of their citizens for business reasons – because those businesses deem ‘unprofitable’ those who are the hardest to serve. Curiously, policymakers sometimes exacerbate this failure by resorting to spectrum auctions to award the right to provide service in a given frequency band to the highest bidder, failing to require service availability to everyone in the auctioned area, and then making the auction winner the gatekeeper for anyone else who wants to use the same spectrum. Too often, decisions are based (explicitly or implicitly) on expected auction revenues, which consumers end up paying for in the end through higher costs of service. Far too infrequently do policymakers factor in the benefits of ensuring ubiquitous connectivity: new jobs, economic growth, security, social inclusion, and improvements in healthcare, education and food production, to name a few. Indeed, treating spectrum as a property right rather than as the valuable public resource it is often leads to perverse results in the marketplace.

Convergence, vertical integration and consolidation can also lead to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector. Similarly, many global companies now are able to focus their regulatory activities outside their traditional home, and in jurisdictions that provide the most accommodating terms and conditions.

Changes in the TMT ecosystem, including increased opportunities to distribute video content over broadband networks, have led to policy focuses on issues such as network neutrality: the goal of providing some type of stability for the provision of the important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus may be laudable, the way in which resulting law and regulation are implemented has profound effects on the balance of power in the sector, and also raises important questions about who should bear the burden of expanding broadband networks to accommodate capacity strains created by content providers and to facilitate their new businesses.

The following chapters describe these types of developments around the world, as well as the liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I thank all of the contributors for their insightful contributions to this publication, and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

**John P Janka**

Latham & Watkins LLP

Washington, DC

November 2018

# TAIWAN

*Patrick Marros Chu, Vick Chien and Sam Huang<sup>1</sup>*

## I OVERVIEW

With the trend of convergence between telecommunications and media, Taiwan's existing regulatory regime is out of date, and even hinders the sound development of the TMT sector. To achieve the policy goals of deregulation and fostering market competition, the competent authority, the National Communications Commission (NCC), has formulated a set of policies and proposed amendments of mainly applicable laws to encourage new entrants and eliminate the hurdles for conducting TMT businesses.

Nevertheless, in the wake of emerging OTT services, which are not regulated under the current TMT regulatory regime, the difference in regulation level between the traditional telecom and media operators and OTT service providers has been raised by the former operators, and they are striving for the introduction of a policy wherein 'the same legal requirements should apply to services with the same nature'. In this context, the NCC is now also considering how to reach a balance in terms of deregulation and fairness of competition.

## II REGULATION

### i The regulators

Prior to 22 February 2006, the telecom and broadcasting media sectors in Taiwan were regulated by the Directorate General of Telecommunications, the Ministry of Transportation and Communications (MOTC) and the Government Information Office, Executive Yuan, respectively. With the trend of convergence, in the spring of 2006 the two authorities were consolidated into a new independent regulatory agency, the NCC, which is composed of seven full-time commissioners who are appointed by the Premier of the Executive Yuan with the consent of the Legislative Yuan. These seven commissioners serve a four-year term, and may be reappointed for a second consecutive term.

The NCC's principal duties include, *inter alia*:

- a* developing relevant regulations and policies;
- b* processing applications for licences;
- c* overseeing the telecom and broadcasting industry;
- d* allocation of spectrum and RF;
- e* setting information security standards and technical specifications; and
- f* regulating the content of broadcasting.

---

<sup>1</sup> Patrick Marros Chu is a partner, Vick Chien is a senior attorney and Sam Huang is an attorney at Lee and Li, Attorneys-at-Law.

## ii Regulated activities

To operate a telecom and broadcasting businesses, business operators have to apply for an operating licence from the NCC in accordance with the applicable laws and regulations.

According to the Telecommunications Act (TA), telecom businesses can be divided into two categories: Type I telecom businesses (Type I telecom operators) and Type II telecom businesses (Type II telecom operators). Pursuant to Article 11 of the TA, a Type I telecom operator means an enterprise that installs telecommunications line facilities and equipment to provide telecom services. The aforementioned telecommunications line facilities and equipment refer to network transmission facilities connecting the sending and receiving terminals, the switching facilities installed to be integrated with the network transmission facilities and the auxiliary facilities of both. A Type II telecom operator means a telecom operator other than any Type I telecom operator. Type I telecom operators are generally perceived as facility-based telecom operators, while Type II telecom operators are generally perceived as service-based telecom operators.

The Type I telecom businesses service categories include:

- a* integrated network services, local network services, long-distance network services, international network services and leased-circuit services (Article 5 of the Administrative Rules on Fixed Network Telecommunications Businesses);
- b* mobile communications services (Article 4 of the Administrative Rules on Mobile Communications Businesses), including digital low-power wireless telephone services, mobile data communications services and 2G mobile communications services;
- c* 3G mobile communications services (Article 4 of the Administrative Rules on Third Generation Mobile Communications Businesses);
- d* mobile broadband access services (Article 4 of the Administrative Rules on Mobile Broadband Businesses); and
- e* satellite communications services (Article 6 of the Administrative Rules on Satellite Communications Businesses), including satellite fixed network communications services, satellite mobile network communications services and satellite TV programme uplink services.

According to the Administrative Rules on Type II Telecommunications Businesses (Type II Regulations), generally, Type II telecom businesses can be further divided into two categories: ordinary Type II services and special Type II services. Ordinary Type II services are Type II services other than special Type II services. Special Type II services refers to international simple resales (including domestic long distance calls and international calls), VoIP services, international communication services provided to non-specific persons by leasing international circuits and other telecom services designated by the NCC.

A Type I telecom operator shall be a company limited by shares and incorporated under the Taiwan Company Act, and the chairperson of the board of a Type I telecom operator shall be a Taiwanese citizen. In addition, Type I telecom operators are subject to the minimum capital requirements.

Generally speaking, the process for obtaining licences includes two stages: first, an applicant must file a written application, business plan and other required documents with the NCC for the establishment permit; second, the applicant has to complete its corporate registration and other statutory requirements (e.g., establishing a network system) so as to submit the relevant documents to the NCC for a business licence within six months of obtaining the establishment permit.

With regard to broadcasting media business, the NCC's prior approval is also required for conducting any of the following activities: operation of a radio or television broadcasting business (Article 10 of the Radio and Television Act (RTA)); operation of a cable radio or television broadcasting business (Article 5 of the Cable Radio and Television Act (CRTA)); and operation of a satellite radio or television broadcasting business (Article 6 of the Satellite Broadcasting Act (SBA)).

### **iii Ownership and market access restrictions**

For a Type I telecom operator, the total direct shareholding by foreigners shall not exceed 49 per cent, and the sum of direct and indirect shareholding by foreigners shall not exceed 60 per cent. Nonetheless, there is no restriction on foreign investments in a Type II telecom operator. Therefore, foreigner investors may acquire a 100 per cent equity interest in a Type II telecom operator.

Foreign investment in a radio or television broadcasting business operator is prohibited. A foreign natural person is not allowed to be a direct shareholder of a CATV operator, and the total direct shareholding thereof by foreign legal persons shall not exceed 20 per cent, and the sum of direct and indirect shareholding thereof by foreigners shall not exceed 60 per cent. Direct foreign investment in a satellite broadcasting business operator shall be less than 50 per cent of the total issued shares. On the other hand, an offshore satellite broadcasting business operator may offer programmes in Taiwan by setting up a branch office or appointing a distributor, provided that the NCC has granted broadcasting approval.

### **iv Transfers of control and assignments**

In principle, the transfer of a licence or the assignment of a business by telecom or broadcasting operators is not allowed.

If a Type I telecom operator would like to assign all or a substantial part of its business or assets, make investments in other Type I telecom operators or merge with other Type I telecom operators, a prior approval from the NCC would be required. On the other hand, if a Type II telecom operator is merged into other Type II telecom operator or other company, the Type II telecom operator also needs to file a consolidated business plan with the NCC for approval in advance.

The NCC's approval would be required as well for transferring shares of a radio or television broadcasting business operator. If a CATV operator intends to assign its business, merge with other CATV operators or make investments in other CATV operators, the CATV operator has to file a written re-application and an updated business plan with the NCC for approval. Additionally, neither CATV operators nor satellite broadcasting business operators shall commission the operation of a broadcasting business to a third party.

Cross-ownership among broadcasting business operators is subject to general competition laws. In addition, the CRTA stipulates that the total subscribers of a CATV operator, as well as its affiliates and directly and indirectly owned CATV operators, shall not exceed one-third of the total subscribers in Taiwan. Last but not least, on 12 July 2017, the NCC published a draft of the Anti-Media Monopoly Act (Draft Anti-Monopoly Act) for public comment that aims to set a cap for mergers or acquisitions among broadcasting businesses and national daily newspapers. However, as this is very controversial, if considering its necessity when OTT services and internet are widely used by the public, we do not expect that the Draft Anti-Monopoly Act will be enacted in the near future.

### III TELECOMMUNICATIONS AND INTERNET ACCESS

#### i Internet and internet protocol regulation

Purely internet-based services are not deemed by the NCC as telecom services; hence, no telecom licence is required.

However, some of the communications services using both IP and traditional telecom networks are still regulated under the TA or the Type II Regulations. For instance, VoIP services are defined as voice services received and transmitted through the internet and provided by an operator. Although this definition is very broad, based on market practice, the NCC holds the view that providing voice communication services through an internet platform or software would not be deemed as a kind of telecomm service, and thus would not be subject to the Type II Regulations as long as there is no connection to the traditional telecommunications network (such as PSTN).

For the VoIP services that fall into categories of telecom service, these can be further divided into two types: E.164 internet telephony service and non-E.164 internet telephony service. The former is defined as the internet telephony service run by an E.164 number allocated by the NCC in accordance with the International Telecommunication Union ITU-T Recommendations, while the latter is defined as the internet telephony service that is provided without an E.164 number.

Another relevant issue regarding IP regulation that raises industry concerns is whether an OTT service should be regulated as a traditional media broadcasting service. Currently, there is no law that specifically regulates online video programme distribution services. Therefore, the provision of pure OTT services in Taiwan would not trigger any licence requirement such as those under the RTA, CRTA or SBA. It is worth noting that if an OTT service is provided in the name of a fixed network telecom operator (e.g., Chunghwa Telecom) by using the PSTN rather than the internet, and the content therein belongs to linear programmes, this kind of service would still be deemed a value-added telecom service, and a telecom licence is required. In fact, in response to the trend of digital convergence and the emphasis of the media industry on the fairness of regulations, the NCC submitted a Draft of Regulating Cable Multichannel Video Programming Distributing Platform (Draft) in 2015, which aims to regulate not only current cable operators, but also OTT operators provided that there are two or more channels distributed on the OTT platform and the quality of the programmes viewed during the transmission is ensured. The Draft was withdrawn due to the change of ruling political party, which occurred in 2016.

#### ii Universal service

In accordance with Article 5 of the Fundamental Communications Act ('communications and disseminations should safeguard human dignity, respect the rights of minorities and advance balanced development of cultural diversity'), the NCC is active in its promotion of a universal service. The original scope of the universal service includes providing telephone services, public telephone services and access to data communications at preferential prices to elementary, junior high and high schools, as well as public libraries in economically challenged areas. Since the internet has become a fundamental part of the information society, alongside traditional voice services, building a ubiquitous broadband network has become a key issue of universal service. In light of the foregoing, in 2006, the NCC revised the universal service

regulation to extend the scope of this service to offering internet access services with a speed of 2Mbps to every village in Taiwan in order to narrow the digital divide between urban and rural areas.

The Broadband for All Villages and Broadband for All Tribes projects were completed in 2007 and 2010, respectively. Since the beginning of 2012, the NCC has been promoting an increase of broadband speeds from 2Mbps to 12Mbps. From 2007 to 2016, an accumulated total of 3,710 kilometres of fibre-optic cable was deployed, reaching 667 villages and tribes.<sup>2</sup>

### **iii Restrictions on the provision of service**

#### ***Telecom sector***

Due to their nature as common carriers, telecom operators are required to provide telecom services in a fair and non-discriminatory manner, unless stipulated otherwise in the TA. However, in the wake of OTT's development, the issue regarding net neutrality has also been brought to the NCC's attention. Accordingly, in the Bill of the Digital Communications and Broadcasting Act (DCBA Bill), which has been submitted to the Legislative Yuan (i.e., the Congress) for its review and approval, digital communication or broadcasting service providers (including current telecom businesses and media businesses) should not impose any obviously unfair restriction on communications protocols and internet traffic control, and such restriction, if any, should be imposed based on the purposes of facilitating the optimisation of network transfer and access. However, whether and when the DCBA Bill will be enacted is still not clear.

With regard to price control, only a Type I telecom operator's primary tariff (such as an internet access fee, monthly mobile communications service fee, wholesale price of the items designated by the NCC) is subject to a price cap. The currently effective price cap provides that the aggregate price increases of a Type I telecom operator during any given year shall not exceed ' $\Delta\text{CPI}-X$ '<sup>3</sup>, where X is a coefficient set by the NCC. As the NCC has realised that decreases in retail prices may lead to a price-squeezing effect, it has recently focused on the tariffs of the more competitive retail telecom services to intermediate and wholesale telecom services so as to facilitate competition on the retail telecom service markets.

#### ***Broadcasting sector***

Under the current regulatory regime, a price cap of NT\$600 per month per household for CATV services was set by the NCC, which cap has never been adjusted since the 1990s even though the CPI has risen substantially in the past 20 years. In addition, CATV operators are required to report the subscription tariff to local government agencies within a month after 1 August every year. The local government will examine and decide the actual subscription tariffs within the standard (i.e., NT\$600) enacted by the NCC, and then make an announcement of its fee cap decision accordingly. Currently, the subscription tariffs of the local CATV operators are between NT\$495 and NT\$590 (i.e., below the NCC's price cap of NT\$600). However, the NCC has proposed a bill of multiple subscription tariff schemes for CATV services, which requires CATV operators to offer at least two TV programming packages with basic channels and removes the price cap of NT\$600.

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2 NCC Performance Report 2016, [https://www.ncc.gov.tw/english/files/18022/382\\_2184\\_180227\\_1.pdf](https://www.ncc.gov.tw/english/files/18022/382_2184_180227_1.pdf).

3 ' $\Delta\text{CPI}$ ' refers to the most current annual rate of increase of the consumer price index (CPI) in Taiwan, as announced by the competent authority prior to each year of implementation.

Similar to telecom businesses, CATV operators are deemed by the regulator to be quasi-common carriers. Therefore, Article 49 of the CRTA provides that CATV service operators shall not reject, without justification, requests from the local populace to pay for a CATV service.

#### **iv Security**

With regard to telecom services, a telecom operator is entitled to refuse to provide the service only when the contents therefrom appear to endanger national security or public order. In addition, to protect network security, telecom operators are required to regularly conduct self-inspection in accordance with the NCC's guidelines. Among other measures, telecom operators should set up an information security task force for establishing an information security management mechanism. Information security should be divided into levels A, B and C, and the operator should select a suitable security baseline according to the rating.

With regard to CATV services, the CRTA provides that foreign investments in CATV services shall not affect national security, impair overall industrial developments, hinder fair competition or restrict market competition. It is worth noting that in some recent cases regarding mergers of CATV service operators, the NCC held the view that national security may be jeopardised if the capital for the investment is related to or comes from Mainland China.

Pursuant to Article 21 of the Personal Data Protection Act (PDPA), the central competent authority has the power, in its discretion, to prohibit international transfers of personal data if:

- a* it will prejudice any material national interest;
- b* it is prohibited or restricted under an international treaty or agreement;
- c* the country to which the personal data is to be transmitted does not afford sound legal protection of personal data, thereby affecting the rights or interests of the data subjects;
- or
- d* the purpose of transmitting personal data is to evade restrictions prescribed under the PDPA.

To date, the NCC is the only government agency that has issued a directive to prohibit telecom and media operators from transmitting their subscribers' personal data to Mainland China.

## **IV SPECTRUM POLICY**

### **i Development**

According to the TA, spectrum is allocated by the NCC to various mobile telecom service operators in accordance with the telecom licences they obtain and the Table of Frequency Allocation of Republic of China (Taiwan) promulgated by the MOTC.

The use of spectrum is still highly regulated in Taiwan. Mobile telecom service operators that are entitled to use spectrum should first apply for the NCC's prior approval if there is any change of their use of the spectrum (including the equipment, station or network involved) as indicated in their business plan, which is a required document when applying for a telecom licence. Furthermore, unless stipulated in other regulations (such as the 4G Regulations allowing the transfer of the right to use of spectrum between 4G telecom operators with the NCC's involvement), the right to use spectrum is not allowed to be leased, transferred, lent or

split. Accordingly, the value of spectrum is underestimated because of the current restrictions, and the NCC has conducted several studies on the issue of opening a secondary market for spectrum.

In the bill of the Telecommunications Management Act (TMA Bill), one of the bills in response to the convergence of telecom and media industries, approved by the Executive Yuan on 16 November 2017 and submitted to the Legislative Yuan for its review, the NCC indicated that it will deregulate the use of spectrum so as to have the spectrum used efficiently. Article 58 of the TMA Bill provides that a telecom operator is allowed to transfer part of the spectrum it obtains to another telecom operator, provided that it first submits the application and the agreement between the two parties to the NCC for its approval. The TMA Bill also authorises the NCC to further promulgate relevant regulations in terms of the scope of the spectrum that may be transferred, usage of the spectrum after being transferred and the qualification of the party received, and restriction and management matters thereof.

It is widely recognised that the above-mentioned development would help to establish the secondary market for spectrum in Taiwan after the TMA Bill takes effect. The TMA Bill and other bills will substantially change the current regulatory regime of the telecom industry. However, the timeline for the Legislative Yuan to discuss the TMA Bill is not clear, and it is also uncertain whether the Legislative Yuan will pass the TMA Bill; thus, the specific requirements under the TMA Bill cannot be ascertained at this stage.

## **ii Flexible spectrum use**

With the promising development of IoT services, the NCC notes that IoT services combined with the 5G service may substantially change the telecom industries and the lifestyle of the public in Taiwan. To facilitate the development of IoT services, the NCC, according to the spectrum band used and the quality of service required, divides IoT services into telecommunications grade IoT services (using Narrowband IoT, LTE for machines and massive machine-type communication for future 5G services) and non-telecommunications grade IoT services (using Bluetooth, LoRa, Sigfox, Wi-Fi, Zigbee, etc.).

With regard to non-telecommunications grade IoT services, the original spectrum used was the 922–928MHz, 2.4GHz and 5GHz bands, and a telecom licence is not required. On 22 February 2017, the NCC announced that the 920MHz–925MHz band had also become available for low-power IoT services. On 27 July 2018, the NCC further announced that 839MHz–847MHz in the 800MHz band have also become available for advanced metering infrastructure. As for telecommunications grade IoT services, these are deemed telecom services, and the spectrum they use would be the same as that obtained from the mobile service operators via auctions. The spectrum used in this regard is expected to be the bands below 1GHz.

## **iii Broadband and next-generation mobile spectrum use**

The MOTC and the NCC have reached a conclusion on the spectrum plan for 5G services and IoT services. In terms of 5G services, they plan to use the 850MHz, 3.3–3.5GHz and 24GHz bands, subject to the final conclusion made at the World Radiocommunication Conference 2019 so as to avoid any inconsistency.

Considering the significant amount of testing that will be needed for 5G services, the MOTC and the NCC has also set up a special district for telecom experimental network to substantially reduce the application process and timeline for 5G testing. In addition, taking

into consideration the fact that the spectrum bands used for 5G services are those high spectrum bands, the NCC has also revised the relevant regulations to allow small cell base stations to be installed in or on public constructions, such as utility poles and light poles.

#### **iv Spectrum auctions and fees**

The NCC held spectrum auctions for 4G services in November 2013 (700MHz, 900MHz and 1,800MHz bands), December 2015 (2,500MHz and 2,600MHz bands) and November 2017 (1,800MHz and 2,100MHz bands). A total of 610MHz bandwidth has been taken by five 4G operators in Taiwan, and as of March 2018, 4G subscription accounts for approximately 82.21 per cent of total mobile communication, which is around 23.5 million subscribers.

Furthermore, as the term of 3G services will expire on 31 December 2018, a total of 120MHz bandwidth in the 2100MHz band used for 3G service will be released for 4G service. As for the 800MHz band, which is also used for 3G services, the NCC plans to use it in other ways in accordance with the international practice. In addition, to fulfil the increasing demand for mobile broadband access, another 30MHz bandwidth in the 1,800MHz band used for 3G services will be released as well.

The NCC held an auction of the 2,100MHz band at the end of October 2017, and the winners were announced in the middle of November 2017 so as to have one year to smoothly transition from 3G services to 4G services.

To avoid the spectrum being held by a small number of operators, and thus affecting the development of the mobile telecom industry, the bandwidth that a single 4G operator can hold is capped at one-third of the total 4G bandwidth and one-third of the total 2,100MHz bandwidth.

In terms of the spectrum usage fees, currently, the annual fee payable is NT\$10.675 million per MHz (applicable to 2G, 3G and 4G services) multiplied by the applicable bandwidth and applicable territory factor (e.g., if the mobile service is launched nationwide, the factor would be 1). To encourage 4G operators to construct mobile broadband networks in remote areas, the NCC has revised the standard charge for the utilisation fee for spectrum by providing a 5 to 15 per cent discount of the fee if the coverage rate in remote areas reaches 85 to 95 per cent.

## **V MEDIA**

### **i Restrictions on the provision of service**

The RTA and the SBA require a radio or television broadcasting business operator or a satellite broadcasting business operator to classify the programmes that it broadcasts in accordance with the Regulations Governing TV Programming Rating promulgated by the NCC, and that the programmes are easily identifiable and distinguishable from advertisements.

Radio and television broadcasting business operators and satellite broadcasting business operators are prohibited from broadcasting any programmes or advertisements invested in or produced by the government and related to a certain candidate in elections. If radio and television broadcasting business operators and satellite broadcasting business operators accept sponsorship, they shall clearly disclose the information concerning the sponsors before and after broadcasting programmes.

To develop local cultural industries, the RTA stipulates that locally produced programmes shall not be less than 70 per cent of the total programmes, and locally produced

drama programmes broadcast in the main time slots shall not be less than 50 per cent of the total drama programmes. If a satellite broadcasting programme supplier broadcasts dramas, films (including documentaries), variety shows or children's programmes in specific time slots designated by the NCC, the ratio of locally produced programmes to the total broadcasted programmes shall not be less than 25 per cent and the ratio of new broadcast thereto shall not be less than 40 per cent (decreased to 20 per cent in the case of broadcasting films).

The SBA also requires satellite broadcasting business operators not to broadcast any programmes containing embedded marketing placed by the government, or any programmes invested, produced, sponsored or subsidised by the government without disclosure of relevant information. Furthermore, placing embedded marketing in news-related or children's programmes is not allowed. When placing embedded marketing in other programmes, satellite broadcasting business operators shall not deliberately affect the content of such programmes, or directly encourage viewers to purchase specific products or services, or exaggerate the effect of such products; and shall disclose the information about the business operator who placed the embedded marketing before and after the programme.

## **ii Internet-delivered video content**

With the development of technology and communications, OTT services that are being provided via the internet have not only gradually impacted the existing industries, but have also brought various challenges for regulatory bodies. It is noted that at present, the NCC does not regulate OTT TV being provided online, but has drafted the DCBA Bill as the basic principles of the internet, which introduces the spirit of internet governance and light touch as a positive response to the needs of the times.

It is worth noting that at this stage, the business scale of Taiwan OTT TV service is still not substantial, and operators are still testing the water and trying to find a profitable business model. On the other hand, as some of the TV programme content delivered through OTT TV services may raise piracy concerns, content owners are also urging the NCC to take anti-piracy measures such as revising relevant laws requiring telecom operators to block illegal websites where piracy content came from. Nevertheless, the NCC has yet to decide on adopting such an approach due to freedom of speech concerns.

## **VI THE YEAR IN REVIEW**

China Network Systems (CNS), one of Taiwan's largest CATV network operators, was sold in May 2018 for NT\$51.5 billion to KHL Capital and Hong Tai Group, subject to the relevant authorities' approvals. Two of the investment team's largest shareholders are investment firms set up through the Y L Lin Hung Tai Education Foundation, which is owned by the Hong Kuo Group, a real estate developer. Currently, CNS has 12 CATV system operators and 1.13 million subscribers, or some 25 per cent of Taiwan's CATV market.

A 60 per cent stake in CNS is being sold by Korea-based private equity firm MBK Partners, which acquired it in 2007. This is the fourth time MBK has attempted to sell CNS. Other potential buyers of CNS included Want Want China Times Group (from 2011 to 2013), Ting Hsin International Group (from 2014 to 2015) and Morgan Stanley (from 2015 to last year). The previous deals fell apart because of issues such as a concentration of ownership and allegations that government investment or Mainland China influence are involved.

The sale is pending approval by the Investment Commission, as it would involve MBK – a foreign investor – pulling out of Taiwan. In addition, the NCC and the Fair Trade Commission need to be consulted before the Investment Commission can act. It is expected the deal can be approved by the end of 2018.

## VII CONCLUSIONS AND OUTLOOK

### i Telecom sector

The current TA was promulgated 60 years ago. Although it has been revised several times, the regulatory structure therein obviously cannot meet market changes caused by evolving IT technologies and the convergence of the telecom and broadcasting sectors. In response to emerging OTT services and formulating a fair market competition environment, the NCC has taken the lead by drawing up and promoting the TMA Bill and DCBA Bill under a converged legal framework. Under the TMA Bill, the concept of Type I and Type II telecom businesses would be abandoned, and only those intending to provide telecom services using frequencies, numbers or rights-of-way would be required to register in advance with the NCC. In addition, current telecom operators with significant market power (SMPs) would not necessarily be SMPs under the TMA Bill, which situation would be assessed by several market parameters, such as the maturity of such SMP's services and technologies, the geographical regions it covers, and issues in supply and demand.

The DCBA Bill, on the other hand, is in essence a guide or code of practice that has no mandatory effect on market players. The DCBA Bill stresses self-discipline by providers and users of internet services, and collaboration between the private sector and the public sector, as well as minimal use of government regulation.

### ii Media sector

Due to the restriction that the government cannot invest in the broadcasting sector (including CATV business), any entity, so long as any of its share is held by the government or a government-owned fund, would not be allowed to acquire a broadcasting business. Such prohibitions have prevented a number of proposed buyouts by listed Taiwan companies, as almost all of Taiwan's major listed companies have some portion of their shares purchased by government-owned funds.

The NCC has been aware of that unreasonable restriction, and has proposed amendments to fix this hurdle for the acquisition of broadcasting businesses. Nevertheless, as the issue of how large a percentage of shares of a broadcasting business could be held by an investment involved with government funds is quite politically sensitive, the political parties so far have not yet reached a consensus. As a result, recently several acquisition cases have been rejected by the NCC merely because of such unreasonable restriction, even where the NCC itself is of the opinion that the market would benefit from such acquisition. Without doubt, the zero-government fund restriction is a critical hurdle that the NCC has to fix for the sound development of the media sector in Taiwan.

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