**Struggling for the Optimal Level of Competition in National Markets: Thailand’s Approach[[1]](#footnote-1)**

*Dr. Suthiphon Thaveechaiyagarn*

*National Broadcasting and Telecommunications Commission, Thailand*

**Introduction**

Unlike the European Union where the competition in the telecommunication sector is too high, competition in the Thai telecommunication market is low. Thailand has not yet reached the optimal level of competition in telecommunication sector. Despite constant growth in demand for data and voice services, mobile business is not easy to operate since it needs huge investment. Due to the restriction of Thai investment law and political situation, it is unlikely that there will be more mobile operators in the next 2-3 years. Thus, Thailand has to struggle to find proper mechanisms to move towards the optimal level of competition.

**International Guideline**

According to WTO and OECD’s best practice on telecommunications, policy tools that are used to create the optimal level of competition in the telecommunications industry in a country include:

1. Liberalizing the telecommunications markets;
2. Establishing an independent regulator;
3. Establishing an interconnection regime; and
4. Fostering effective competition among telecommunications providers

**Thailand’s Current Practices**

Thailand is a good case study on how a developing country can use WTO and OECD’s guideline to improve its telecommunications regulatory regime.

1. **Liberalizing the telecommunications markets**
	1. **Liberalizing by legislation and limitations**

Thailand has started to liberalize the telecommunications markets by switching from a concession regime to a licensing regime with the promulgation of the Telecommunication Business Act in 2001, empowering the National Telecommunications Commission (NTC) to issue new telecom licenses. However, it is not quite a complete switch because a transitional provision in the Constitution of Thailand B.E. 2550 (2007) gives protection to those who previously received concession or sub-contract from the concessionaire to be able to continue to use spectrum and operate the telecommunications business until the concession is over. Therefore, Thailand has two regimes, concession and licensing, operating at the same time at the moment. This leads to many difficulties in regulating the operators because their costs are different.

However, liberalization process of the telecommunications markets in Thailand is not quite complete because Thailand has not privatized government-owned telecommunications companies. Although CAT and TOT, two government-owned telecommunications companies, are public limited company, their shares are still wholly owned by the Ministry of Finance.

* 1. **Minimizing problems for further liberalization**

In minimizing problems of liberalization above, NBTC needs to speed up the auction process. The auction rules must encourage new, small or medium-sized operators to enter the market. In addition, out-of-dated notifications and regulations must be revised so that they themselves will not become barriers to the industry.

1. **Establishing an independent regulator**

Thailand established the National Telecommunications Commission (NTC), an independent organization responsible for regulating the telecommunications markets, since 2004. However, NTC was only a transitional organization which later became the National Broadcasting and Telecommunications Commission (NBTC) in 2010.

 Despite the convergent institution, NBTC’s authority is not yet convergent. Broadcasting and telecommunications regulations are completely separated by Broadcasting Committee (BC) and Telecommunications Committee (TC). Moreover, NBTC’s authority does not cover all aspect of satellite communications activities.

 Thus, BC and TC should work closely and apply similar standards in issuing licenses. NBTC should also coordinate with the Ministry of Information and Communication Technology so that NBTC’s authority is truly convergent.

1. **Establishing an interconnection regime**

NBTC’s role on interconnection is different from that of a regulator abroad. For example, in the US, a regulator can order operators to connect between networks and can also fix the price of the interconnection. But in Thailand, the regulation allows operators to agree among themselves and submit to NBTC the interconnection contract (IC contract) for review. NBTC reviews the IC contracts to ensure that they do not violate any laws or public order. In the past, IC contract rate is fixed at 0.99 Baht/minute because of different costs of each operator due to the concession regime. Currently, IC contact rate is fixed at 0.45 Baht/minute as agreed upon by operators and acknowledged by NBTC.

The obstacle regarding IC contracts is that the concessionaries argue that sub-concessionaires have no power to enter into IC contracts. Thus, NBTC issued the IC Notification stating that the definition of operators (in the licensing regime) include sub-concessionaires (in the concession regime). That way, operators in both regimes have the duty to interconnect.

This current IC practice relates to another guideline about fostering effective competition among telecommunications providers. NBTC’s current practice on IC contracts does not enable NBTC to have a hands-on approach in regulating IC contract, which is an important element of the telecommunications markets. An IC contract is a source of income for operators. Usually, IC is calculated using cost based for both incumbent and new operators. But for incumbents, the cost based is calculated on the long-run incremental cost, and for new operators, the cost based is calculated on fair and reasonable cost – which is a less stringent standard – to allow new operators to recoup costs to enable them to survive in the telecommunications. With more operators the market, competition in the telecommunications business will be more effective.

1. **Fostering effective competition among telecommunications providers**
	1. **Wholesale vs. retail market regulation**

As previously mentioned, one way to foster effective competition is through IC contract regulations. Another way is to only regulate the wholesale market and not retail market. For the retail market, the regulator should let the market fixes itself. But currently, NBTC also regulates the retail market. For example, NBTC issues a notification on prepaid mobile phones – that for every amount refilled, the validity of the value is extended for 30 days. The value can be accumulated for up to one year. Another example is that NBTC sets the ceiling price per minute to 0.99 Baht. This ceiling price is applied to “significant market player” (SMP) in the telecommunications market. Therefore, NBTC has to do three things: one, is to define a “market;” two, is to announce SMPs for each market; and three, is to set the ceiling price for those SMPs. But how can NBTC know the market price?

In Thailand, the existence of dominant market players in the telecom market requires regulatory attention to maintain a healthy competitive market environment. However, in the future when Thailand has already passed the transitional period from the concession regime to the licensing regime, NBTC should make the regulation more flexible so their market can decide by itself according to demand and supply. NBTC’s role should be to regulate only the wholesale market and not the retail market because there is sufficient competition in the retail market. There is no use to set the ceiling price because once there is effective competition, competition in the retail market will automatically drive the price down. NBTC’s ceiling price regulation becomes unnecessary.

* 1. **Satellite communication regulation**

The prepaid mobile phones and ceiling price setting were examples of over-regulation. But for satellite communications, there is under-regulation. Because our law includes satellite communication in the definition of “telecommunications,” NBTC has the authority to regulate satellite communications. But the same law left out the details on how NBTC is to regulate satellite communication operators. Because satellite communication has its special character, it should be under a separate law, not under the telecommunications law. This poses many problems for NBTC in regulating satellite communications. For example, satellite communication involves satellite orbit filing with ITU. But NBTC is not a member of ITU, but the Ministry of Information and Communication Technology (MICT) is. Thus, satellite communication regulation is currently under both NBTC and MICT, making effective regulation extremely difficult to do.

* 1. **Spectrum Assignment by Auction**

The NBTC Act makes it mandatory that in spectrum assignment for telecommunications sector, NBTC must hold an auction. The reason why the law is written so strictly may be because the time of legislative drafting process, the drafters believed that spectrum auction was the best measure in assigning spectrum. Now, it has been proved in many countries that such belief is not always true, but Thailand has to deal with the impact of this legislation which remains unchanged. However, in Thailand there is still misunderstanding about the concept of spectrum auction. Still, according to many Thais’ perception, success of spectrum auction is measured by how much it can generate revenue. Therefore, when NBTC conducted the auction of 2.1 GHz spectrum and received revenue slightly more than the reserve price, the public made strong criticisms and some NGOs brought actions against NBTC. The chaos ended when the Central Administrative Court denied to accept the cases. Later, the ITU made in depth-study and analysis on Thailand’s 3G auction and concluded that principles, objectives, design and the outcome of the 2012 Thai 3G auction were consistent with international practice and achieve the explicit and implicit goals of NBTC in managing the radio spectrum resource. As a result, NBTC was able to issue spectrum licenses to three operators so that they can operate 3G service on such spectrum.

Another case study is the expiration of 1800 MHz concession. NBTC issued an interim measure to protect consumers remaining under such spectrum so that they can continue to use their mobile services. NBTC came under attack that the interim measure was an extension of the concession. However, there is no requirement that NBTC had to auction the expiring spectrum before the concession ends. Before spectrum assignment by auction, there is also no law on how NBTC is to manage the spectrum after being returned for reallocation, and there is no law on remedy for consumers on such spectrum. Thus, NBTC issued the interim measure with the public interest as the top priority because public interest is the ultimate goal required under Section 47 of the 2007 Constitution. Although effective competition is important, it merely serves as one mechanism to achieve such goal.

**Strategies**

Thailand faces most problems in the area of fostering effective competition in the telecommunications market. Many view optimal competition as the ultimate goal, but in my opinion, NBTC must focus on the optimal level of the best benefit of the public rather than focus on the optimal level of competition itself. Competition is only a tool towards the best interest of the public.

To foster effective competition, NBTC should change its role from “regulate when there is opportunity” to “regulate when necessary.” For example, NBTC should only regulate wholesale market and not retail. NBTC must also continue to revise out-of-date laws to keep up with technologies. Currently, NBTC is revising the definition of “market” and “SMP” to prevent unfair competition practices. This is a short-term solution which will foster competition in the telecommunications market.

Because of many misunderstandings among the public, NBTC should also keep the public informed of NBTC’s mission and action and the benefits to the public as a whole to prevent them from being used by public interest groups. For example, in the up-coming 1800 MHz spectrum auction, NBTC should involve the public early on in the process and ensure that the public understands all factors used in spectrum assignment.

As for long-term strategies, in furthering liberalization of the market, NBTC must fully switch to the licensing regime as soon as possible.

Thailand should also enact a sui generis law on satellite communications so that NBTC has full authority to regulate this industry. In the future, technology converges, and there will be overlaps between broadcasting, telecommunications and information communication technology. Thus, the regulation should be under a single organization, specializing in this area. That is the reason why NBTC should be given authority to regulate this industry. With that, regulation in this industry can be looked at from all angles, taking into account technology convergence.

Finally, at the regional level, Thailand and ASEAN member countries need to work together to harmonize telecommunications regulations and create ASEAN community as the same market.

In conclusion, in my view, NBTC should focus on the optimal level of the best benefit of the public as the top priority rather than focusing on optimal level of competition itself because competition is only a tool towards the best interest of the public.

1. Presented at the Telecommunications and Media Forum 2014, organized by Belgian Institute for Postal Services and Telecommunications (BIPT) and the International Institute of Communications, 11-12 March 2014, Brussels, Belgium. [↑](#footnote-ref-1)