

Unclassified

DAF/COMP/GF/WD(2013)29

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

25-Jan-2013

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Chinese Taipei

-- Session II --

This contribution is submitted by Chinese Taipei under Session II of the Global Forum on Competition to be held on 28 February and 1 March 2013.

JT03333611

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-- Chinese Taipei --

1. Introduction

1. In preparing the present submission, the Fair Trade Commission (hereinafter “the FTC”) consulted with the regulatory authority of the telecommunication, television and broadcasting, the National Communication Commission (hereinafter referred to as “the NCC”).

2. The state of competition in the television broadcasting sector

2. The Radio and Television Act, Cable Radio and Television Act, and Satellite Broadcasting Act are the three main laws for the *ex ante* regulation of television broadcasting businesses in Chinese Taipei. Businesses are required to obtain a chartered licence before operation in television broadcasting sector. According to the “2011 Communications Performance Report” from the NCC, 509 television broadcasting licenses had been issued by the end of 2011. The table below shows the basic information for these businesses:

Television broadcasting licenses issued as of the end of 2011

Business category	Business type		Number of Licenses Issued	Sum	Total
Satellite Television	Direct satellite television		8	271	509
	Satellite television program provider	Domestic channel	158		
		Foreign channel	105		
Terrestrial Television	Terrestrial television station		5	5	
	Radio station	General radio station	9	171	
		AM station	19		
		FM station	143		
Digital audio broadcasting (DAB)		0	0		
Cable Television	System operator		59	62	
	Broadcaster		3		

2.1 Terrestrial Television

3. Currently, there are five terrestrial television companies (including the Public Television Service). To improve the picture and sound quality of television programs, the government established a policy to promote the digitalization of terrestrial television and completed the digital terrestrial television (DTT) conversion in June 2012. As a result, there are currently 20 DTT channels in service. In the future, the government will continue to evaluate the market environment, encourage converged services, and make plans for the second-stage issuance of digital terrestrial television broadcasting licenses to stimulate investment and increase the number of choices of television programs in the DTT market.

2.2 *Cable Television*

4. As of the end of 2011, there were 59 system operators and 3 independent broadcasting systems in Chinese Taipei. The NCC in November 2007 approved the service regulations, contracts and rates of the largest fixed network operator, Chunghwa Telecom Co., Ltd., for its multimedia-on-demand (MOD) platform. Since then, the services of the MOD platform of Chunghwa Telecom have been classified as Internet Protocol Television (IPTV) services as defined in the Telecommunications Act.

5. The numbers and ratios of cable television services that operated under multiple system operators (MSOs) as of the end of 2011 are as follows: 10 under the CNS Group, 12 under the KBro Group, 5 under the TFN Group, 4 under the TOP Group, and 4 under the TBC Group, while there were also 27 others (including 3 independent broadcasting services) that did not belong to any of the five MSOs, as shown in the table below:

Cable television services operating under multiple system operators (MSOs) as of the end of 2011

Group Attributes	KBro	CNS	TBC	TFN	TOP	Other (Broadcasting) Systems	Total
Number of Cable TV Services	12	10	4	5	4	24(3)	62
Number of Subscribers	1,086,449	1,089,933	690,733	544,812	294,562	1,355,248	5,061,737
Market Share	21.46%	21.53%	13.65%	10.76%	5.82%	26.77%	100%

6. 54 of the 59 system operators had completed their digital headend installation and most of them provided broadband services. Overall, cable television operators provided services similar to those from fixed network telecommunication service, therefore having the characteristics of network density and scale economies and considered monopolistic (or oligopolistic). Although, on the other hand, Chunghwa Telecom, the largest fixed network provider, has as many as 1.1 million subscribers to its IPTV services, cable television operations still account for a larger proportion in the video and downstream advertising market.

2.3 *Radio Broadcasting*

7. Starting in 1993, the government opened broadcasting frequency spectrum to private radio stations in 10 separate stages. As of the end of 2011, 143 radio stations had been given permission to begin operation (66 medium power and 77 low power stations). Including the 28 stations that had already existed before the release of the frequencies, the number of licensed radio stations came to 171. Among them, 7 were public and 164 private. Most of them mainly provided analog broadcasting services. Digital radio broadcasting licenses were made available but only one station had completed the corresponding installation. Presently, the NCC is working on the policy regarding the “release of FM radio frequencies for the 11th time” to boost the utilization of the frequency spectrum and develop a better and fair competitive environment with diversified radio broadcasting services.

2.4 *Satellite Television*

8. 101 companies received approval in 2011 to begin their operations of providing satellite television programs (80 for domestic programs, 29 for extraterritorial programs, and 8 for both), offering 263 channels (158 domestic and 105 extraterritorial channels). There were 8 businesses providing direct satellite broadcasting services (4 for domestic and 4 for extraterritorial). Compared to cable television or telecommunications platforms, the direct satellite television broadcasting services accounted for less than 1% of the market share.

3. The most significant current and future challenges in the competition policy in television broadcasting

9. In Chinese Taipei, cable television remains the mainstream in the television market with a 62.82% prevalence rate. At present, it is divided into 51 operating areas, with monopolistic management (one operator per area) in as many as 35 areas and duopolistic management (two operators in one area) in 12 areas. The market is developing toward one operator per area. In response to the regulations on area limitations, most businesses had adopted the MSO pattern to conduct cross-area consolidation. After soliciting opinions from various sectors and acquiring the support of the Fair Trade Commission (hereinafter referred to as the FTC) due to its competition advocacy, the NCC in July 2012 decided to rezone the operating areas in accordance with the administrative division of local governments and lower the entry threshold to encourage competition.

10. As a consequence of the rapid progress in digital convergence, broadband services have grown from one technology providing one service in the past to providing three converged services, including data, voice and video, through one broadband connection. Whether through telecommunications or TV broadcasting signals, consumers are even able to receive video services via the Internet at any time and in any place with mobile communications devices. For regulatory authority, it has thus become a great challenge to integrate the domains of telecommunications and broadcasting, which have long been separated before, and establish more appropriate regulations. It has to be done gradually and in the right order. For the competition authority, the market definition in the context of digital convergence can no longer be limited to the market boundaries of conventional businesses when evaluating whether the market structure and business conduct of a case involve competition restrictions or unfair competition. Market definition can be expected to be the greatest challenge. The Fair Trade Commission will revise the “Disposal Directions (Policy Statements) on the Business Practices of Cross-Ownership and Joint Provision among 4C Enterprises” to be the guidance for handling restrictive or unfair competition cases resulting from the cross-industry management of enterprises.

4. Competition law enforcement experiences relating to television and broadcasting businesses

4.1 *Promotion of reasonable licensing for IPTV businesses to obtain program contents*

11. By taking advantage of the convergence of telecommunications technologies and advancement in broadband techniques, telecommunications businesses and network content providers have created a competitive environment for different viewing platforms by offering video audio services through Internet in order to break the regional monopoly/oligopoly of cable television operators. To ensure that IPTV businesses have the opportunity for fair competition as well as to promote fair competition between them and cable television operators, the FTC held a seminar “How to Enable IPTV Businesses to Obtain Program Contents License Reasonably” on two occasions. Scholars and specialists, the NCC, relevant government agencies, IPTV businesses, channel operators (including agents), MSOs, and related trade unions and associations were invited to attend and offer opinions on related issues.

12. The Copyright Review Committee of the Intellectual Property Office made the decision to revise the copyright of video-on-demand programs from the “right of public transmission” to “right of public broadcast”, so that copyrights involved in cable television systems and other similar multimedia video transmission systems in the future could be the same and more alternative video platforms could be introduced into the country to promote competition with domestic cable television services.

4.2 *Television and broadcasting business mergers*

13. In respect of the filing of television and broadcasting business mergers, the FTC and the NCC consulted with each other and reached the conclusion: “Television and broadcasting business mergers that belong to one of the types described in Article 6 of the Fair Trade Act and also meet one of the thresholds set forth in Article 11 of the same Act are required to file a pre-merger notification with the FTC as stipulated in the same Act. When reviewing such cases, the FTC is to acquire the opinion of the NCC first. If there is a change of the person in charge or a board director, supervisor or manager of the business filing the pre-merger notification after the merger and the change does not constitute any of the conditions described in Article 6 of the Fair Trade Act, the NCC is to process the case in accordance with the Radio and Television Act, Cable Radio and Television Act, Satellite Broadcasting Act, or other related regulations. As for mergers that do not meet one of the merger descriptions in Article 6 of the Fair Trade Act or meet one of the descriptions but fall short of the thresholds set forth in Article 11 of the same act, any change of the person in charge or a board director, supervisor or manager of such businesses shall be processed by the NCC according to the Three Broadcasting and Television Acts and related regulations.”

14. The more significant broadcasting and television merger notifications in recent years, such as the merger of Da-fu Media Technology Co., Ltd., Sheng-ting Co., Ltd., KBro Co., Ltd. and their 12 affiliated cable television system operators, and the merger of Want Want China Broadband, An-shun Development Co., Ltd., Bo-kang Development Co., Ltd. and their affiliates, all needed the approval of both the FTC and the NCC. The FTC approved the two said mergers with conditions attached while the NCC either demanded that the merging businesses make promises or approved the merger application with conditions attached. Hence, the decisions of the competition authority and the regulatory agency were consistent. So far, neither authority has yet come up with different decisions.

5. *Case: Want Want China Broadband filed a pre-merger notification regarding its intention to merger with An-shun Development Co., Ltd., Bo-kang Development Co., Ltd., and their affiliates.*

15. Want Want China Broadband intended to purchase 100% of the shares of An-shun Development Co., Ltd. and Bo-kang Development Co., Ltd. to gain the financial, management, and personnel appointment and dismissal control of the 11 cable television systems operators under the two companies. Cable television was the main business of the operators of these 11 cable television systems except for one which also operated as a channel agent. As for the shareholders of the merging parties, some of them were also agents for advertising channels, managed other cable television systems, or provided cable television channels. There were significantly potential competition possibilities that made the merger both a horizontal one and a vertical one. Hence, this merger appeared to have the characteristics of horizontal, vertical and conglomerate merger patterns simultaneously. Moreover, each of the 11 cable television system operators accounted for more than one quarter of the market share in the cable television operating area to which they belonged, thus reaching the threshold set forth in Subparagraph 2, Paragraph 1, Article 11 of the Fair Trade Act for the filing of pre-merger notifications. Therefore, according to law, the filing of a pre-merger notification was required.

16. After analyzing the principal business of the merging parties and their shareholder structures, the FTC believed that the product market involved in this case had to include cable television systems (but did

not include multimedia on demand (MOD), terrestrial television, and direct satellite television services), the provision of satellite television programs, and e-shopping and mail order businesses without physical retail outlets. As for the geographic market, the cable television service operating areas demarcated by the regulatory agency were to be the geographic market of the cable television system operators. Regarding the geographic market of the satellite television program providers and the e-shopping and mail-order businesses without physical retail outlets would be defines as entire domestic territory.

17. The number of subscribers to the cable television systems controlled by the merging parties after the merger would account for 23.05% of the total cable television subscribers whereas these 11 cable television systems would make up 17.46% of the 63 systems. Both ratios would not achieve the thresholds established by the FTC for cable television operations. These figures would also be below the established thresholds. In addition, the 11 channels related to this merger case only accounted for about 10.68% of the analog channels available to cable television system operators. This would not exceed the threshold established by the FTC for the amount of satellite television programs provided by the cable television services, either. Based on the above facts, the merger would not result in disadvantages of competition restraint significantly greater than the overall economic benefit.

18. As for the likelihood of restrictive competition, the FTC considered that the merger was unlikely to lead to any unilateral effect, abatement of balancing power, obstruction to the competitors' choice of trading counterparts, or reduction of market entry potentiality and timeliness in the present cable television market, satellite television market, and e-shopping and mail order market. However, as future amendments to the Cable Radio and Television Act would relax the restriction on the operating area of cable television system operators by adopting an entire special municipality or county/city as a basic unit, the shareholders of the merging parties could exercise their rights as shareholders to find out the management tendency and competition strategy of other system operators in the merger and, in such circumstances, the possibility of such practices leading to coordinated effects or parallel behaviour could not be ruled out.

19. Furthermore, some channels represented by the channel agents participating in the merger had viewing rates ranking in the top 20 or were considered by the public to be of good quality. If the merger was approved, the merging parties would become the MSO with the largest number of subscribers and each of the 11 cable television system operators would account for over one quarter of the market share of the operating area of concern. In fact, 7 of them would even have over 50% of the market share of their operating areas. Therefore, if the merging parties and their affiliates abused their status in the cable television or satellite television market and applied inappropriate measures to restrict competition, this could put pressure on other cable television system operators or satellite television program providers that operated in the same operating area but did not participate in the merger. Alternatively, if the merging parties and their affiliates forced their competitors to withdraw from the market by using the power they gained after the merger, this could result in a high degree of concentration in the cable television or satellite television market and the abuse of market power or market closure could follow as a consequence.

20. The FTC also assessed the characteristics of products sold on TV shopping channels as well as the dynamic trading relations and level of dependence between TV shopping operators and cable television system operators, and the likelihood of TV shopping operators changing their trading counterparts. Cable television system operators apparently had relative market edges over TV shopping operators. Considering the relations between the shareholder structures of the merging parties and the appointment of board directors and supervisors, if the merging parties or their affiliates took advantage of their relative market dominance and unjustifiably refused to lease advertising channels of the cable television systems that were part of the merger to other TV shopping operators or gave them differentiated treatment or jointly boycotted businesses that did not participate in the merger, other TV shopping operators would be forced out of business as a result of such abuse of market power and market closure.

21. The aforesaid likely restrictive competition concerns in the cable television market, satellite television market and e-shopping and mail order market from the merger could be resolved as a consequence of future progress in communications technologies, the digitalization of cable television, competition from the MOD services provided by fixed telecommunications businesses, the adoption of digital convergence in 4C industries and services, and the adjustment of related regulations. The dominant position of the parties after merger in the cable television market, satellite television market, and e-shopping and mail order market would be reduced and the likelihood of market power abuse or market closure by these businesses would thus decrease. As for the overall benefit, the FTC considered that the merger could facilitate cable television digitalization, offer consumers the choice of paying different rates for different packages or video on demand, and greatly increase the number of available broadcasting channels for program providers. This could indirectly promote competition and progress in the video media industry, generate more diverse choices for consumers, provide better programs for the public, stimulate the development of the video media industry, and accelerate digital convergence. In order to further prevent any disadvantages likely to derive from competition restrictions thereof incurred and protect the overall economic benefit, the FTC made the decision on April 29, 2011 to attach conditions and structural and behavioral regulations but did not prohibit the merger. The NCC also approved the investment of Want Want China Broadband in the 11 cable television companies with conditions attached on 25 July, 2012. The decision was consistent with that of the FTC.

22. As to the critical issues regarding the professional independence of the media, unification of opinion, and sources of capital triggered by the cross-industry media acquisition, they did not belong to the jurisdiction of the FTC and had to be reviewed by the NCC and the Investment Commission of the Ministry of Economic Affairs.