

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

TENTH EDITION

Editor
John P Janka

THE LAWREVIEWS

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MEDIA AND
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REVIEW

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PREFACE

As it has since inception, this tenth edition of *The Technology, Media and Telecommunications Review* provides a survey of evolving legal constructs in 21 jurisdictions around the world. It remains a business-focused framework rather than a legal treatise, and strives to provide a general overview for those interested in evolving law and policy in the rapidly changing TMT sector.

More than ever, broadband connectivity goals are the focus of policymakers and are driving law and policy in this sector. New technologies and new ways of connecting people call for decision-makers to move away from old paradigms and embrace new ones. Indeed, facilitating digital inclusion, extending the economic and social benefits of connecting all citizens, and growing local economies by ensuring that affordable connectivity is available, are universal goals that require bold decisions and new approaches.

New expectations of being connected everywhere, and at all times, are driving the development of broadband service on aeroplanes, vessels, motor vehicles and trains, to support the needs of passengers, crew and the airlines themselves as they move to digitise their fleets and transmit the massive amounts of operational data generated by today's aircraft. Accommodating these new mobility services create pressures on the existing spectrum environment. And the different technologies that seek to meet these mobility needs are not always compatible with one another. As a result, regulators (1) sometimes provide more flexibility to allow spectrum to be used to provide a broader range of services, and (2) sometimes 'reform' existing spectrum bands so that new services and technologies can access spectrum previously set aside for other purposes.

The World Radio-communication Conference (WRC) of the International Telecommunication Union (ITU), being held this month in Sharm-El-Sheikh, will address many of these key issues, and make changes in some long-standing radio spectrum allocations, particularly the 'millimetre-wave' bands that offer the promise of providing untold amounts of capacity and even faster service speeds by a variety of technologies. As with most policy choices, the conference likely will include some political decisions. Indeed, political pressures already exist around the world in decisions being made by national regulators outside of the ITU process.

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, educational, health-related and entertainment services now available over the internet. Many governments are re-evaluating how to regulate broadband providers, whose networks have become essential to daily life. 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. But even this may start to change as the wireless providers who once relished auctions are coming to realise that the price they have to pay via auctions is just too high.

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 undesirable 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 base, 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 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 overview of these fascinating developments in the TMT sector.

John P Janka

Latham & Watkins LLP

Washington, DC

November 2019

TAIWAN

Patrick Marros Chu, Vick Chien and Sam Huang¹

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 broadcasting 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 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 (i.e., the Congress). 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 radio frequency spectrum;
- e* setting information security standards and technical specifications; and
- f* regulating the content of broadcasting.

¹ 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 Main sources of law

The Telecommunications Act (TA) is the main source of law for the telecom sector in Taiwan. Under the authorisation of the TA, the NCC enacts a variety of regulations for different types of telecom services, including without limitation:

- a* the Administrative Rules on Fixed Network Telecommunications Businesses;
- b* the Administrative Rules on Third Generation Mobile Communications Businesses;
- c* the Administrative Rules on Mobile Broadband Businesses;
- d* the Administrative Rules on Satellite Communications Businesses; and
- e* the Administrative Rules on Type II Telecommunications Businesses (the Type II Regulations).

For the broadcasting sector, the main source of law is the ‘Three Broadcast Laws’: the Radio and Television Act (RTA), the Cable Radio and Television Act (CRTA) and the Satellite Broadcasting Act (SBA).

iii Regulated activities

To operate 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 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 service categories of Type I telecom businesses include:

- a* integrated network services, local network services, long-distance network services, international network services and leased-circuit services;
- b* 3G mobile communications services;
- c* mobile broadband access services; and
- d* satellite communications services, including satellite fixed network communications services, satellite mobile network communications services and satellite TV programme uplink services.

According to the Type II Regulations, Type II telecom businesses can be further divided into two categories: ordinary Type II services and special Type II services. Special Type II services refer 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. Ordinary Type II services are Type II services other than special Type II services.

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 business, the NCC's prior approval is also required for conducting any of the following activities: providing radio and television broadcasting services; providing cable television (CATV) services; and providing satellite broadcasting services.

iv 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.

v Transfers of control and assignments

In principle, all licences issued by the NCC are non-transferrable and the assignment of 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 broadcasting business to a third party.

Cross-ownership among broadcasting business operators is subject to general competition laws. In addition, the CRIA stipulates that the total number of subscribers of a CATV operator as well as its affiliates and directly or indirectly controlled CATV operators, shall not exceed one-third of the total number of subscribers in Taiwan. Last but not least, on 12 July 2017, the NCC published a bill of the Anti-Media Monopoly Act (the Anti-Monopoly Bill) to solicit public comments. The Anti-Monopoly Bill aims to set a cap

for mergers or acquisitions among broadcasting businesses and national daily newspapers. However, as this is very controversial, we do not expect that the Anti-Monopoly Bill 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, under the Type II Regulations, VoIP services are defined as voice services received and transmitted through the internet. 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 telecom 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 services, these can be further divided into two types: E.164 internet telephony service and non-E.164 internet telephony service. The former refers to the internet telephony service run by E.164 numbers allocated by the NCC in accordance with the ITU-T Recommendations, while the latter refers to 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 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 requirements such as those under the RTA, CRTA or SBA. Nonetheless, 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 is linear programming, this service would still be deemed a value-added telecom service, and a telecom licence is required. It is worth noting that on 31 May 2019, the Acting Chairperson of the NCC indicated that the NCC is considering proposing a bill of the Audio-Visual Convergence Act to regulate OTT media services by the end of 2019, requiring OTT streaming platforms to report the number of subscribers, fee schemes and other consumer protection-related matters to the NCC.

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 promoting universal service. The scope of universal service includes voice service and access to data communications. The former refers to the provision of uneconomic public payphone services and telephone services in uneconomic areas. The latter refers to the provision of access to data communications in uneconomic areas and to elementary and secondary schools and public libraries at a preferential rate. Since mobile broadband has become a fundamental part of the information society, besides traditional voice services and internet access services, providing

ubiquitous wireless broadband access has become a key issue of universal service. In light of the foregoing, in 2019, the NCC revised the universal service regulation to extend the scope of universal service to offering mobile broadband services in uneconomic areas.

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 (the DCBA Bill), which has been submitted to the Legislative Yuan for its review and approval, digital communication or broadcasting service providers (including current telecom and broadcasting operators) 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 fees for internet access or mobile communications service and 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 ' $\Delta\text{CPI}-X$ ',² 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

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 operators shall not reject, without justification, requests from the local populace to subscribe to a CATV service.

Under the current regulatory regime, a price cap of NT\$600 per month per household for CATV services was set by the NCC, which 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 price cap (i.e., NT\$600) enacted by the NCC, and then make an announcement of its decision on subscription tariffs accordingly. Currently, the subscription tariffs of CATV operators are between NT\$495 and NT\$590. To offer multiple options for subscribers, the NCC has proposed a bill of multiple subscription tariff schemes for CATV services, which requires CATV operators to adopt a tiered scheme and provide subscribers with different

2 ' ΔCPI ' 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.

packages which contain different combinations of channels. Under the bill, the price cap of NT\$600 remains unchanged; however, CATV operators may be exempted therefrom under some circumstances.

iv Privacy and data security

A telecom operator is entitled to refuse to provide telecom services only when the content conveyed through telecommunications appears 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 operators, the NCC held the view that national security may be jeopardised if the source of funds for investments comes from or is related to Mainland China.

The Personal Data Protection Act (PDPA) is a general law regulating the collection, processing and use of personal data in Taiwan. The PDPA requires data controllers to have in place appropriate measures to prevent personal data from being stolen, altered, damaged, destroyed, lost or disclosed. The Enforcement Rules of the PDPA further provide certain technical and organisational measures that data controllers may consider adopting based on the principle of proportionality (i.e., based on the quality and quantity of the personal data involved). Moreover, pursuant to Article 21 of the PDPA, the central competent authority has the power, in its discretion, to prohibit cross-border transfers of personal data if, inter alia, it will prejudice any material national interest. To date, the NCC is the only government agency that has issued a ruling to prohibit telecom and broadcasting operators from transmitting their subscribers' personal data to Mainland China.

Pursuant to the Communication Protection and Surveillance Act (CPSA), telecom operators must enable the law enforcement authority to conduct monitoring and interception of communications on their systems. Such an obligation is imposed on all Type I telecom operators and certain Type II telecom operators. Pursuant to the CPSA, if there is sufficient evidence that the accused or the suspect is involved in certain material crimes explicitly listed under the CPSA and there is reasonable belief that the content of his or her communications is relevant to the case being investigated, and it is difficult or there are no other methods to collect or investigate the evidence, an interception warrant may be issued. The CPSA also provides that when it is necessary to conduct surveillance on certain communications in order to collect intelligence on foreign forces or hostile foreign forces to protect national security, the head of the competent authority overseeing national intelligence may issue an interception warrant.

IV SPECTRUM POLICY

i Development

Pursuant 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 Radio 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 allocated to them (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 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 Telecommunications Management Act (TMA), which was passed by the Legislative Yuan on 31 May 2019, with the effective date to be further determined by the Executive Yuan, the NCC deregulates the use of spectrum so as to have the spectrum used efficiently. Article 58 of the TMA provides that a telecom operator is allowed to transfer part of the spectrum allocated to it 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 also authorises the NCC to further promulgate relevant regulations in terms of the scope of the spectrum that may be transferred, the usage of spectrum after transfer, the qualification of the transferee(s), restriction and other management matters.

It is widely recognised that the above-mentioned development would help to establish the secondary market for spectrum in Taiwan after the TMA takes effect. The TMA and other bills proposed by the NCC will substantially change the current regulatory regime of the telecom industry.

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 industry and everyday life in Taiwan. To facilitate the development of IoT services, the NCC, according to the frequency 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 frequency bands, and a telecom licence is not required. On 22 February 2017, the NCC announced that the 920MHz–925MHz frequency band had also become available for low-power IoT services. On 27 July 2018, the NCC further announced that 839MHz–847MHz in the 800MHz frequency 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 frequency bands below 1GHz.

iii Broadband and next-generation mobile spectrum use

Currently, the radio spectrums must be allocated along with telecom licences and used within certain business scopes. For the purposes of increasing spectrum use efficiency, the TMA allows the NCC to set a spectrum sharing mechanism, free-to-use terms, etc. in advance while it releases spectrums so as to respond to the needs of innovative technologies and services. A telecom operator that has obtained spectrum may file an application with the NCC to provide the spectrum or part thereof to other telecom operators for their use by dividing the spectrum into different subbands, time slots or subregions. Telecom operators may even combine and use their spectrums together, which is expected to bring about dramatic changes to the competition in the relevant markets. In addition, a telecom operator that has obtained spectrum may also file an application with the NCC to return the spectrum after the Executive Yuan makes a public announcement. The NCC will re-auction and re-allocate the spectrum to another telecom operator, and the winning bidder would not be subject to the original usage restrictions.

iv Spectrum auctions and fees

The NCC held the spectrum auctions for 4G services in November 2013 (700MHz, 900MHz and 1,800MHz frequency bands), December 2015 (2,500MHz and 2,600MHz frequency bands) and November 2017 (1,800MHz and 2,100MHz frequency 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 communications, which is around 23.5 million subscribers.

To avoid the spectrum being held by a small number of operators, and thus affecting the development of the telecom industry, the bandwidth that each 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 Charging Standards for the Radio Frequency Usage Fees by providing a 5 to 15 per cent discount if the coverage rate in remote areas reaches 85 to 95 per cent.

In August 2019, the NCC announced the spectrum that it plans to release for 5G services, including 270MHz in the 3.5GHz frequency band, 2,500MHz in the 28GHz frequency band, and 20MHz in the 1,800MHz frequency band (2,790MHz of bandwidth in total). The total floor price for the 5G spectrum auction to be held at the end of 2019 would be NT\$30 billion. The 5G spectrum auction would be conducted in two phases: the first would be a multiple-round auction to determine the amount of bandwidth each bidder can receive; the second would be an auction to determine each bidder's location on the spectrum.

V MEDIA

i Regulation on media distribution generally

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 time slots from 8pm to 10pm 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 premier programmes 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 programmes.

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

On 31 May 2019, the TMA was passed by the Legislative Yuan, with the effective date to be further determined by the Executive Yuan. The TMA will result in major structural changes to the regulatory environment and the telecom industry. The TA divides the telecom industry into various types of businesses based on whether business operators own relevant telecom facilities, thereby adopting a vertical regulatory regime, and a telecom service provider that does not have prior approval from the NCC would be subject to criminal sanctions and severe administrative penalties. However, the TMA adopts a horizontal regime, which separates the telecom industry into three levels: the infrastructure level (telecom networks), the operation level (telecom services), and the content/application services level. Moreover, to encourage new entrants to enter the market and to give them the flexibility to conduct business operations, the TMA has changed the mechanism of market participation to voluntary registration. Telecom service providers that choose not to register as telecom operators may still provide telecom services to consumers. Nonetheless, if a telecom service provider intends to obtain certain rights or resources conferred by the TMA (e.g., applying for allocation of radio frequency), it would still need to register as a telecom operator.

In furtherance of establishing telecom infrastructure, the TMA has removed the punishment of unauthorised telecom networks under the TA, which means that entities may establish their own telecom networks according to their needs without obtaining prior approval from the NCC. Furthermore, entities may organise telecom networks by means of leasing others' telecom networks or using network slicing technologies instead of establishing their own telecom network. For the purposes of increasing spectrum utilisation efficiency, the TMA allows the NCC to set a spectrum sharing mechanism, free-to-use terms, etc., in advance when it releases spectrums so as to respond to the needs of innovative technologies and services. In addition, the TMA also authorises the NCC to ban the purchase and use of certain telecom equipment for national security reasons.

VII CONCLUSIONS AND OUTLOOK

i Telecoms 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 and DCBA Bill under a converged legal framework. On 31 May 2019, the TMA was passed by the Legislative Yuan, with the effective date to be further determined by the Executive Yuan. Under the TMA, the concept of Type I and Type II telecom businesses would be abandoned, and only those intending to provide telecom services by 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, 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.

On the other hand, the DCBA Bill 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

Owing to the restriction whereby 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.

It is worth noting that on 31 May 2019, the Acting Chairperson of the NCC indicated that the NCC is considering proposing a bill of the Audio-Visual Convergence Act to regulate OTT media services by the end of 2019, requiring OTT streaming platforms to report the number of subscribers, fee schemes and other consumer protection-related matters to the NCC. Currently, however, it is still at an early stage to predict how the bill would regulate OTT media services, but this development is certainly worthy of being noted.

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