

Current Development in Thai Telecommunications Law*

Dr. Suthiphon Thaveechaiyagarn
National Broadcasting and Telecommunications Commissioner

I. Introduction

The entry into force in December 2010 of the Act on Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010) (hereafter 'The NBTC Act 2010') brings about a significant change and concrete action which ensures the development in telecoms and broadcasting industry in Thailand. Such change and current development deal mainly with the new law, the NBTC Act 2010, altogether with the first establishment of the National Broadcasting and Telecommunications Commission (NBTC), an independent convergent regulator. There are eleven commissioners with various expertises who went through competitively selective process and were formally appointed by the King. The convergent regulator 'NBTC' is divided into two sub-commissions; telecoms and broadcasting commissions, for the reason that they can specifically perform their roles and duties which fit mostly for each field. However, the joint authority and responsibility still remain in term of 1.) spectrum management which must be consistent with the Radio Frequency Plan and 2.) adopting policy and regulation which promote free and fair competition and with due regard to public interest.

Formerly, the long-term monopoly over telecoms and broadcastings was in the form of concession contracts and state ownership or state-run administration. The NBTC Act 2010, which is consistent with the Constitution of 2007 brings about the significant change in telecoms and broadcasting market in Thailand as it requires 'liberalisation' in telecoms and broadcasting markets. The radio frequency, which is national and scarce resource, will be allocated on market-based approach (auction). The exclusive right for using the spectrum through concession contract will completely ended (depending on their remaining period according to concession contract). Under the new regime, the telecoms and broadcasting market in Thailand have been gradually and continuously

*The author would like to specially thank Miss Natjira Kanthong, legal officer, for her research assistance. The author also expresses appreciation to the ASEAN Law Association (ALA) for supporting the distribution of this paper.

developed resulting from the new regulatory framework and environment which are carried out by the NBTC.

II. Contents

There are three main regulations which set the regulatory framework for the NBTC, the NBTC Act 2010, the Telecoms Business Act B.E. 2544 (2001) and the Broadcasting Business Act B.E. 2551 (2008), including over 170 promulgations dealing with the specific matters relating to telecommunications. The key tasks for the NBTC, contributing to current development in Thailand, are as follows:

1. Telecoms regulation

1.1 New area of authority and responsibility of the NBTC according to the new law

1.) Liberalisation

Before the enactment of the NBTC Act 2010, the use of radio frequency had been granted under administrative approach (concession contract), which discretionary power of the granter plays an important role. Such concept can impair the development of the market in some countries. In Thailand, dominance position causing by the incumbents is resulted from lack of efficient competition. The lack of efficient competition deters the real development in the industry and consequently affects consumers as end users in term of limitation of consumer's choice. Under the new regime, radio frequency using for telecoms and broadcasting business will be allocated under market-based approach, i.e auction for 2100 GHz band. Pursuant to the liberalisation concept, all sectors (incumbents, existing sectors, new entrants) will be treated equally under the similar regulation without any special privilege.

2.) Satellite services

Before the establishment of the NBTC, satellite services had been operated and administrated under concession contract. According to the NBTC Act 2010, satellite services fall under the definition of 'telecommunication services'. Therefore, any operation associated with satellite services is from now on subject to licensing regime by the NBTC.

1.2 Former and current area of authority and responsibility of the NBTC

1.) Well-functioning regulations

With regard to regulations which have been applied and already served the telecoms market efficiently on the basis of free and fair competition concept, no amendment is needed. However, the NBTC still has authority over monitor and evaluate (ex-post measure) such regulations.

2.) Burdensome regulations

In term of burdensome regulations, the NBTC is now on the process of revising and amending some clauses according to promulgations which impair regulation enforcement. Furthermore, the NBTC plans to adopt parallel regulatory instruments, i.e. Standard Form of Operator-Consumer Contract Term, which aims to promote and protect consumers' rights. Additionally, the NBTC is working to establish the 'Mediation Center' as ADR mechanism which aims to avoid delay, cost, dispute and help to find the win-win solution for both parties. The Mediation Center will operate on voluntary basis of parties entering into the mediation process.

2. Broadcasting regulation

Similarly to the telecoms field, the broadcasting business also requires liberalisation. As a result, any operation relating to broadcasting business is subject to licensing. The NBTC has a duty to award license on market-based approach.

2.1 Transition from the military and state monopoly to a liberalised broadcasting.

2.2 Decentralisation of licensing system, which divides into three levels: 1.) public service license, 2.) local license and 3.) commercial license.

2.3 Increase on consumer's (viewer's) choices and direct access (participation of the citizens and more freedom of expression as a fundamental right in a democratic society).

2.4 Shift from analogue to digital television. The timeframe for which switching into digital system is in accordance with the Radio Frequency Master Plan.

3. Policies making

Another concrete action which ensures the development in telecoms market is provided in the Master Plans. According to the NBTC Act, the NBTC has obligation to

adopt 1.) the Radio Frequency Master Plan 2.) the Telecommunications Master Plan and 3.) the Broadcasting Master Plan. All are for five-year implementation guideline.

The proposed Telecoms Master Plan of the NBTC is a 5-year guideline. It comprises six main areas of objectives which demonstrate concrete actions affecting development in the telecoms industry.

The key strategic frameworks, according to the draft of the Telecoms Master Plan, aim towards following objectives:¹

1. Ensure free and fair competition, which is the key principle for regulating telecoms market. The concrete action can be pursued by 1.) increasing competition level in the telecoms market, 2.) removing anticompetitive behaviours and abuse of dominant market power among sectors and 3.) guaranteeing reasonable tariff price for consumers.

2. Ensure effective licensing process and operation of telecoms business by 1.) removing barrier to entry into the telecoms industry for new entrants, 2.) reducing regulatory cost for license fee as well as shorten the process for licensing application on the necessity and transparency principle, such as automatic license which is rapid application process by means of notification system and removes unnecessary process causing delay, and 3.) regulating similar services based on the technology neutrality concept.

3. Manage telecoms resources efficiently by 1.) encouraging efficient infrastructures sharing to avoid duplicated investment as well as promoting use of 'Right of Way' and 2.) preparing for emergency and disaster situation with the help of spectrum utilisation for warning system.

4. Promote universal access of telecoms² services in rural areas and for specific target groups, such as schools and hospital. Moreover, the Telecoms Master plan also aims at

¹ The NBTC is required under the NBTC Act 2010 to engage public hearing process for drafts of every Master Plans. Recently, the public hearing has been organised. It is expected that the Master Plans including the Telecoms Master Plan will come into effect in April 2012.

² The NBTC is required under the NBTC Act 2010 to engage public hearing process for drafts of every Master Plans. Recently, the public hearing has been organised. It is expected that the Master Plans including the Telecoms Master Plan will come into effect in April 2012.

expanding telecoms infrastructure coverage (voice \geq 95 and data \geq 80 of population in Thailand).

5. Promote consumer protection by ensuring full enforcement of existing regulations as well as improving regulations, such as adopting a 'Standard Form of Operator-Consumer Contract Term' and establishing a 'Mediation Center' for dispute resolutions, which serves as an additional regulatory instrument parallelly with a traditional dispute settlement system in order to avoid burdensome delay in on process and for win-win solution for agreeing parties. Currently, the creation of the Mediation Center is under process under the cooperation with the Thai Dispute Settlement Center of the Court of Justice of Thailand.

6. Regarding the preparation towards the ASEAN Economic Community (AEC) in 2015, the NBTC is responsible to adopt appropriate measures and revise or amend existing regulations in order to be consistent with the AEC's commitments.

III. Conclusion

Telecommunications are fundamental service which play a crucial role for the growth of the information society in Thailand. To strengthen the capacity of the Thai telecommunications industry the NBTC needs to seek appropriate balance of its role as regulator as well as facilitator. The NBTC also has to understand the nature of the Thai telecoms and neighbouring market by analysing all relevant information and statistic in the industry including sectors' behaviours with aim to promote sustainable free and fair telecoms market. The NBTC has presently been working hard to encourage free and fair competition by eliminating all anticompetitive behaviours, and applying the non-discrimination, and transparency principles to all sectors. Regarding consumer protection, the NBTC will attempt to increase consumer welfare in term of reasonable price and higher quality of services. Out-of-dated regulations will be revised to facilitate the telecommunications sector and to provide better protection of consumers. Furthermore, the NBTC will increase international cooperation to exchange information and experience with international counterparts so that the Thai Telecommunications

service can catch up with international standards. With all these strategic plans, it is expected that the Telecoms industry in Thailand will be developed and strengthened towards right direction.