The Impact of Convergence on the Telecommunications Law and Broadcasting-Related Laws: A Comparison between Japan and Taiwan

by Yu-li LIU*

Abstract

In order to cope with the convergence of telecommunications and broadcasting, the governments of Japan and Taiwan have both considered integrating telecommunications law and broadcasting laws. In Japan, the integration work started in 2006 which was earlier than its commencement in Taiwan. Before the Democratic Party took the helm in August 2009, Japan planned to integrate nine laws into one. However, in March 2010, Japan announced that it would realign eight laws concerned with communications and broadcasting into four laws. Compared with Japan, the pace of alignment in Taiwan became slower because of inconsistent government policy. However, the common belief shared by both governments is that the layer model is a trend for the convergence of communications laws in the future. While it was easier for Japan to adopt the layer model (horizontal regulation) when it revised its laws, Taiwan will require more time and effort to put the layer model into practice. To most Taiwanese stakeholders, whether the regulator will adopt horizontal regulation or vertical regulation is not that important. They only care about the impact and the substantial changes caused by the revised laws.

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

Introduction

The purpose of this paper is to study the impact of convergence on the Telecommunications Laws and Broadcasting-related Laws in Japan and Taiwan. The years between 2006 and 2010 are very important for Japan and Taiwan to deal with convergence. Although Taiwan drafted a converged bill integrating telecommunications law and media laws in 2007, it was opposed and questioned by the telecom and media industries and the academics. It seems that Taiwan can

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learn the Japanese experience with regard to how to interact with the industry people, the academics and the public interest groups. When Japan starts to draft the converged law, the NCC's draft bill might be a good reference. As a matter of fact, South Korea and Hong Kong are also interested in the converged communications law. Therefore, this paper might shed some light on countries other than Japan and Taiwan as well. The research methods of this paper include literature review, document 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 was also 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 of 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 dimension (Dupagne & Garrison, 2006). From 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 the economic dimension, a single business such as cable TV or fixed network can provide triple-play or quadruple-play bundled services on the same platform. From the regulatory perspective, there are discussions about converged regulators or converged laws. The trend of convergence poses challenges to the current separate laws for telecommunications, broadcasting, cable TV, and satellite TV not only in Japan and Taiwan, but also everywhere.

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 contents depending on linear (such as scheduled channels) or non-linear (such as VOD) classification. 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 revise the separate laws? Before March 2010, Japan proposed to integrate nine laws into one. However, it decided to integrate eight laws into four laws in 2010. Taiwan was caught in between. Some people welcome the converged law. Others suggested revise separate laws and unify the telecommunication law and broadcasting- related laws later.

Layer Model

Layer models can be used from the perspectives of technology, market, and policy. Facing the converged technologies and services, the industry people use layer model to plan their business. The communication policymakers also find it useful when confronting with the problems brought by convergence. They think layer model is a conceptual framework and can be used to provide a unified regulatory direction for the new evolved media and services.

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

Werbach (2002) modified the OSI model and made it four layers: content, applications/services, logical and physical layers. Sicker and Mindel (2002) also proposed four layers which were different from Werbach's model. Their model comprises access, transport, application, and content layers. Taniwaki (2003), a MIC official, proposed another four layers: terminal, network, platform, and content/ application.

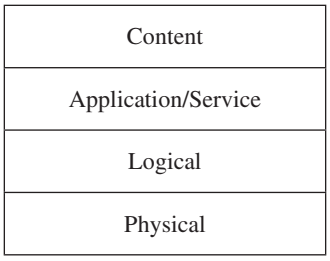

Figure 1: Werbach's model (2002)

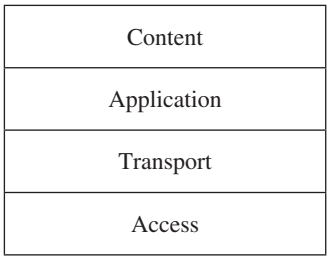

Figure 2: Sicker & Mindel's model (2002)

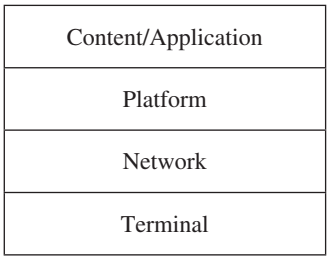

Figure 3: Taniwaki's model (2003)

From the interface perspective, Guilenburg & Verhoest (1998) proposed five layers comprising infrastructure, network interface, carrier, user interface, and application. Taiwanese former broadcasting regulator Government Information Office (GIO) introduced different five-layer model when it tried to integrate Broadcasting Act, Cable Radio and TV Act, and Satellite Radio and TV Act into one Broadcasting Act (Liu, 2004).

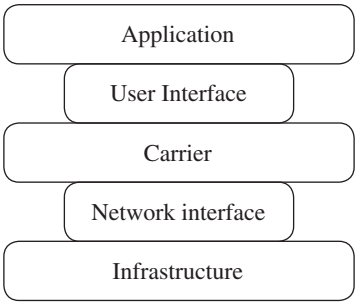

Figure 4: Cuilenburg, J. V. & Verhoest, (1998)

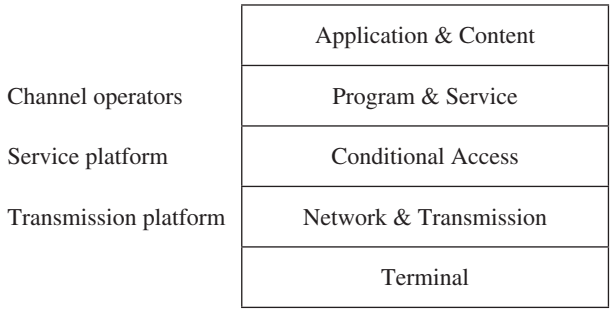

Figure 5: GIO model (2004).

The useful part of the layer model is that it provides a unified legal framework for the converged services. It can prevent the phenomenon that same services provided by different technologies are regulated differently. It also encourages deregulation for the topper layers such as content and application layer. The industry will have more flexibility in their management and can 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 other's facilities if they want. It's so-called separation of transmission and content. The entry barrier for each layer is lower and easier than the vertical structure. All the players can be innovative and flexible.

The defect of the layer model is that it is only a concept or framework and cannot solve all the problems the regulators and industry are facing everyday. Sicker & Blumensaadt (2006) also challenged that there were misunderstandings about layer model. Nevertheless, the layer model is a big paradigm shift from vertical regulation to horizontal regulation. Japanese scholar 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 their legal framework (classification of electronic communication service and electronic communication network). In 2002, the EU set up a Directive which states "the convergence of telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework". With regard to content, it is regulated by Audio-visual Media Service Directive. The EU Framework is "a set of approved regulations that are being currently implemented by member states," whereas the layered model is "a tool to help policy makers establish a unified policy model" that facilitates "consistent, systematic treatment" of issues (Mindel & Sicker, 2006).

Convergence Impact on Telecommunications Law and Broadcasting Law

Before the converged service such as IPTV occurred, Japan had three laws for telecommunications business and three laws for broadcasting. After IPTV technology appeared, the Japanese government made a specific law "Law Concerning Broadcast on Telecommunications Services" to regulate IPTV. In order to accomplish the goals of switching off analogue TV and expend broadband services, the MIC started to review the comprehensive structure to enable convergent services. It has decided to work on the integration of the legal system and the establishment of a system that has 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 Government Information Office (GIO)

respectively. When the converged service such as IPTV occurred in Taiwan, the two governing agencies had different views about regulating IPTV. DGT would treat IPTV as a new telecom service; however GIO would treat IPTV as cable television. Even after the NCC was established, it still could not find a proper law to regulate IPTV. Even though Taiwan learned that Japan has 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 followed Telecommunications Act. However, before Telecommunications Act was revised, the DAB operators were not qualified to provide telecom service because they were considered as broadcasters. The above-mentioned examples clearly show that convergence does have great impact on Telecommunications Law and Broadcasting laws. The boundaries between telecommunications and broadcasting are blurring and the existing laws are outdated.

Background of the Evolution of the Converged Law Framework

In Japan, there have been discussions and debates about the proposed framework of the converged communications law since 2006. Media economics scholars such as Prof. Minoru Sugaya proposed to adopt the layer model (horizontal regulation) for the converged law. The telecommunication regulator Ministry of Internal Affairs and Communications (MIC) announced that it would adopt the layer model and integrate the telecommunications laws and the broadcasting laws in 2009. However, in March 2010, it only decided to integrate eight laws into four laws. Unlike Taiwan, Japan's telecom regulator has not initiated a detailed draft for the converged law, because it chose to establish a Study Group to work on the framework and also 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. Authority over telecommunications and broadcasting that was originally under the Ministry of Transportation and Communications (MOTC), Government Information Office (GIO), and Directorate General of Telecommunications (DGT) was 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 abolish or amend unnecessary regulatory legislation, respond to

urgent industry need, complete revision of laws on a small scale or respond to the needs of digital convergence, create the "4-in-1"Converged Telecommunications & Media Law. In 2007 there were discussions about 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.

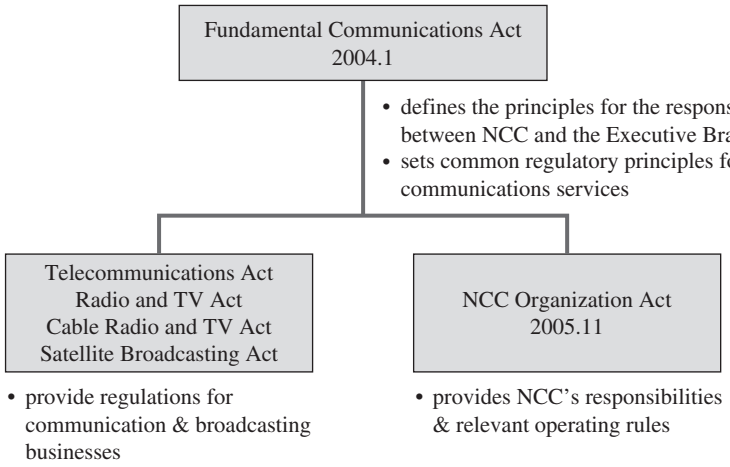

Figure 6: Legal Framework for Communications

Source: NCC, 2007

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. Therefore, the years of 2009 and 2010 are very important for Japan and Taiwan to deal with convergence.

The Development of the Converged Law framework

Japan

Since Japan has decided to terminate analog broadcasting on July 24, 2011and make all the people have broadband Internet access in 2010, it needs to review 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 Telecommunications Business Act, Radio Act, Wire Telecommunications

Act, Act Concerning Wire Broadcasting Telephones Business, Laws and Ordinances concerning Measures against Illegal and harmful information, Broadcast Act, Act to Regulate the Operation of the Cable Radio Broadcasting Services, Cable Television Broadcast Act, and Act Concerning Broadcast on Telecommunication Services. Before the Democratic Party took the helm in August 2009, Japan planned to integrate these nine laws into one. However, on March 5, Japan announced that it would realign eight laws concerning communications and broadcasting into four laws (Radio Netherland Worldwide, March 3, 2010).

Unlike Taiwan, Japan started a converged law framework working group to give the governments directions. The former Minister of MIC Takenaka took the initiative in 2006. He organized a panel for the Comprehensive Legal Structure of Information and Communication in January 2006. Table 1 explains the timetable

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

Time	Task
January 2006	Former MIC minister Takenaka formed a Panel to study the convergence issues.
June 2006	The Panel on Frameworks of Communications and Broadcasting submitted report.
June 2006	Agreement between the Government and the Ruling parties on Regulatory Frameworks for Communications and Broadcasting was reached.
July 2006	The LDP and the MIC released the Joint Paper.
August 2006	Study Group on a Comprehensive Legal System for Telecommunications and Broadcasting was formed.
September 2006	Process program regarding the reform of Communication and broadcasting fields.
June 2007	The Interim report was released.
December 2007	Study Group on a Comprehensive Legal System for Communications and Broadcasting submitted final report.
February 2008	Had consultation with the Telecommunications Council on Comprehensive Legal System for Communications and Broadcasting.
March 2008	The Second Study Group was formed.
June 2008	Invited public comment—Interim Report by Panel on Issues.
December 2008	Summarized as “Discussion Agenda on Comprehensive legal System for Communications and Broadcasting”.
August 2009	The Telecommunication Council (at the MIC) authorized the final report from the Second Study Group.
September 2009	The LDP left and the Democratic Party took the helm and organized a new Cabinet.
March 2010	Realign eight laws into four laws.
May 2010	The MIC Minister submitted the New Broadcasting Law to the Diet.
May 2010	The New Broadcasting Law was passed in the House of Representatives.
November 2010	The New Broadcasting Law was passed in the House of Councilors.

Sources; Sugaya (2009); Sugaya (2010); MIC website; NHK website.

for the preparation of the converged law framework.

The above records can be found on the MIC website. In the beginning, the broadcasting industry opposed to adopt the converged framework, because they were afraid that many new comers would come in the market and share their advertising revenues. Also, they were afraid that they would be asked to transform from vertical structure to 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 held 20 meetings of Study Group on a Comprehensive Legal System for telecommunications and broadcasting since August 2006 in order to study the legal system for convergence of communications and broadcasting. The Study Group compiled its final report at the 20th meeting in December 2007 and gave the following recommendations (MIC Communications News, Feb. 8, 2008).

1. Recognizing the necessity to undertake a fundamental revision of the legal system for telecommunications and broadcasting
   "Vertical structure" limits markets and usage patterns according to the physical attributes of each medium. "Horizontal (layer) structure" would enable free combinations of networks and contents. The industry can create new services and new markets by building a horizontal business model that goes beyond existing vertical media. Therefore, the government can consider changing the current vertical structure to a layered structure and unifying the current legal systems into a single "Information and Communications Law".
2. Legal system for content
   The Final Report of the Study Group divided the contents into two types: items that are not open in nature such as the specified communications between people (i.e. personal correspondence) and items that are open in nature. For the non-open nature content, safeguarding confidentiality in transmissions has to be assured. For the open nature content, there are two categories: (1) open media contents: the transmission of telecommunications that is not aimed at any specific person such as web pages. Also, the elements do not have a special influence on society; (2) media service: existing broadcasting and content distribution services that can be analogized to broadcasting that is expected to appear in the future. Also, the elements do have a special influence on society (Sugaya, 2009; MIC Communications News, February 2008).
3. Legal system for transmission infrastructure
   There are two parts: (1) transmission service regulation: the government can consider integrating transmission service regulations and speeding up flexible and free business development. Also, it can place emphasis on promoting fair competition and the security of users. (2) Transmission

facility regulation: revise radio licensing system and restructure the system to promote usages for telecommunications and broadcasting.

4. Legal system for platforms, and interplay rules
   The report said there was no need to enact regulations for platforms as independent from other layers. However, if platforms create bottleneck to harm free flow of information, it is necessary to prevent any discriminatory handling. With regard to interplay rules, the operators should have freedom to promote their business development beyond layers.

Taiwan

In Taiwan at present there are three electronic media laws (the Radio and Television Act, Cable Radio and Television Act and Satellite Broadcasting Act) and one Telecommunications Act. However, with the convergence of telecommunication 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. Also, whether the NCC should revise the individual communication laws or to integrate the laws, it was debatable. However, the NCC did not revise the separate laws. Instead, it wanted to integrate all the telecommunication and broadcasting-related laws into one comprehensive law.

It finished the first draft in September 2007 and held two-step public consultations in September and November 2007. The stakeholders such as communication scholars, experts, public interest groups, and representatives of the telecommunication and broadcasting sectors all expressed their concerns about the draft. It was felt that more discussion and dialogues were needed.

Because of time restraints, 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 came to the office in August 2008, they decided to revise the current laws individually. Therefore, the converged law draft was temporarily put off.

In the Commission 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 base on the policy and the goal the government wants to achieve rather than just write a new law. The new law should give the industry flexibility to decide how many layers they want to manage. Otherwise, it will be meaningless to integrate the laws (www.ncc.gov.tw).

Table 2: Timetable for the Converged Communications Law (Taiwan)

Time	Task
September 11, 2007	NCC finished the draft and opened it for public consultation.
September 26-28, 2007	First round public hearings.
November 9, 2007	Explain the policy for the converged law draft.
November 21, 2007	Second round public hearings.
December 20, 2007	Submitted the draft to the Executive Yuan.
January 2008	KMT became the ruling party after the election.
April 2008	The Executive Yuan returned the draft bill to the NCC.
August 2008	The second term NCC Commissioners assumed the post and decided to suspend the draft.
August 2009	NCC established a Convergence Policy Development Task Force which was divided into three groups: structure and behaviour, communication content, and network & resources.
November 2009—May 2010	NCC held several meetings on convergence issues.
July 2010	The Executive Yuan passed the Digital Convergence Policy Initiative calling for a two-stage regulatory reform. The NCC was asked to relax the relevant laws and regulations by 2014 in order to help the industry cope with convergence.

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, prevent unfair competition; (3) social norm and regulation: implement self regulation, introduce ombudsman system, respect press autonomy, allow some product placements and advertisement flexibility.

The Content of the Converged Law Initiatives

Japan

The Converged Law Framework in Japan

In June 2009, the Study Group announced its draft for public comments. It finalized the draft and submitted it to the Committee, and then the draft went to the Telecommunications Council under the MIC. The MIC then finalized the draft and submitted it to the Minister. Thereafter, the bill went to the Legal office of the Cabinet. Since the ruling party has been changed to the Democratic Party in August 2009, there are changes in the framework.

According to the MIC, the 2009 version of the proposed comprehensive legal framework only has three layers and it is a little different from the Final Report

of the Study Group. It is aimed at promoting free distribution of information, promoting flexible business management, securing safety and reliability of information communications, and protecting general public and individual users (Shirae, 2009). The 2009 converged law framework is as follows:

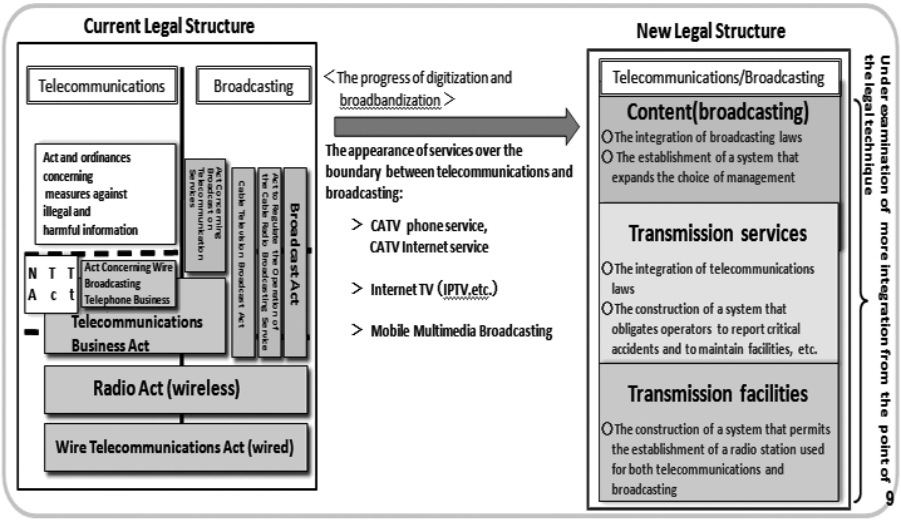

Figure 7: Legal Structure towards Convergence

Source: MIC, July 2009

According to the planned legal structure, the three layers include transmission facilities, transmission services, and content. At the layer of transmission facilities, the construction of a system permits the establishment of a radio station used for both telecommunications and broadcasting. At the transmission service layer, the construction of a system obligates operators to report critical accidents and to maintain facilities. At 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 flexible use of radio frequencies, reasonable use of white spaces, promote new technologies and make use of the creative ideas of the private sector, and promote the new services and new products. The drafted bill will allow the licensee to establish a station 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 rules for transmission services such as Telecommunications Business Act and Act Concerning Wire Broadcasting Telephone Business. The government should review 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 current four broadcasting Acts but not establishing new regulation applied to open media content such as web content. Maintaining the specific broadcast in the framework and apply it only to terrestrial broadcasts and to special satellite broadcasts. Current law does not give flexibility to broadcasters. The drafted bill will allow broadcasters to choose their operating structure. As for program classification, broadcasters still need to disclose classifications of each program and broadcasting time.

Other issues

In addition to the above-mentioned three layers, the proposed framework also added other issues such as expanding the function of Telecommunications Dispute Settlement Commission to dispute between content providers and telecommunications carriers and between broadcasters and cable television broadcasters about retransmission consent. In order to promote consumer protection, this legal framework also suggested that broadcasters that provide paid services are obligated to explain terms and conditions of those services to consumers, process complaints from consumers, and prior notice on suspension of business activities.

However, the 2009 legal framework did not integrate NTT Act. NHK still operate both facilities and services because it is a public corporation and its position will not change under the new framework. The MIC will probe into these issues related to NTT and NHK later. The MIC admitted that although they studied the EU model, they did not follow the Audio-visual Media Service Directive. Based on the final report of the Study Group, the MIC modified the bill and submitted it to the Diet in March 2010. The new legal framework is as follows:

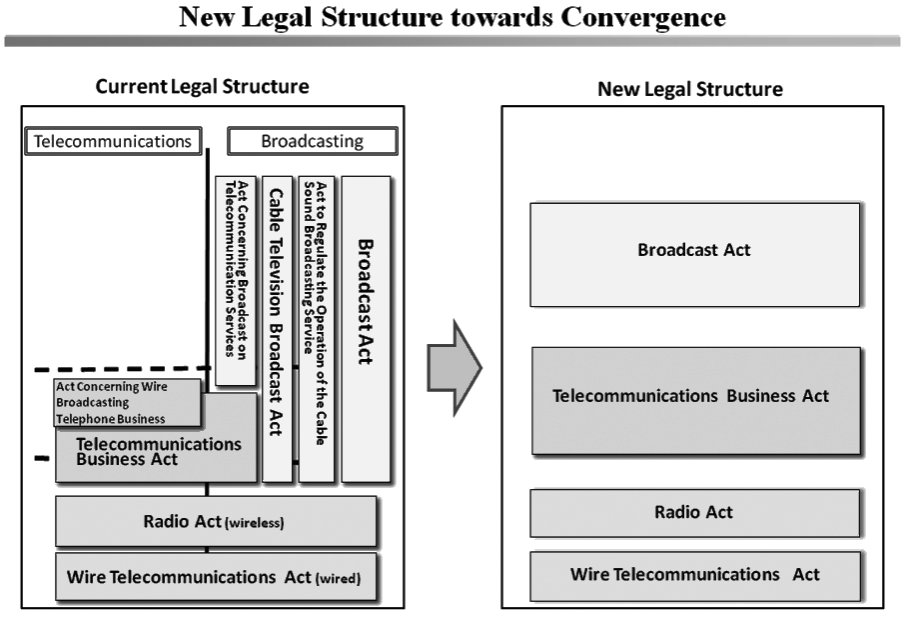

Figure 8: Amendment of the Legal Structure towards Convergence (MIC, 2010)

The major difference between the new legal structure and the 2009 legal framework is that the new bill abandoned the idea of integrating nine laws into one law. Instead, it realigned the eight laws concerned with communications and broadcasting into four laws. It integrated four broadcasting-related laws such as Broadcast Act, Act to Regulate the Operation of the Cable Sound Broadcasting Service, Cable Television Broadcast Act, and Act Concerning Broadcast on Telecommunication Services into a new Broadcasting Law. Meanwhile, the Act Concerning Wire Broadcasting Telephone Business was abolished.

The following is the discussion of the new bill which was passed in the House of Representatives and the House of Councilors in May and November 2010 respectively.

1. Broadcast Act

The new broadcast Act established a category for Kikan Hoso "basic broadcasting" (major broadcasting service, or broadcasting that uses frequencies allocated exclusively to broadcasting) and a category for Itsupan Hoso "general broadcasting" (broadcasting other than basic broadcasting). At the same time, the Act to Regulate the Operation of the Cable Radio Broadcasting Services, the Cable Television Broadcast Act, and the Act Concerning Broadcast on Telecommunication Services are abolished.

(1) Enabling broadcast operators to choose its own operating structure

Under the current law, broadcast operators cannot choose its own operating structure. For instance, terrestrial broadcasters have to own their broadcast stations. However, the new bill will allow broadcasters to separate vertically or get licenses of terrestrial broadcast station under vertically integration (MIC, 2010).

(2) Clarifying ownership limitations of broadcasters

Under the current law, the MIC can establish ownership restriction without any limitation. The new act clarifies ownership limitations in the MIC ordinance within the range from minimum 10% to maximum 33%.

(3) Requiring basic broadcasters to disclose classifications of each program and broadcasting time

The new act requires basic broadcasters (terrestrial television and BS broadcasting) to disclose classifications of each program and broadcasting time.

(4) Rationalizing broadcast licensing scheme

Under the current law, cable television operator must receive permission from the MIC. The new bill only requires cable television operator to register to the MIC.

(5) Requiring basic broadcasters that provide paid services to explain terms and conditions of those services

According to the new bill, tariffs related to basic paid broadcasting only need to notify the regulator instead of getting approval. Notification for tariffs related to general paid broadcasting is abolished. Meanwhile, basic broadcasters that provide paid services have to explain terms and conditions of those services.

2. Radio Act

(1) Flexible use of radio frequency

The new act enables companies to provide both telecommunications services and broadcasting services under a single license as long as it does not hinder the main purpose of radio station license. In addition, after receiving a license, companies can change the purpose of the radio station with permission (MIC, 2010).

(2) Allowing a blanket license to include mobile telephone base stations

Mobile telephone base stations and small-scale stations that are installed indoors do not need to obtain individual licenses if they have obtained a blanket license. However, they still need to submit notifications.

3. Telecommunications Business Act

(1) Expanding the function of Telecommunications Dispute Settlement Commission

The new bill will allow content providers to use the dispute settlement procedure of the Telecommunications Dispute Settlement Commission.

(2) Establishing an interconnection accounting system for the mobile carriers installing the category II designated telecommunications facilities

In order to promote the services by competitive carriers and to guarantee transparency of interconnection rates for mobile telephones, the new bill establishes an interconnection accounting system for the mobile carriers installing the category II designated telecommunications facilities (MIC, 2010).

Taiwan

The NCC adopted three-layer framework aiming to offer consistent regulatory criterion for operators running same business, encourages flexible and creative business models and shift from vertical regulation to horizontal regulation. The three layers include Content/ application Layer, Service/ platform Layer, and infrastructure/Network Layer. The NCC's regulatory principles for Communication Administrative Bill are as follows:

1. Toward the direction of medium to high degree of convergence

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

2. Adopting 3-layer horizontal regulatory structure and regulating accordingly based on their different features

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

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

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

4. Separating network and service regulation

The NCC wanted to separate network and service regulation by treating network and service in different layer. Some critics argue that the NCC should not only impose obligations on the service layer. It is also necessary to regulate network layer in terms of network connection.

5. Handling broadcasting services separately if necessary

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

6. Ensuring minimum government intervention and respecting market mechanisms

The NCC wants to ensure minimum government intervention and respect market mechanisms. The NCC would relax the advertisement regulations by allowing product placement in certain kinds of programming (only news and children programs are not allowed).

7. Fulfilling media self-regulation and civil society regulation

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

8. Seeking 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 telecommunication operators and broadcasting media will not be affected. Also, the consumers' interests have to be protected.

The Pros and Cons of the Converged Law Framework

Japan

Most of the stakeholders did not resist 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 this plan. They were afraid they might be asked to choose only one layer to manage (either transmission or content layer). They also had great concerns about new competitors' entry into the market and take away their advertising revenues.

If the converged legal framework wanted to include NTT and NHK during the policy making process, it would be very complicated. Therefore, the MIC decided not to deal with these two entities this time. They announced that they will review the two cases in the near future. The following are the pros and cons of the proposed legal framework of 2009.

National Association of Broadcasters (NAB)

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

First, they wish content regulation will not be stricter than the current regulation in the future.

Second, they hope the term "broadcasting" will maintain in the new law.

Third, they wish the program genre shall be classified by the broadcasters instead of the regulators. Home shopping programs are very important for the broadcasters. They wish 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 cannot reach an agreement regarding retransmission consent, the government can arbitrate. The broadcasters want to have 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 urged to consider the characteristics of broadcasting and make it clear and concrete.

Sixth, with regard to the emergent cases, back-up equipments are needed for broadcasters. The country's digitization is very important. However, the government should consult with the broadcasting industry and have full discussion with them.

Cable TV Association

The cable TV industry welcomes the abolition of the lease channel requirement. However, it suggests the government has to have an alternative measure for the transitional period. The new law plans to abolish "licensing system" and change it to registration system. Meanwhile, it is still important to require the cable operators to meet certain technical standards in order to protect consumers. It also has to warn 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 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 NAB, the cable TV industry expressed the concerns that the arbitration system for transmission consent should stay. They

wish at this stage the arbitration between cable TV and broadcasting industry should be resolved locally first. Then, the central government can intervene when it is necessary. The cable TV industry strongly suggests that the arbitration system for telecommunication and cable TV are very different. They do not want to see a unified arbitration system for both. They still want to be separated from telecommunications.

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 the time was too short for public consultation. They said that EU's "Framework Directive on Electronic Communications Networks and Services" asks NRA to give all the stakeholders reasonable review time. WTO asked all of its members give 60 days for review. The NCC's draft has 185 articles. Even though the NCC held two rounds of hearings, one in September, 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 must be great. The NCC should at least conduct Regulatory Impact Analysis (RIA) before it introduced its converged law.

With regard to the obligations for different layers, most of the stakeholders suggested that the network layer should also carry the responsibility of network interconnection. This draft only asks the service/platform providers to provide network interconnection. They asked why the NCC did not ask the network layer to provide interconnection (Taiwan Communications Society, www.ncc.gov.tw). For the service layer, some stakeholders questioned the NCC: Why telecommunication service and broadcasting service were still regulated differently on this layer?

Foreign investment of the media and multiple ownership rules are also the public interest groups' great concerns. They warned the government not just consider economic efficiency, cultural autonomy and diverse ownership are also important. In addition to the media sector, there is also concern for not regulating foreign investment of the network layer. The NCC explained that foreign owners cannot take away the facilities they invest. Also, the service/platform layer is the one to manage the customers and business, therefore, there should be no worry about leaving debt to the local industry and endanger national security.

When facing convergence, most of the stakeholders are concerned about the definition of the market. They said the definition for market was unclear in the draft. How to define market is important, because when the regulator wants to regulate the operator which has significant market power (SMP), it has to know which market it belongs to. There was also criticism about overlap between Fair Trade Act and this draft with regard to the regulation for SMP. The following are

opinions received from different industry associations:

Taiwan Telecom Industry Association

1. Incremental change and stage by stage: Japan announced its IT national strategic planning in 2001. EU announced its convergence green paper in 1997. UK announced Communications white paper in 2000 and passed Communications Act in 2003. They all had enough discussion, planning, and preparation before they introduced a new law. The NCC should conduct RIA before it introduced 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. 56 articles in the bill authorize the regulator to enact the rule-making. In this case, the regulator will become too powerful.
3. Market definition should be clear: When the boundaries of the media and telecommunications become 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 measure the operator in the specified market.

Cable Broadband Institute in Taiwan

Foreign investment: In Taiwan, the three biggest MSOs are all owned by foreign investors (one big MSO kbro was acquired by a domestic MSO in 2010). They want to promote no restriction on foreign shares by citing the experiences of USA, Hong Kong, Japan and UK. They argued that open foreign investment does not mean cultural autonomy is not protected.

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

Taiwan Broadcasting Association

They suggested the government deregulate the media and abolish the time limit on advertising per hour.

NCC Watch, a civil group

The civic group is against repealing the special fee collected from the media (The current Cable Radio and TV Law requires cable operators to submit 1% of its turn over per year). The special fee is aimed for sponsoring public television and

local culture. The NCC thought that public television can receive budget from the government annually. Local programs can be sponsored by the local government. Therefore, it might not be necessary to mention special fee in the converged law. The civic group strongly opposed abolishing this requirement. It said exempting the special fee; the media do not carry social responsibility any more.

The civic group also expressed concerns about domestic and locally produced programs and media concentration issues. Therefore, it opposed to lift the cross media ownership restriction and loosen foreign investment regulations for some media.

Discussion and conclusion

In Japan, after the August 2009 election, the Democratic Party took the helm and has become the ruling party. The MIC revised the legal framework by realigning eight laws into four laws in March 2010. It submitted the New Broadcasting Law to the Diet in May 2010. The New Broadcasting Law was passed in the House of Representatives in the same month. In November 2010, the New Broadcasting Law was passed in the House of Councilors.

In Taiwan, the second-term NCC Commissioners did not think passing the converged law was a matter of urgency. They preferred to revise the Telecommunications Act and three broadcasting-related laws first. Therefore, the draft converged bill was not on their agenda or part of their annual plan. However, in July 2010, the Executive Yuan passed the Digital Convergence Policy Initiative calling for a two-stage regulatory reform. The first stage aims to complete the legal framework with regard to digital convergence in 2014 and the second stage is to achieve the goal of digital convergence in 2015. The NCC was asked to relax the relevant laws and regulations by 2014 in order to help the industry cope with convergence (http://www.cepd.gov.tw).

Taiwan was one of the first countries in Asia to liberalize its telecommunication and broadcasting sectors. However, the political infighting and the inconsistent policy prevented the opportunity from being realized. The establishment of the NCC gave Taiwan a chance to improve its competitive environment. Given the political climate in the government, a lengthy law-making process has become inevitable. However, the NCC was asked to play an active role in revising the relevant laws and to submit them to the Executive Yuan by 2014. It is uncertain whether Taiwan will adopt a Convergent Telecommunication and Media Law, but it will be easier to integrate three broadcasting-related laws.

Unlike that in Taiwan, the 2009 converged legal framework in Japan used to require a compromise among different stakeholders. It is obvious that Japan abandoned the idea of integrating nine laws into one comprehensive law. Instead, it realigned eight laws concerning communications and broadcasting into four laws.

After some revisions, the New Broadcasting Law integrating four broadcasting-related laws will be enacted in 2011.

The telecommunication regulators in Japan and Taiwan tried to create a Convergent Telecommunication and Media Law but they both failed. However, Japan has at least succeeded in integrating four broadcasting-related laws. Taiwan used to have a draft bill for the converged Broadcasting Act (which involved integrating three broadcasting-related laws), but it was put off. Since the NCC has a deadline to revise the laws, the easiest way to begin is to integrate the broadcasting-related laws. With regard to the four-in-one convergent law issue, the NCC wants to adopt a gradual approach. If there is a great consensus among the stakeholders, the layer model might be considered again. However, communication and interaction with all the relevant stakeholders is the key to success.

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