

Taiwan

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Major Media Law Reform on the Agenda

The Executive Yuan (EY) recently submitted to the Legislature important draft amendments to the *Radio and Television Law* that are aimed at addressing the trend towards broadcasting technology convergence, promoting market liberalization, and curbing political influence over the media. The EY's package of amendments (the Draft Bill) consolidates three existing laws separately governing terrestrial, cable and satellite broadcasting operations into a single, more streamlined law. The government has given the Draft Bill top priority for passage in the autumn session.

Consolidation and Administration

To better deal with the convergence trend, the Draft Bill reclassifies the disparate technologies and services into two main platform categories: transmission and operation. Transmission platform refers to the various electric wave, cable and satellite signal transmission and reception systems and facilities. In the EY scheme, regulation of these types of physical infrastructure will come under the purview of the Ministry of Transportation and Communication vis-à-vis the *Telecommunications Act*. The Draft Bill is intended to govern the licensing and operation of the terrestrial, cable, satellite, or other carrier operation platform enterprises that broadcast programmes or advertisements, and as a distinct category, the "channel operators" (comprising both domestic and offshore operators), Channel operators provide programmes and advertisements under a specific channel name via broadcast through a transmission platform. Under the Draft Bill, the Government Information Office (GIO) will serve as the competent authority; the EY proposals call, however, for the eventual establishment of an independent,

convergent regulator along the lines of the US FCC to oversee operations under the consolidated law.

Limits on Foreign Investment

Terrestrial Operators. Non-Republic of China (ROC) nationals will essentially be prohibited from investing in terrestrial service enterprises. Separately, under the Draft Bill the transfer of shares for this sector would no longer require GIO approval.

Cable Operators. The combined total shares directly held by a non-ROC national will be limited to less than 50% (significantly higher than the current 20% cap); and combined shares directly and indirectly held must be less than 60%. Furthermore, the chairman of the board of directors must be an ROC citizen, as must be at least two-thirds of the directors and supervisors of such enterprises.

Satellite and Channel Operators. The combined total of shares directly held by a non-ROC national in these sectors would have to be less than 50%.

These restrictions may not apply where otherwise stipulated by treaty or agreement between the foreign national's home country and the ROC. Foreign nationals whose home country permits ROC nationals to invest in terrestrial enterprises may be permitted to invest in such enterprises in the ROC. The competent authority may raise the investment ratio for foreign nationals where provisions of a foreign national's home country concerning investment amounts by ROC nationals in satellite or cable enterprises or channel providers of that country are more favourable than those in the ROC.

Limits on Market Share

The combined market share of any operation platform enterprise or channel operator and affiliates thereof operating such enterprises may not exceed one-third of the respective markets of such enterprises; likewise, the combined coverage rate may not exceed one-quarter of the total coverage rate of the radio and television industry.

Licensing

Under the Draft Bill, operation platform enterprises and channel providers must still gain permission from the competent

authority for both the establishment and operation of their respective enterprises. Under the current licensing framework, the competent authority's decision to award a licence is based primarily on the applicant's proposed user fee. Under the Draft Bill, however, the competent authority, in addition to examining the operations plan, would also take policy objectives, market conditions and other factors into consideration, and may issue permission by means of evaluation, public tender, or another appropriate method. The Draft Bill does not stipulate minimum paid-in capital requirements for operation platform enterprises and channel operators, but authorizes the GIO to stipulate the respective implementation rules regarding such thresholds. The valid term of a first-time licence is nine years; the valid term of each subsequent renewal licence issued after expiry of this term is six years. The valid terms of licences of agents engaged by offshore channel operator enterprises shall be determined by the term of the agency agreement, but are limited to two years.

Subscriber fees

To prevent unfair pricing practices that could arise from the monopolies enjoyed by cable operators in their franchise areas, the Draft Bill proposes that the competent authority will make a determination on proposed fees in consultation with relevant local authorities. Currently, the local authorities make such determinations alone. Cable operators will be required to report subscription fees for basic channels (not including pay channels) along with fees related to installation or reinstallation directly to the competent authority annually for approval and public announcement.

The revised Radio and Television Law will be effective upon promulgation. The GIO is currently drafting implementation rules to clarify key issues such as licensing fees, terms and approval procedures, minimum equity investment thresholds, and the number of advertisement channels that can be operated, among others.

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