

TELECOMMUNICATIONS & MEDIA

Following due process and conducting an economic impact analysis are essential elements in the construction of any new law or government policy. Before the draft of a law or policy is announced, a prudent government agency will first complete a careful analysis of the potential impact on all related parties. And it will follow up that announcement by seeking feedback from the public, giving all relevant stakeholders ample time for review and comment. Only then can the agency feel fully confident that the law or policy is practical, coherent, and meets the needs of society while having no unnecessary negative effect on any party.

In the considered opinion of this Committee, the recent draft of the Convergent Law has failed to adhere to the above-mentioned standards, as explained below.

Suggestion: Seek further public comment on the draft Convergent Law.

The NCC initiative to replace the existing Telecommunications Act, Terrestrial Radio and Television Act, Cable Television and Radio Act, and Satellite Broadcasting Act with a “Convergent Law” represents an attempt to achieve significant regulatory reform and should have been cause for commendation.

The so-called “Convergent Law” would actually be made up of five laws: the Telecommunications Infrastructure and Resource Administration Act, the Telecommunications Business Act, the Administrative

Law for Cable and Multi-Channels Platform Service, the Administrative Law for Terrestrial and Channel Providers, and the Electronic Telecommunications and Broadcasting Act. It would replace the previous silo model with one structured horizontally – for example with an infrastructure layer (the draft Telecommunications Infrastructure and Resource Administration Act), operational layer (the draft Telecommunications Business Act and Administrative Law for Cable and Multi-Channels Platform Service), and an application layer (the drafts for the Electronic Telecommunications and Broadcasting Act and the Administrative law for Terrestrial and Channel Providers).

The five draft laws are closely related to one another and should have been reviewed and discussed as a whole. However, the five drafts were not announced as a package but rather one by one, every 12 days during the period from October 16, 2015 to December 14, 2015. Clearly the drafts of certain laws were released while others were still under discussion by the NCC.

Most disappointingly, the NCC provided a very short period for stakeholders' review and comment. For example, the draft Telecommunications Infrastructure and Resource Administration Act and Telecommunications Business Act were announced on December 14, 2015, with an explanatory meeting with stakeholders held on December 21 and comments due by December 22, which means that only five working days were available to prepare for the meeting and another six working days to provide comments. This schedule was far too rushed for consideration of such important legislation with wide-ranging implications.

Despite the limited time allowed, a number of scholars and stakeholders provided their opinions. But the NCC did not hold any further public meetings for discussion of the comments, and without revising the draft laws in light of the comments submitted, it forwarded the proposed five laws to the Executive Yuan for approval on December 31.

Aside from the lack of due process, the structure of the proposed Convergent Law is problematic as well. In the draft, cable service is defined as “multi-channels platform service,” which is a special telecom service as stated in the draft Administrative Law for Cable and Multi-Channels Platform Service. Telecom service is defined as the service provided by a telecom operator based on a “telecom network.” However, in the draft Telecommunications Infrastructure and Resource Administration Act, the NCC defines “telecom network” from a current telecom perspective, ignoring the difference between a cable network and telecom network. An example of the potential resulting confusion is that the draft Telecommunications Infrastructure and Resource Administration Act requires a “telecom network” to safeguard the privacy of subscribers' communications – an impossible requirement for cable networks as they do not provide communication service.

Furthermore, the NCC ignores the fact that Over-the-Top (OTT) platforms now provide audio and video services, competing keenly with cable operators. As a result, no regulation of OTT service appears in the draft, creating unfair competition in the audio and video services market.

The shortcomings in the draft law could have been identified and remedied if there had been an adequate consultation period, with genuine attention to public and industry comments, before the drafts were sent to the Executive Yuan. Considering the substantial impact the draft Convergent Law will have on digital convergence and the overall industry environment, we urge the NCC and/or Executive Yuan to engage in additional consultation with all related parties (including other government agencies, scholars, and representatives of the telecommunications and communications industry) and to hold additional public hearings. Most importantly, the NCC and Executive Yuan should carefully review the comments and incorporate all valid suggestions in the draft.