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**The Impact of Convergence on Telecommunications Law and Policy:
A Comparison between Japan and Taiwan**

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**The Impact of Convergence on Telecommunications Law and Policy:
A Comparison between Japan and Taiwan**

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Abstract

In order to cope with the convergence of telecommunications and broadcasting, the governments of both Japan and Taiwan have been integrating their respective telecommunications laws and broadcasting laws. In Japan, the work of integration started earlier than in Taiwan and it has proceeded very well. It is expected that Japan will complete its Comprehensive Legal Structure of Information and Communications in the early part of 2010. In contrast to Japan, the process of integration in Taiwan has been much slower because of inconsistent government policy. However, the common belief shared by both governments is that the layer model underlies the trend toward the convergence of communications laws in the future.

Key words: convergence, layer model, communications law, Japan, Taiwan

Introduction

The purpose of this paper is to study the impact of convergence on the respective telecommunications laws and policies in Japan and Taiwan. The years between 2006

and 2010 have been and will continue to be very important for Japan and Taiwan to deal with convergence. Although Taiwan drafted a convergence bill that sought to integrate the telecommunications and media laws, its proposals were opposed and questioned by both the telecommunications and media industries as well as academics. It would seem that Taiwan can learn from the Japanese experience in regard to how to interact with the business community, academia and public interest groups. When Japan starts to draft the convergence law, the NCC's draft bill might serve as a good reference. As a matter of fact, Korea and Hong Kong are also interested in a communications convergence law. Therefore, this paper might also shed some light on countries other than Japan and Taiwan. The research methods adopted in this paper include a literature review, a documentary analysis, and in-depth interviews.

Literature Review

Convergence of Telecommunications and Broadcasting

The term "convergence" originally comes from the world of science and mathematics. It has also been used in political science and economics. In the area of communications, Pool (1983) clearly helped popularize it (Gordon, 2003). He conceptualized convergence as follows:

A process called the "convergence of modes" is blurring the lines between media . . . A single physical means . . . may carry services that in the past were provided in separate ways. Conversely a service was provided in the past by any one medium . . . can now be provided in several different physical ways.

Convergence can be defined from many perspectives such as technological, economic, and regulatory dimensions (Dupagne & Garrison, 2006). In terms of the technological dimension, broadband can be provided not only by DSL, but also by

cable modem. In addition to TV, cable operators can also provide cable telephony. From an economic dimension, a single business such as cable TV or a fixed network can provide triple-play or quadruple-play bundled services on the same platform. From a regulatory perspective, there are discussions regarding the convergence laws and unified regulator. The trend toward convergence poses challenges to the currently separate laws for telecommunications, broadcasting, cable TV, and satellite TV, not only in Japan and Taiwan, but also everywhere else.

In the United States, different media are regulated differently, even if they deliver the same content, because there may be different social impacts based on the delivery technology. However, in the EU, the member states regulate content depending on linear (such as scheduled channels) or non-linear (such as VOD) classifications. Uncertainty could inhibit the development of the converged services and the benefits to consumers. Therefore, it is very important for the governments in Japan and Taiwan to deal with convergence by revising the relevant laws. Then, another question arises. Should Japan and Taiwan integrate the existing laws or simply revise the separate laws? Japan seems to have a unanimous answer which is to pass a comprehensive converged law. Taiwan is caught in between. While some people welcome the converged law, others have proposed first revising the separate laws and only later unifying the telecommunications law and broadcasting-related laws.

Layer Model

Layer models can be used from the perspectives of technology, markets, and policy. Faced with the convergence of technologies and services, industrialists use layer models to plan their businesses. The communications policy-makers also find such models useful when confronted with the problems brought about by convergence. They think that the layer model is a conceptual framework that can be used to provide a unified regulatory direction for newly-evolving media and services.

The earliest layer model is the Open System Interconnection Reference Model

(OSI model) which is an abstract description for a layered communications and computer network protocol design. It divides the network architecture into seven layers, namely, physical, data-link, network, transport, session, presentation, and application (Wikipedia, http://en.wikipedia.org/wiki/OSI_model). When the idea of a layer model is used by policy-makers, the layers vary from two to five layers. A two-layer model comprises infrastructure and content. The three-layer model adds a layer for service.

Werbach (2002) modified the OSI model and made it have four layers, namely, the content, applications/services, logical and physical layers. Sicker and Mindel (2002) also proposed four layers which were different from those of Werbach’s model. Their model comprised access, transport, application, and content layers. Taniwaki (2003), an MIC official, proposed another four layers, namely, the terminal, network, platform, and content/application layers.

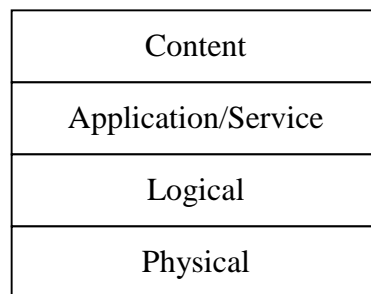


Figure 1 Werbach’s model (2002)

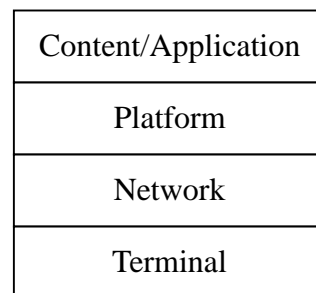
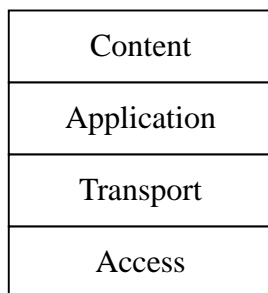


Figure 2 Sicker & Mindel’s model (2002) Figure 3 Taniwaki’s model (2003)

From an interface perspective, Guilenburg & Verhoest (1998) proposed five layers including the infrastructure, network interface, carrier, user interface, and application layers. Taiwan's former broadcasting regulator, the Government Information Office, introduced a different five-layer model when it tried to integrate the Broadcasting Act, the Cable Radio and TV Act, and the Satellite Radio and TV Act into one Broadcasting Act (Liu, 2005).

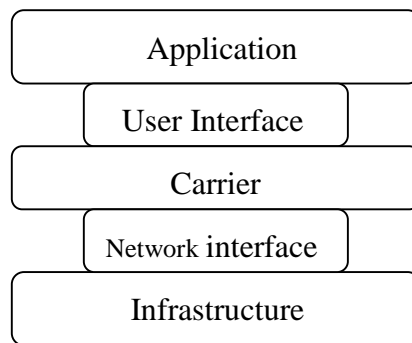


Figure 4 Cuilenburg, J. V. & Verhoest, (1998)

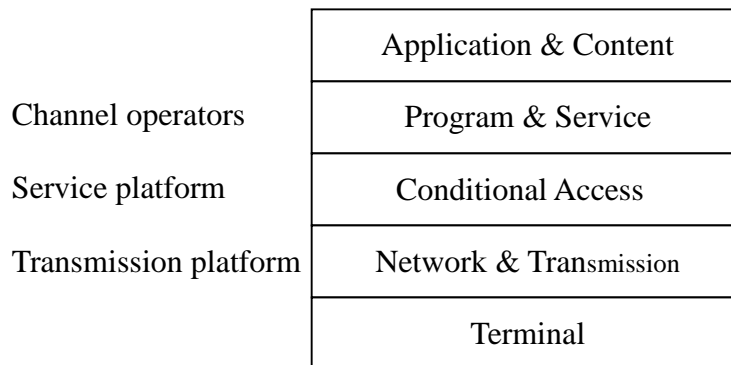


Figure 5 GIO model (2004).

The useful part of the layer model is that it provides a unified legal framework for converged services. It can avoid the phenomenon whereby the same services provided by different technologies are regulated differently. It also encourages deregulation in the case of the topmost layers such as the content and application layer.

The industry will have more flexibility in its management and will be able to increase innovation and efficiency. For instance, if the broadcasters only want to be content providers, they do not need to build transmission towers. They can use others' facilities if they want. This is the so-called separation of transmission and content. The entry barrier for each layer is lower and easier than in the case of the vertical structure. All the players can be innovative and flexible.

The weakness of the layer model is that it is only a concept or framework and cannot solve all the problems that the regulators and the industry are facing everyday. Sicker & Blumensaadt (2006) also pointed out that there were misunderstandings regarding the layer model. Nevertheless, the layer model represents a big paradigm shift from vertical regulation to horizontal regulation. Japanese scholars and officials used to adopt four layers (Sugaya, 2006; Taniwaki, 2003). Now, the Japanese government wants to adopt three layers. The European Union (EU) has adopted the layer model in its legal framework (in the classification of electronic communications services and electronic communications networks). In 2002, the EU set up a Directive which states "the convergence of the telecommunications, media and information technology sectors means that all transmission networks and services should be covered by a single regulatory framework". With regard to content, it is regulated by the Audio-visual Media Service Directive. The EU Framework is "a set of approved regulations that are currently being implemented by member states," whereas the layered model is "a tool to help policy-makers establish a unified policy model" that facilitates a "consistent, systematic treatment" of issues (Mindel & Sicker, 2006).

Impact of Convergence on the Telecommunications Law and Broadcasting Law

Before its converged service, such as IPTV, was introduced, Japan had three laws for telecommunications business and three laws for broadcasting. After the IPTV technology appeared, the Japanese government drew up a specific law that was referred to as the “Law Concerning the Broadcasting of Telecommunications Services” to regulate IPTV. In order to accomplish its goals of switching off analogue TV and expanding broadband services, the MIC started to review the comprehensive structure to enable convergent services. It decided to work on the integration of the legal system as well as to establish a system that had the flexibility to expand the area of management (MIC, 2009).

In Taiwan, before the National Communications Commission (NCC) was established, telecommunications and broadcasting were regulated by the Directorate General of Telecommunications (DGT) and the Government Information Office (GIO), respectively. When the converged service such as IPTV appeared in Taiwan, the two governing agencies had different views about how IPTV should be regulated. The DGT believed that IPTV should be treated as a new telecom service, while the GIO considered that IPTV should be treated in the same way as cable television. Even after the NCC was established, it still could not find a proper law to regulate IPTV. Although Taiwan learned that Japan had a specific law to regulate IPTV, it chose to revise the fixed network regulation and ask Chunghwa Telecom (CHT)’s IPTV to act as an open platform for all the interested parties.

In addition to IPTV, other converged services such as digital audio broadcast (DAB) also encountered many problems caused by the outdated laws. For instance, DAB operators, due to their broadcasting nature, could not provide data service unless

they adhered to the Telecommunications Act. However, before the Telecommunications Act was revised, the DAB operators were not qualified to provide telecom service because they were considered to be broadcasters. The above-mentioned examples clearly show that convergence does have a great impact on Telecommunications and Broadcasting laws. The boundaries between telecommunications and broadcasting are becoming increasingly blurred and the existing laws are outdated.

Background to the Evolution of the Converged Legal Framework

In Japan, discussions and debates regarding the proposed framework for the converged communications law have taken place since 2006. Media economics scholars such as Professor Minoru Sugaya have proposed the adoption of the layer model (horizontal regulation) for the converged law. The telecommunications regulator, the Ministry of Internal Affairs and Communications (MIC), announced that it would integrate the telecommunications laws and the broadcasting laws in 2010. Unlike Taiwan, Japan's telecom regulator has not yet prepared a detailed draft of the converged law. It has instead first chosen to establish a Study Group to work on the framework and also to inform the telecom and broadcasting industries to prepare for the new regulatory environment and adapt to the new converged law.

In Taiwan, in order to cope with convergence, a newly-converged government agency, the National Communications Commission (NCC), was established in February 2006. The NCC is an independent regulator governing the telecommunications, media and information sectors. The authority over telecommunications and broadcasting that was originally under the Ministry of Transportation and Communications (MOTC), the Government Information Office

(GIO), and the Directorate General of Telecommunications (DGT) has been transferred to the NCC.

Article 16 of the Fundamental Communications Act states that the government shall amend the relevant statutes within two years of the NCC’s establishment. The NCC can consider abolishing or amending the unnecessary regulatory legislation, respond to urgent industry needs, complete the revision of laws on a small scale or respond to the needs of digital convergence, by creating the “4-in-1” Converged Telecommunications & Media Law. In 2007 there were discussions regarding whether the Telecommunications Law and laws related to electronic media should be amended individually or integrated into one law (*DigiTimes*, 2007). In this case, the NCC must decide whether to revise the four laws individually or to submit a revised draft of the converged laws to the new administration.

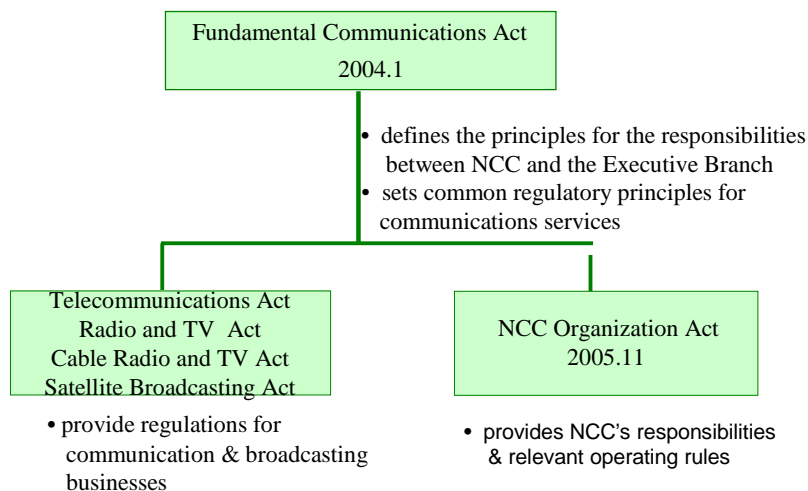


Figure 6 Legal framework for Communications

Since so many converged services have emerged in Japan and Taiwan, the

telecom regulators of both countries need to accommodate the convergent media with appropriate regulations.

The Development of the Converged Legal Framework

Japan

Since Japan has decided to terminate analog broadcasting on July 24, 2011 and enable all the people to have broadband Internet access in 2010, it needs to review the legal structure for Communications and Broadcasting in order to cope with the new ICT society.

Currently, there are four laws for broadcasting, three laws for telecommunications business, and two laws for transmission facilities. The laws include the Telecommunications Business Law, Radio Law, Wire Telecommunications Law, Laws Concerning Wire Broadcasting Telephones Business, Laws and Ordinances Concerning Measures against Illegal and Harmful Information, the Broadcast Law, the Law to Regulate the Operation of the Cable Radio Broadcasting Services, the Cable Television Broadcast Law, and the Law Concerning the Broadcasting of Telecommunication Services. Japan has determined to integrate these nine laws into one in 2010.

Unlike Taiwan, Japan established a converged legal framework working group to give the government direction. Former Minister Takenaka of the MIC took the initiative in 2006. He organized a panel for the Comprehensive Legal Structure of Information and Communications in January 2006. The following is the timetable adopted for the preparation of the converged legal framework:

Table 1 Timetable for the preparation of the converged legal framework (Japan)

Time	Task
January 2006	Former MIC minister Takenaka formed a Panel to study the convergence issues.
June 2006	The Panel on the Frameworks of Communications and Broadcasting submitted a report.
June 2006	Agreement between the Government and the Ruling parties on the Regulatory Frameworks for Communications and Broadcasting was reached
July 2006	The Cabinet passed the Basic Principles for Economic Operation Structural Reform
August 2006	The Study Group on a Comprehensive Legal System for Telecommunications and Broadcasting held meetings
September 2006	The program regarding the reform of the communications and broadcasting fields was launched
December 2007	The Study Group on the Comprehensive Legal System for Communications and Broadcasting submitted its final report
February 2008	A consultation was held with the Telecommunications Council on the Comprehensive Legal System for Communications and Broadcasting
June 2008	Invited public comment—Interim Report by the Telecommunications Council on Issues
December 2008	Summarized the “Discussion Agenda on the

	Comprehensive legal System for Communications and Broadcasting”
August 2009	Final Report by the Telecommunications Council

The above records can be found on the MIC website. Initially, the broadcasting industry was opposed to the adoption of the converged framework, because they were afraid that many newcomers would enter the market and share their advertising revenues. In addition, they were afraid that they would be asked to transform themselves from a vertical structure to a horizontal structure (i.e., give up the transmission part to be the content provider to follow the layer model). It took the government some time to work with different stakeholders.

The MIC has held 20 meetings of the Telecommunications Council on a Comprehensive Legal System for Telecommunications and Broadcasting since February 2008 in order to study the legal system for the convergence of communications and broadcasting. The Council compiled its final report at its 20th meeting held in August 2009.

Taiwan

In Taiwan, there are at present three electronic media laws (the Radio and Television Act, the Cable Radio and Television Act and the Satellite Broadcasting Act) and one Telecommunications Act. However, with the convergence of telecommunications and broadcasting, many laws and regulations have become outdated.

As a matter of fact, Article 16 of the Fundamental Communications Act did not say which government agency should take the initiative to revise the laws. The NCC

believed it was its responsibility to revise the laws. In addition, whether or not the NCC should have revised the individual communication laws or integrate the laws was also debatable. However, the NCC did not revise the separate laws. Instead, it wanted to integrate all the telecommunications and broadcasting-related laws into one comprehensive law.

The NCC finished the first draft of this one comprehensive law in September 2007 and subsequently held two public consultations in September and November 2007. The stakeholders, which included communications scholars, experts, public interest groups, and representatives of the telecommunications and broadcasting sectors, each expressed their concerns about the draft. It was felt that more discussion and dialogue were needed.

Because of time constraints, the NCC submitted the draft converged law to the Executive Yuan in December 2007. Thus, it came as no surprise that the Executive Yuan returned the draft of the integrated law to the NCC in April 2008. After the second-term NCC Commissioners took up office in August 2008, they decided to revise the current laws individually. Therefore, the converged law draft was temporarily put off.

In the Commissioners' Meeting, during the discussion of the draft law, Commissioner Yu-li Liu wrote two major dissenting opinions. She argued that the converged law initiative should be based on the policies and goals that the government wanted to achieve rather than just writing a new law. She recommended that the new law give industry the flexibility to decide how many layers they wanted to manage. Otherwise, it would be meaningless to merely integrate the laws.

Table 2 Timetable for the Converged Communications Law (Taiwan)

Date	Task
September 11, 2007	NCC finished the draft and disclosed it for public consultation
September 26-28, 2007	First round of public hearings
November 9, 2007	Explanation of the policy for the converged law draft
November 21, 2007	Second round of public hearings
December 20, 2007	Submitted to Executive Yuan
	Executive Yuan returned the draft to the NCC
January 2008	The KMT became the ruling party after the election
April 2008	The Executive Yuan returned the draft bill to the NCC
August 2008-2009	The second term NCC Commissioners took up office and decided to suspend the draft

In the draft, there were three directions for the converged draft bill: (1) Technological convergence: allow separation of network and content, relax cross media ownership rule, and improve digital divide; (2) Marketplace order: set spectrum planning principle, and prevent unfair competition; (3) Social norms and regulation: implement self regulation, introduce an ombudsman system, respect press autonomy, and allow product placement and advertisement flexibility.

The Content of the Converged Law Initiatives

Japan

The Converged Legal Framework in Japan

In June 2009, the Telecommunications Council submitted its draft for public comments. From there it will finalize the draft and submit it to the Minister. Thereafter, the bill will go to the Legal Office of the Cabinet. Since the ruling party changed to the Democratic Party of Japan (DPJ) in August, there might be some changes in the framework, but they are not expected to be big.

According to the MIC, the most recent version of the proposed comprehensive legal framework only has three layers. While there is a big difference between the MIC draft and the report of the Study Group (which introduced regulations for Internet content), there is almost no difference between the MIC draft and the final report of the Telecommunications Council. The draft aims to promote the free distribution of information, enhance flexible business management, secure the safety and reliability of information communications, and protect the general public and individual users (Shirae, 2009). The current converged legal framework is as follows:

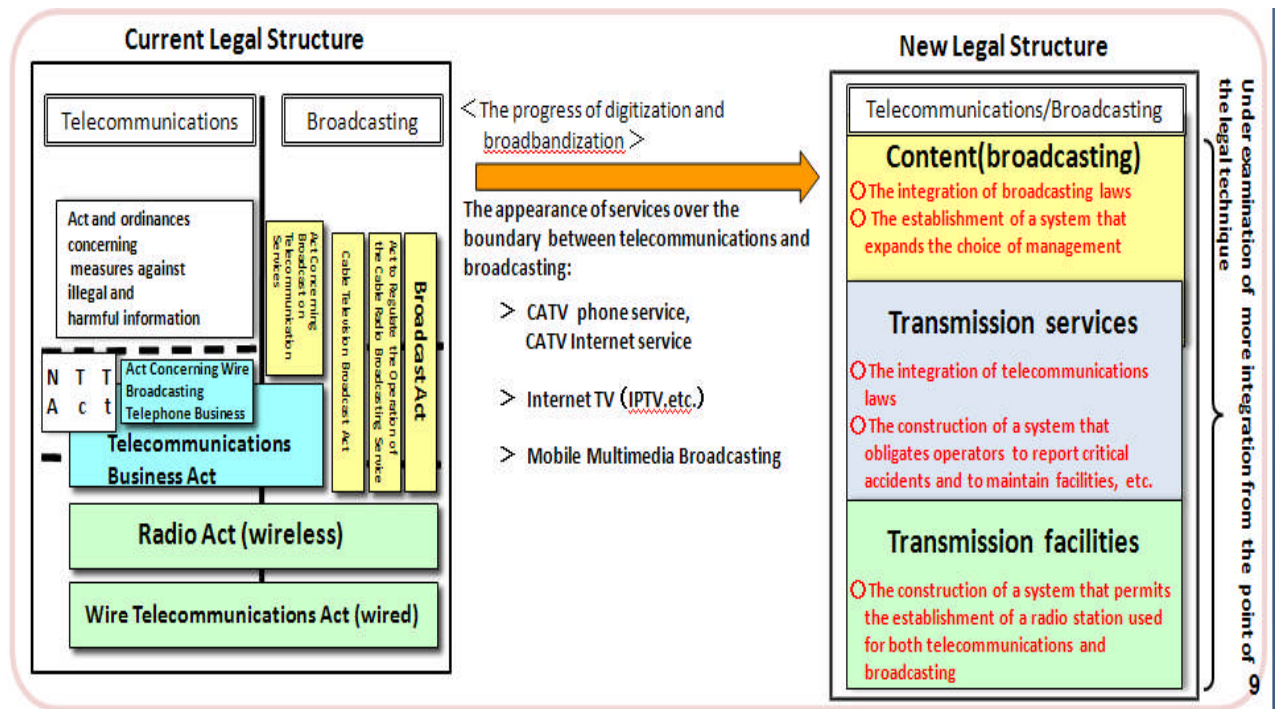


Figure 7. New Legal Structure towards Convergence, source: MIC, July 2009.

According to the planned legal structure, the three layers include transmission facilities, transmission services, and content. As for the transmission facilities layer, the construction of a system permits the establishment of a radio station to be used for both telecommunications and broadcasting. As to the transmission service layer, the construction of a system obliges operators to report critical accidents and to maintain facilities. As for the content layer, the establishment of a system can expand the choice of management. The three layers are explained as follows:

1. Transmission Facilities

The principles include the flexible use of radio frequencies, reasonable use of white spaces, the promotion of new technologies and making use of the creative ideas of the private sector, and the promotion of new services and new products. The new law will allow the licensee to establish a station that is used for both

telecommunications and broadcasting and to change what the station is used for after it is licensed.

2. Transmission Services

The principles include integrating the rules for transmission services such as the Telecommunications Business Act and the Act Concerning Wire Broadcasting Telephone Business. The government should review the rules for cable television broadcasting facilities and maintain broadcast reliability with technical standards in consideration of accidents interrupting broadcasting.

3. Content

The principles include integrating the current four broadcasting Acts, but not establishing a new regulation applied to open media content such as web content. Also included is maintaining the specific broadcast within the framework and applying it only to terrestrial broadcasts and special satellite broadcasts. The current law does not give flexibility to broadcasters. The new law will allow broadcasters to choose their operating structure. As for program classification, broadcasters still need to disclose the classifications of each program and the broadcasting time.

Other issues

In addition to the three layers mentioned above, the proposed framework also includes other issues such as expanding the function of the Telecommunications Dispute Settlement Commission to resolve disputes between content providers and telecommunications carriers and between broadcasters and cable television broadcasters regarding retransmission consent. In order to promote consumer

protection, this legal framework has also suggested that broadcasters that provide paid services are obliged to explain the terms and conditions of those services to consumers, process complaints from consumers, and give prior notice of the suspension of business activities.

However, the comprehensive legal framework does not integrate the NTT Act on this occasion. NHK still operates both facilities and services because it is a public corporation and its position will not change under the new framework. The MIC may later probe into these issues related to NTT and NHK. The MIC has admitted that although it studied the EU model, it did not follow the Audio-visual Media Service Directive. Based on the final report of the Telecommunications Council, the MIC aims to submit the bill in the 2010 ordinary diet session.

Taiwan

The NCC has adopted a three-layer framework that aims to offer consistent regulatory criteria to operators running the same business, encourages flexible and creative business models and represents a shift from vertical regulation to horizontal regulation. The three layers include the Content & Application Layer, the Service/Platform Layer, and the Infrastructure/Network Layer. The NCC's regulatory principles for the Communication Administrative Bill are as follows:

1. In the direction of a medium to a high degree of convergence

The NCC realized that it was difficult to ask the industry to transform itself from a vertical structure to a horizontal structure right away. It takes time for the industry to adjust. Therefore, it decided to work in the direction of a medium to a high degree of convergence. For instance, in regard to the service layer, telecommunications and broadcasting are still treated differently.

2. Adopting a 3-layer horizontal regulatory structure and regulating according to the different features

After considering different layer models, the NCC decided to adopt a 3-layer model. The NCC will not force the industry to adopt only one layer. The industry has the freedom to choose how many layers it wishes to manage.

3. Adopt a single legislation approach (4-in-1)

The NCC decided to integrate the Telecommunications Act, the Radio and TV Act, the Cable Radio and TV Act, and the Satellite Broadcasting Act into one comprehensive Act. Some critics have argued that the NCC could integrate the three broadcasting-related laws first, and then integrate the Telecommunications Act. This means that they prefer two stages rather than one stage of integration.

4. Separate network and service regulation

The NCC has wanted to separate network and service regulation by placing networks and services in different layers. Some critics argue that the NCC should not only impose obligations on the service layer, but that it is also necessary to regulate the network layer in terms of network connections.

5. Handle broadcasting services separately if necessary

Even though the Fundamental Communications Act stipulates that the government should not treat the same service provided by different technologies differently, in reality it is premature to treat broadcasting in the same way as telecommunications services. Therefore, the draft bill suggests that the government can handle broadcasting services separately if necessary.

6. Ensure minimum government intervention and respect the market mechanism

The NCC wants to ensure minimum government intervention and to respect the market mechanism. The NCC intends to relax the regulations regarding advertising

by allowing product placement in certain kinds of programming (only news and children's programs are not allowed).

7. Fulfill media self-regulation and civil society regulations

The NCC has emphasized on many occasions that it wants to encourage media to endorse self-regulation and invite public interest groups to participate in the license renewal process. It is believed that the news media would normally not enforce self-regulation unless required to do so. Therefore, the draft would require that the news media endorse self-regulation in their news reporting.

8. Seek seamless migration

The government has to make sure that there will be seamless migration from the existing laws to the new law. It has to ensure that the interests of the existing telecommunications operators and broadcasting media will not be affected. In addition, the consumers' interests have to be protected.

The Pros and Cons of the Converged Legal Framework

Japan

Most of the stakeholders support the converged legal framework in Japan. When the layer model idea was brought to the public in 2006, the broadcasting industry did not agree with the plan. They were afraid that they might be asked to choose only one layer to manage (either the transmission or the content layer). They were also very concerned that new competitors would enter the market and take away their advertising revenues.

If the converged legal framework wanted to include NTT and NHK (public broadcasting status) during the policy-making process, the process would have been very complicated. Therefore, the MIC decided not to deal with these two entities at

this time. It announced that it would review the two cases in the near future. The following outlines the pros and cons of the proposed legal framework.

National Association of Broadcasters (NAB)

They welcome this legal framework, and hope that the content of the four broadcasting-related laws will be kept. They have emphasized that the content on the Internet should not be regulated. They have six concerns:

First, they hope that the content regulation will not be more strict than the current regulation in the future.

Second, they hope that the term “broadcasting” will be maintained in the new law.

Third, they hope the program genre can be classified by the broadcasters instead of by the regulators. Home shopping programs are very important for the broadcasters. They hope they can discuss how to classify home shopping programs through an open and self-regulatory approach.

Fourth, they hope to abolish the retransmission consent regulation. According to the current regulation, if the broadcasters and cable operators can not reach an agreement regarding the retransmission consent, the government can arbitrate. The broadcasters want to have the freedom to negotiate with cable operators.

Fifth, if the Telecommunications Complaint Committee will be in charge of both telecommunications and broadcasting in the future, it is all the more important to consider the characteristics of broadcasting and to make these clear and concrete.

Sixth, with regard to the emerging cases, back-up equipment is needed for broadcasters. The country’s digitization is very important. However, the government should consult with the broadcasting industry and fully discuss the issues

with them.

Cable TV Association

The cable TV industry welcomes the abolition of the lease channel requirement. However, it is recommended that the government have an alternative measure for the transitional period. The new law plans to abolish the “licensing system” and to change it to a registration system. Meanwhile, it is still important to require the cable operators to meet certain technical standards in order to protect consumers. It is also necessary to warn the cable operators not to over-concentrate on the cities to prevent so-called cream skimming.

With regard to content, cable TV has to serve the public interest and provide some local information. If the government wants to abolish its licensing system, it has to maintain some basic requirements. For the areas where terrestrial TV signals cannot be received clearly, the existing guidelines should be maintained. Both terrestrial TV and cable TV should work together to solve the reception problems.

In order to protect consumers, the basic plans stipulated in the Broadcasting Act should also apply to cable TV. Unlike the NAB, the cable TV industry has expressed concern that the arbitration system for transmission consent should remain. They hope at this stage that the arbitration between cable TV and the broadcasting industry can be resolved locally first. Then, the central government can intervene when necessary. The cable TV industry in Taiwan is aware that the arbitration systems for telecommunications and cable TV are very different, and it does not want to see a unified arbitration system for both. They still want to remain separate from telecommunications.

Telecommunications industry

Telecommunications operators such as KDDI have generally supported the converged legal framework. They have not thought that the legal framework will have a major impact on itself, but rather that the framework might give KDDI a chance to enter the content industry. Other companies such as Softbank have expressed views regarding the converged legal framework:

1. Flexible use of the spectrum

The operators should be allowed to use the spectrum flexibly according to the time, geographical, and technical conditions. In addition, the base station should also be used for multiple purposes.

2. Ensure fair competition within the same layer

Softbank has suggested that new laws should promote cross-layer integration and allow the operators as different players to expand their businesses and cooperate with one another.

3. No antitrust practices in the market

While allowing the operators to cooperate within the same layer or between layers, it is important to consider the bottleneck facility-based operator's vertical integration in order to avoid discrimination and unfair competition. If the bottleneck facility-based operator wants to cooperate with content providers, the new law has to ensure that there will be no antitrust practices in the market.

4. Deal with the copyright issue in the new law

It is suggested that the new law should include a copyright provision. Currently, a lot of TV programs cannot be shown on the Internet. The new law should deal with this issue to allow viewers to have more choices regarding TV platforms.

Taiwan

Because the NCC only gave the public two weeks to submit their opinions in response to the proposed converged law, the stakeholders all complained that the time was too short for public consultation. They said that the EU's "Framework Directive on Electronic Communications Networks and Services" asks the NRA to give all the stakeholders a reasonable review time. The WTO has asked all of its members to give 60 days for review. The NCC's draft law has 185 articles. Even though the NCC held two rounds of hearings, one in September and the other in November, most of the stakeholders still thought this was a rush version and opposed this draft. They emphasized that the impact of the new law on the industry would be huge. The NCC should therefore at least conduct a Regulatory Impact Analysis (RIA) before it introduces its converged law.

With regard to the obligations for different layers, most of the stakeholders suggested that the network layer should also bear the responsibility for network interconnection. This draft only asks the service/platform providers to provide network interconnection. These providers thus asked why the NCC did not ask the network layer to provide interconnection? In regard to the service layer, some stakeholders questioned the NCC: Why are telecommunications services and broadcasting services still regulated differently within this layer?

Foreign investment in the media and multiple ownership rules are also major concerns of the public interest groups. These groups have warned that the

government do not just consider economic efficiency, but that cultural autonomy and diverse ownership are also important. In addition to the media sector, there is also concern over not regulating foreign investment within the network layer. The NCC has explained that foreign owners cannot take away the facilities in which they invest. In addition, the service/platform layer is the layer that is used to manage the customers and businesses, and there should therefore be no need to worry about leaving debt with the local industry and endangering national security.

When faced with convergence, most of the stakeholders are concerned with the definition of the market. They have said that the definition of what constituted the market was unclear in the draft. How the market is defined is important, because when the regulator wants to regulate an operator that has significant market power (SMP), it has to know to which market it belongs. There was also criticism regarding the overlap between the Fair Trade Act and this draft with regard to the regulation of SMP. The following are opinions received from different industry associations and public interest groups:

Taiwan Telecom Industry Association

1. Incremental change and stage by stage: Japan announced its IT national strategic plan in 2001, the EU announced its Convergence Green Paper in 1997, and the UK presented its Communications White Paper in 2000 and passed the Communications Act in 2003. They all had enough discussion, planning, and preparation before they introduced their new laws. The NCC should perform an RIA before it introduces its proposed bill.

2. Too much delegation of power to the regulator: The articles of the new law should be very specific. It should not leave too much room for the regulator to

interpret the law. As many as 56 articles in the bill authorize the regulator to formulate the rules. In this case, the regulator will become too powerful.

3. The market definition should be clear: When the boundary between the media and telecommunications becomes blurred, how to define the market becomes another important issue. If the regulator only wants to regulate the SMP, it has to know how to distinguish the markets and to measure the operators in the specified market.

Cable Broadband Institute in Taiwan

Foreign investment: In Taiwan, the three biggest MSOs are all owned by foreign investors. They are seeking to promote no restrictions on foreign shareholdings by citing the experiences of the US, Hong Kong, Japan and the UK. They argue that open foreign investment does not mean that cultural autonomy is not protected.

The cable operators are also very concerned about IPTV regulation, the must carry rule, rate regulation, the restructuring of the management area, and the clear definition for shopping channels. They recommend that the content providers' rate structure on CHT's IPTV platform should also be regulated in the same way as cable operators.

Taiwan Broadcasting Association

The Taiwan Broadcasting Association has suggested that the government deregulate the media and abolish the time limit on advertising in terms of the number of hours.

NCC Watch, a civil group

This civic group is against repealing the special fee collected from the media (the

current Cable Radio and TV Law requires that cable operators submit 1% of their turnover each year). This special fee is intended for sponsoring public television and local culture. The NCC is of the opinion that public television can receive a budget from the government on an annual basis. Local programs can be sponsored by the local government. Therefore, it might not be necessary to refer to special fees in the converged law. This civic group strongly opposed abolishing this requirement. It said that by exempting the special fee, the media do not carry social responsibility any more.

The civic group also voiced concerns about domestic and locally produced programs and media concentration issues. Therefore, it opposed lifting the cross-media ownership restriction and relaxed foreign investment regulations for some media.

Discussion and conclusion

In Japan, following the August 2009 election, the Democratic Party of Japan (DPJ) took the helm and has become the ruling party. Although the new ruling party might make some changes to the converged legal framework, it is believed that the changes will be minor. If the DPJ does not have too many opinions, the MIC will submit the draft bill to the ruling party and ask that it be approved. Then, it will submit the bill to the Cabinet whose legal office will check the language to make sure that it conforms to the laws and the Constitution. Thereafter, the Cabinet will present the bill to the Diet. Although there will not be much time for the Diet to review the bill, it is believed that the converged law will be passed in 2010.

In Taiwan, the second-term NCC Commissioners do not think passing the converged law is a matter of urgency. They would prefer to first revise the

Telecommunications Act and three broadcasting-related laws. Therefore, the draft convergence bill is not on their agenda or part of their annual plan. Since Taiwan's Cabinet and the regulator do not consider the converged law to be very urgent, Japan will pass the converged communications law before Taiwan.

Taiwan was one of the first countries in Asia to liberalize its telecommunications and broadcasting sectors. However, the political infighting and the inconsistent policies have prevented this opportunity from being realized. The establishment of the NCC has given Taiwan a chance to improve its competitive environment. Given the current political climate in the government, a lengthy law-making process has become inevitable. However, the NCC should play a pro-active role in revising the draft and submitting it to the Executive Yuan. The Executive Yuan and Legislative Yuan should collaborate with the NCC and other government agencies to create a practicable Convergent Telecommunications and Media Law.

The converged legal framework in Japan is a compromise among different stakeholders. It still has its limitations because it does not encompass the NTT Act and NHK's public broadcasting status. Meanwhile, some scholars in Japan have started to question the establishment of an independent regulator such as the FCC in the US. This might be a difficult and complicated issue to deal with. However, since the DPJ has started to include the establishment of an independent regulator in its policy index 2009, and its neighbours such as Taiwan and Korea have also established independent regulators, it is hard to say whether Japan will resist this world trend.

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