

Dealing with digital convergence

- By Wei Hsin-fang 魏杏芳



The National Communications Commission (NCC) has recently expressed concern about two major acquisitions: the purchase of Kbro Cable TV by Fubon Financial Holding Co chairman Daniel Tsai (蔡明忠) and his brother, Taiwan Mobile Co chairman Richard Tsai (蔡明興), and the deal to buy China Network Systems (CNS) by Want Want Group.

The commission has said that it needs to look into how the industry is developing in terms of digital convergence, vertical integration in telecommunications and the media, the preservation of cultural diversity and the protection of the interests of consumers. It is also worried these acquisitions will concentrate media content in too few hands.

There are, however, legitimate concerns as to whether the commission has the legal or political authority to deal with the situation.

People may have heard of the term “digital convergence” but, unless they work in information technology or electrical engineering, they probably do not fully understand what it involves.

For most consumers, digital convergence means the ability to access services originally provided by a variety of network platforms, such as telecommunications, Internet access and cable TV, in one integrated service. This trend has led to a blurring of the lines that previously separated established markets. This is great for consumers and gives them much more

choice, but governments need to create policy and equip themselves with the powers to address issues that arise as a result of this phenomenon.

That is to say, they need a set of laws designed to regulate networks that cut across the boundaries between telecommunications, the Internet, cable TV and radio. In other words, despite the obvious technical differences between different forms of media, the principle of market regulation should apply to all markets in the same way.

Irrespective of how advanced the technology or hardware becomes, or how diverse the behavior of its users, the concepts informing policymaking should remain consistent. It has to be this way if we are going to achieve basic legal, rational, transparent and predictable results.

In order to address digital convergence, the European parliament issued a directive in 2002 outlining a regulatory framework governing electronic communications. This clearly stipulated that all electronic communication networks whose purpose was to transmit a digital signal, be they satellite, fixed (including the Internet) or mobile telecommunications, terrestrial or cable TV networks, fell within the scope of electronic communications and would be subject to the same legislation.

The 2002 regulatory framework directive was designed to act as a guiding principle for antitrust or competition laws and how they were to be implemented. Market analysis and the identification of market boundaries was to be used to determine whether an operator exists in any given market with what was termed “significant market power” (SMP).

For operators with SMP, there a set of regulatory measures in place that impose certain requirements on the leaders in a particular market, to take up the slack left by antitrust laws. Otherwise, we would have to rely on market mechanisms operating within the context of competition laws.

Things are different in Taiwan.

Both the Telecommunications Act (電信法) and the Cable Radio and Television Act (有線廣播電視法) deal with the same area. Although these can be applied to their own specific fields, they lack any form of overriding logic or regulatory consistency. The Telecommunications Act, for example, imposes specific responsibilities that apply to Type I telecommunications enterprises,

at the very least, in order to boost market competition, in some cases including price regulation on market leaders. Article 26 of the law also covers the competitive behavior of operators once they have entered the market.

There are no such provisions in the Cable Radio and Television Act. It would be very difficult to apply Article 21 — which deals with limits to the number of subscribers or administrative districts — or Article 23 — involving foreign investors and the implications for national security.

Furthermore, the concern voiced by the commission that the acquisitions in question may have an adverse effect on the horizontal or vertical development of the industry lie more within the scope of market laws — antitrust legislation. This being the case, the NCC cannot take sole responsibility for coming to a decision on these two major acquisitions: The role of the Fair Trade Commission must not to be forgotten or ignored.

In summary, it is of paramount importance that we address these issues, amending and restructuring our telecommunications and broadcasting legislation and the way in which it is implemented, to improve government policy on developing the telecommunications industry vis-a-vis market deregulation and free competition.

Wei Hsin-fang is an assistant professor of international business at the Chang Jung Christian University.

TRANSLATED BY PAUL COOPER