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## ANALYSIS OF COMPETITION POLICY IN BROADCASTING MARKET IN THAILAND<sup>1</sup>

การวิเคราะห์ตลาดเพื่อกำหนดนโยบายการแข่งขันในธุรกิจวิทยุกระจายเสียงและวิทยุโทรทัศน์

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### Abstract

There was no real competition in the Thai broadcasting market until the success of broadcasting reform in 2008, which change the landscape of broadcasting system and regulation. The regulator, NBTC, had set up competition policy in the telecommunication market, but not yet in the broadcasting sector. During the media reform period until current, private sector and civic sector have jumped into the broadcasting market, causing a boom of the market. Also, digital terrestrial television, launched in the early 2014, is another new battle field. Due the prosperity of the market, NBTC has issued transmission service licenses and facility licenses. However, competition policy in the broadcasting market is still needed in order to regulate the upcoming competitive market, reduce monopoly or oligopoly, and prevent market failure.

The article intended to analyze Thai broadcasting market structure, regulation and competition policy, which included: (1) regulatory agency (2) Thai broadcasting market (3) broadcasting regulatory framework (4) competition analysis (such as definition of relevant market and significant market power). To initiate the broadcasting market competition policy, the regulator could apply a similar methodology utilizing in the telecom market competition policy.

**Keywords:** Broadcasting Market Analysis, Competition Policy, NBTC

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<sup>1</sup> This article is an excerpt from the research project on broadcasting competition policy funded by National Broadcasting and Telecommunication Commission and DETECON Company.

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## บทคัดย่อ

เนื่องจากกิจการกระจายเสียงและแพร่ภาพในประเทศไทยมีลักษณะเป็นการผูกขาดโดยรัฐหรือหน่วยงานที่รัฐมอบหมายมาตลอดระยะเวลากว่า 50 ปี โดยรัฐมีอำนาจเหตุผลของความมั่นคงแห่งชาติและการให้บริการสาธารณะแก่ประชาชน ตลอดระยะเวลาที่ผ่านมาประเทศไทยไม่เคยมีการแข่งขันด้านกิจการวิทยุกระจายเสียงและวิทยุโทรทัศน์อย่างเต็มรูปแบบ เมื่อการเปลี่ยนแปลงจากการผูกขาดโดยรัฐเป็นการแข่งขัน ทำให้องค์กรกำกับดูแลคือ คณะกรรมการกิจการกระจายเสียง กิจการโทรทัศน์และกิจการโทรคมนาคม (กสทช.) จำเป็นต้องออกกฎกติกาต่างๆ เพื่อป้องกันไม่ให้เกิดการผูกขาดและส่งเสริมการแข่งขันอย่างเสรีและเป็นธรรม เช่นเดียวกับองค์กรกำกับดูแลกิจการสื่อสารในประเทศอื่นๆ

บทความนี้จึงมีวัตถุประสงค์เพื่อวิเคราะห์แนวทางการกำหนดตลาดและการกำหนดนโยบายการแข่งขันในธุรกิจวิทยุและโทรทัศน์ซึ่งองค์กรกำกับดูแลโดยทั่วไปมักใช้ในการกำหนดกติกาการแข่งขันเพื่อป้องกันการผูกขาดในธุรกิจดังกล่าว โดยจะประกอบด้วยประเด็นสำคัญ ได้แก่ (1) องค์กรกำกับดูแล (2) ตลาดธุรกิจวิทยุกระจายเสียงและวิทยุโทรทัศน์ (3) กรอบแนวคิดการกำกับดูแล (4) การวิเคราะห์สภาพการแข่งขัน ซึ่งประกอบด้วย การกำหนดขอบเขตของตลาดธุรกิจวิทยุและโทรทัศน์ และการประเมินผู้มีอำนาจเหนือตลาด โดยอาศัยแนวทางที่คณะกรรมการกิจการโทรคมนาคมแห่งชาติ (กทช.) ได้เคยดำเนินการไปแล้วเป็นหลัก

**คำสำคัญ:** การวิเคราะห์ตลาดธุรกิจวิทยุและโทรทัศน์ นโยบายการแข่งขัน กสทช.

## Introduction

The broadcasting sector in Thailand has been in the transition process since the reform of communication regulation in the late 1990s. Communication regulation is in the hand of the new regulatory agency, National Broadcasting and Tele-communications Commission (NBTC), which was finally established in 2011 after a decade of delay. Whereas the competition policy and market regulation in telecom sector has progressed since 2010, the broadcasting sector is yet to catch up. However, in order to formulate competition policy for the broadcasting sector, understanding of the broadcasting market and regulatory status quo with regard to competition regulation in the broadcasting sector is essential. The article intended to provide an overview of Thai broadcasting

market structure and regulatory framework relevant to the broadcasting sector. It also applied competition analysis adapting from the telecommunication competition policy, including market definition, signification market power (SMP) designation and remedies.

## 1. Regulatory Agency

Prior to establishment of the NBTC, the communication sector in Thailand was under the control of some significant state agencies such as Post and Telegraph Department, Ministry of transportation, Public Relation Department, Office of Prime Minister, Royal Thai Army and Ministry of Defense. From 1990-2000, the trend of communication reform across the world led to privatization and reform in the Thai communication sector.

Establishment of an independent regulatory agency was initiated since the year 2000, but the process could be successfully completed ten years later. There are two the main relevant public authorities (MICT and NBTC) overseeing the Thai communication sector, including both the telecom and broadcasting market. Ministry of Information & Communication Technology (MICT) is in charge of overseeing the IT sector. It works in conjunction with other state departments. NBTC was established under the Act on Organization for Frequency Allocation and Regulating Broadcasting and Telecommunication Services B.E. 2553 (2010) as a single converged regulator for telecom and broadcasting sectors (NBTC Act). According to the NBTC Act of 2010, NBTC has duties in formulating national communication plans, licensing and regulation, competition regulation, content regulation, communication right and freedom of expression.

## 2. Broadcasting Market

Since Thailand is in the transition stage of broadcasting competition regulation, the market overview is the current broadcasting market structure. Some have been operating already prior to the establishment of NBTC.

*Analog Free TV:* There are 6 free-to-air TV stations (analogue terrestrial broadcasting) in Thailand. Operators of television broadcasting can be divided into two types: state-run and privately run broadcasters. Accordingly, television broadcasters have been separated into two license categories: ownership and concession. Broadcasting operators running

their business under the first category are those who own and operate their broadcasting business (state-run broadcasters). There are two commercial (Channel 5 by Royal Thai Army and Channel 9 by MCOT, a former state enterprise) and two public service broadcasters (Channel 11 by NBT (Public Relation Department) and Thai PBS) in this category. The second type is the broadcasters operated by concessionaires on a commercial basis. They are joint business operations between the government and private operators whereby the private partner operates the broadcaster under agreements in return for a predetermined remuneration or a revenue share. There are 2 television channels: Channel 3 owned by MCOT and operated by BEC Entertainment Public Company, and Channel 7 owned by the Royal Thai Army and operated by the BBTB Company. These two private-run operators (BEC and BBTB) are the leaders in Free TV market with the combined viewership share of almost 80% (MCOT annual report, 2012).

*Digital Free-TV:* NBTC endorsed DVB-T2, a Europe-based standard for the transmission of digital terrestrial television, as the uniform standard for Thailand in the process of moving to digital broadcasting starting in 2014. Among the 48 digital TV channels, NBTC allocated 12 channels for community services, another 24 channels for commercial services, and 12 channels for public services.

*Cable TV:* There were national and local cable TV operators. TrueVisions is the only national cable TV operator, which operates on

behalf of the MCOT and offers subscription-based services. This is currently the biggest cable TV operator that covers the area of the whole country via satellite transmission (Ku-band) and fiber optic links. Data from TrueVisions annual report (2012) indicated 2.04 million subscribers. Also, there are around 500 local cable TV operators running on 900 networks offering subscription-based services throughout the country (NBTC Opens Satellite and Cable TV Licensing Today, 2012). These provincial operators transmit through cable lines that are laid down along the electricity or telegraph poles to their subscribers in villages. With a low subscription fee, these services have become popular and are important competitors in the cable TV business. However, Cable Thai Holding Plc. (CTH) is another new and prominent comer in the national market. It was created in 2009 from the merger of more than 100 small cable operators, who have united in a bid to pool their financial resources so they can bid for attractive foreign content.

*Satellite TV:* The Thai satellite broadcasting includes both pay direct-to-home (DTH) and free DTH satellite services. Free DTH alone is growing very quickly with about 43% of households adopting this service by 2011 (Work Point Entertainment annual report, 2012). TrueVisions is the main legal operator with 711,000 subscribers at the end of 2011 (TrueVisions annual report, 2012). The free DTH satellite platform allows the viewers to buy and install satellite dish and receive programs directly.

*Radio:* There are 523 radio stations, distributed among state agencies (such as 128 for the Army, 145 for the PRD, 62 for MCOT, 44 for Police, 36 for Air Force, and 21 for Navy). There are 40 FM and 35 AM radio stations broadcast within Bangkok where the radio business is most competitive. 173 FM and 272 AM are available in urban and rural area throughout Thailand (Tangkitvanich, 2003). Initially, all national stations were owned by government agencies from which operators leased airtime for producing their programs. The leases were for the whole day or the partial time. There are also 5,000-6,000 community radio stations in Thailand operated with low-power transmitters. The numbers have proliferated during the past decade. They serve geographic communities and communities of interest.

### 3. Broadcasting Regulatory Framework

The 2007 Constitution of the Kingdom of Thailand, B.E. 2550 (2007) is an important legal source laying the fundamentals of the framework for the Thai broadcasting sector. According to the 2007 Constitution, transmission frequencies for radio or television broadcasting and telecommunication are national resources for public interest, and there shall be an independent regulatory body having the duty to distribute the frequencies and supervise radio or television broadcasting and telecommunication businesses as provided by the law. Moreover, the Constitution underlines the need for measures for prevention of merger, acquisition or control among the mass media or by other

persons, which may deteriorate liberties to information of the public or may hinder the public from variety of information.

Based on the 2007 Constitution, Thailand enacted the Broadcasting Business Act, B.E. 2551 in 2008, followed by the Act on Organization for Frequency Allocation and Regulating the Broadcasting and Telecommunications Services B.E. 2553 (thereafter the NBTC Act) in 2010. The independent regulatory body, NBTC, was established on October 7, 2011. The laws intended to redesign Thai communication structure, policy and regulations to be in the hands of an independent regulatory body, and to be free from the government agencies.

In addition, there are a number of notifications in broadcast operation set by the NBTC in 2012. All those notifications aim to: (1) prescribe characteristics and categories of a broadcasting operation; (2) regulate and provide procedures for the application of broadcast network provider license, facility provider license, and broadcast service provider license, as well as temporary broadcast business service license without frequency. Some notifications concern Must Carry and list non-exclusive programs. It could be noticed that NBTC has not posted any competition policy on broadcasting market while the market is increasingly competitive due to the proliferation of new entry players.

#### 4. Competition Analysis

A telecom market competition policy completed in 2010 lead to definition of relevant telecommunication markets, identification of

significant market power (SMP) and imposition of additional regulatory measures, including also ex-ante regulation, on the SMP operators. Experiences from telecommunication sector could assist the competition analysis of broadcasting market, which will detail in the following section.

##### 4.1 Definition of the Relevant Market

Communication regulators in many countries have done competition analysis for broadcasting transmission services in order to identify anti-competitive behavior (Bird & Bird, 2002). This does exist in Thai telecommunication sector, but not in the broadcasting sector. The first step of the competition analysis is definitions of the scopes of relevant markets. The purpose is to identify those actual and potential competitors that are capable of constraining their behavior of market participants and of preventing them from behaving independently of effective competitive pressure. The market can be defined by a number of conditions, for example, different conditions of competition, the price of the services and the characteristics of different types of television operation, which will lead to different conditions of regulation.

Actually, NBTC has categorized broadcasting services but not systematically enough to gauge the market in terms of anti-competitive behaviors. For example:

*Markets for transmission of TV signals:*

The 2008 Broadcasting Business Act and the Notification on Prescribing Characteristics and Categories of a Broadcasting Operation B.E. 2555 (2012) differentiates the broadcasting markets

in terms of those using radio frequency (free TV, digital TV and radio) and those not (cable TV and satellite TV).

*Markets for retail distribution:* Markets for broadcasting retail distribution can be separated into three types: Market for radio; Market for pay TV (subscriptions) and Market for free TV. The provision in the 2008 Broadcasting Business Act treats pay TV and free TV differently in some aspects. For example, free TV is permitted a maximum of 12.5 minutes per hour but must not exceed an average of 10 minutes per hour in a day; and pay TV is permitted a maximum of 6 minutes per hour but must not exceed an average of 5 minutes per hour in a day. Even if this affects the content and not the transmission of broadcastings, it provides some consideration when defining the relevant market for broadcasting transmission services.

*Geographic scope:* For broadcasting services using radio frequency, the licensing framework for business broadcasting service could be of use when defining markets. Under the 2008 Broadcasting Business Act, the market is defined into 3 categories based on geographic service areas: (1) National Business License granted for broadcasting and television providers providing coverage and services nationwide, (2) Regional Business License granted for broadcasting and television providers providing coverage and services in a certain regions or groups of provinces in Thailand, and (3) Local Business License granted for broadcasting and television providers providing coverage and

services in communities or local province.

*Market for type of services:* the Notification on Prescribing Characteristics and Categories of Broadcasting Operation B.E. 2555 (2012) classifies broadcasting operation into four categories: Network Providers, Facility Providers, Service Providers, and Application Program Providers.

Formerly, Thailand's broadcasting industry was operated vertically. The operators operated the business by providing network, facility, service, and application programs. Under the NBTC's new broadcasting regulation and licensing approach, there will be more competition in each level of service separately on a horizontal structure.

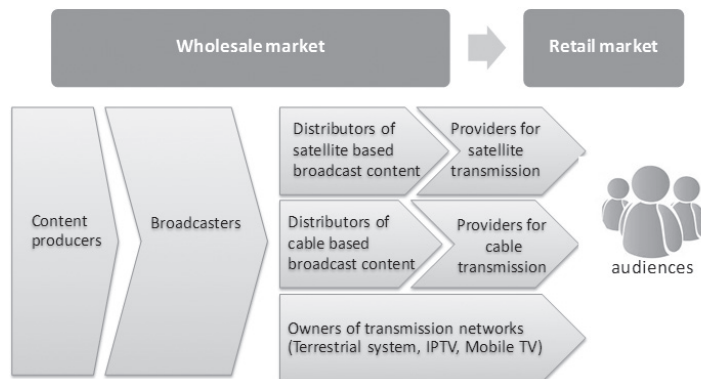
In Thai telecom market analysis (Boonsa-ard, 2010) the market was defined by considering the product/service substitutability and the geographic scope as follows:

- (1) Identify the products or services under consideration and the firm(s) supplying these services or products;
- (2) Identify relevant boundaries of the market from the product dimension including identify all products or services substitutable to the identified products or services on the demand side and supply side;
- (3) Identify relevant boundaries of the market from the geographic dimension such as delineating the geographic area in which substitutable products or services on the demand side area and supply side area;
- (4) Identify market participants including companies and customers involved in the

supply and demand of the relevant products or services.

In the context of market definition for broadcasting transmission services in Thailand, there are at least two main types of relevant

markets to consider (figure 1): (1) Market of services or facilities provided to end-users (retail markets) and, (2) Market of access to facilities for operators necessary to provide such services to end-users (wholesale markets).



**Figure 1** Wholesale and retail broadcasting market

According to the figure 1, a broadcaster wishing to deliver broadcast content to end users may obtain transmission services from a number of providers and using a set of technology platforms. The main technology platforms currently available for the delivery of broadcasting content include terrestrial (analogue and digital), satellite (analogue and digital), cable (analogue and digital), fixed (IPTV) and mobile (mobile TV) telecommunications network.

Since the competitive conditions on the retail level are relevant with regard to whether there exists market power at the wholesale level, it is necessary to examine the market definition and criteria for significant market power related to the retail level in addition to the wholesale level. For the defini-

tion of the relevant product market, this means that the evaluation of the relevant retail market will come before the evaluation of the relevant wholesale market, since demand at the wholesale level is derived from demand for retail products and/or services. Hence, the starting point for the identification of markets susceptible to ex ante regulation is the definition of retail markets over a given time horizon, taking into account demand-side and supply-side substitutability. Having defined retail markets, which are markets involving the supply and demand of end-users, it is then appropriate to identify the corresponding wholesale markets which are markets involving the demand and supply of products to a third party wishing to supply end-users.



## 4.2 Significant Market Power

To ensure fair competition in Thailand, the 1999 Trade Competition Act (TCA) prohibits monopoly and also prohibited business operators from banding together to conduct a business transaction that will lead to the creation of an unfair competition or monopoly. Additionally, mergers of business operators in Thailand are generally prohibited unless there is an approval from the Trade Competition Commission (TCC) based on evidence that the intended merger is for a legitimate business reason. More importantly, the business operators in Thailand are prohibited from doing acts that destroy, impair, obstruct, impede or restrict business not only of existing competitors but potential competitors as well. Based on this Act, the TCC has established a practice with regard to market analysis and assessment of dominance. Market share and market concentration are the two main concepts used to designate significant market power (SMP) along with other factors to be considered, including (1) market share (calculated based on revenue, units of output manufactured, units of output sold and/or capacity) and (2) market concentration ratio (reflecting the level of competition). The common approach is to start with firms with the highest market share. The number of firms is not fixed. It could include 4, 8 or all of the firms in the market. In general, oligopolistic market will have a market concentration range of 50-80%. Other factors to be considered when conducting SMP designation include number of players, barriers to entry, substitutability of

products and services in the market.

Usually, volume and value of sales are used to assess market shares and size. According to the SMP Notification for the telecommunication business sector (2008), there are three market shares based alternatives for NBTC decision as follows:

(1) Assumed SMP: Very large market shares, e.g. of more than 50%

(2) Assumed Non-SMP: SMP is excluded for a company with no more than 25% market shares

(3) Further assessment: For market participants with market shares between 25% and 50%

For assessment of market concentration, NBTC uses the “Herfindahl Hirschman - Index” (HHI) in the telecommunication market. It calculates by (1) identifying market share of each market participant in the relevant market under consideration, (2) squaring the identified market share of each market participant and (3) sum all squared market shares (Boonsa-ard, 2010).

A small HHI means low or no concentration and indicates a competitive industry with no dominant players, while a big HHI means high market concentration and indicates competitive constraints to be addressed by additional regulatory intervention by NBTC. The authority has identified three HHI-based thresholds for a decision on the level of concentration in the relevant market.

Not only market share and market concentration, market structure and barrier to



entry are the factors applied in SMP analysis. According to the SMP Designation Notification in Telecommunication market (2008), there are other criteria defined for this additional assessment, for example overall business size and control of necessary infrastructure.

## Conclusion

The scope of the market defined at the end of the day can depend on the relative weight given to demand-side and supply-side substitutability, and can also depend on the prospective time horizon considered. Market definition is not an end in itself but is a means of assessing effective competition for the purposes of ex ante regulation in the market for broadcasting transmission services. In other words, NBTC defines markets in order to assess whether competition is effective and whether any party has significant market power (SMP) in a particular market or market segment. Following from an assessment of the effectiveness of the competition, NBTC should then determine whether precompetitive remedies are required to guard against the risk of anti-competitive behavior operators who have SMP.

The SMP concept is defined according to the principle of general competition law. It is therefore equivalent to the competition law concept of dominance. An operator shall be deemed to have SMP if, either individually or jointly with others, it enjoys an economic position that enables it to considerably behave independently of competitors, customers and ultimately consumers. It follows from this that

SMP may be held by only one company (single dominance) in the market or by more than one company together (collective dominance).

However, NBTC's SMP assessment in the present initial review may focus on single dominance only, using a simplified approach. A more detailed analysis including all relevant criteria as well as aspects of collective dominance will be considered in the long-run as a result of NBTC's monitoring of market development.

In the broadcasting policy NBTC should clarify the meaning of market shares, whether subscriber market share or revenue market share or both. In practice, the analysis is depending on data availability and both subscriber and revenue market shares are used. The NBTC's notifications related to broadcasting business always have regulatory measures to promote competition, such as licensing and regulating various types of broadcasting operation. It is expected that there will be more concrete progress in broadcast competition coming in the future.

## Suggestion

Recommendations are formulated in the light of easiness to implement for NBTC, taking into consideration that NBTC would be touching a new field. The recommendations integrate two different solutions for NBTC, one for the initial phase of competition analysis, the other for later, more mature phases. Although NBTC has no specific legal or regulatory requirement on market definition process, it could adapt the procedure from telecommunication sector,

such as the relevant market definition and SMP designation.

If NBTC finds that a relevant market is subject to effective competition, i.e. where no SMP has been established, it is not allowed to impose obligations and must withdraw already existing obligations. But if it finds that a relevant market is not effectively competitive, i.e. where an SMP has been established, it could exceptionally impose certain obligations on non-SMP operators. Such obligations include, but are not limited to, access to application program interfaces and electronic program guides to

ensure accessibility to specified digital TV and radio broadcasting services and obligations in order to comply with eventual Thailand's international commitments. Also, if NBTC finds that a relevant market is not effectively competitive, i.e. where an SMP has been established, it must designate the operator concerned as having SMP and impose appropriate regulatory obligations on the company concerned. NBTC must also demonstrate that the measure imposed is compatible with the principle of proportionality.

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