BALANCING SOCIAL BENEFITS AND MARKET COMPETITION IN THAILAND'S MOBILE TELECOMMUNICATIONS INDUSTRY: REGULATORY PERSPECTIVE

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ABSTRACT

Fundamentally, a telecommunications regulator plays a very important role to develop the public’s equal, pervasive and reasonably priced access to diverse telecommunications services through modernized networks on a fair competition basis and with efficient use of telecommunications resources to support the national development into an intellectual and creative society, with a view to narrowing the rural-urban disparities, continuously enhancing the country’s competitiveness in terms of telecommunications infrastructure, as well as developing efficient consumer protection measures. In Thailand, the National Broadcasting and Telecommunications Commission (NBTC) is responsible for managing the spectrum for telecommunications services and regulating the telecommunications business. Therefore, it must be very clear that the policy objectives of spectrum assignment are based on the principle of public interest together with free and fair competition. This paper aims to describe how NBTC regulates telecommunications business on balancing competition, social benefits, and consumer protection.

Keyword: Social, Competition, Mobile, Telecommunications, Regulatory


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Balancing Social Benefits and Market Competition in Thailand's Mobile Telecommunications Industry: Regulatory Perspective

1. INTRODUCTION

In Thailand, the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Service B.E.2553 (2010) [1] which has become effective since 20 December 2010 prescribed that there shall be the National Broadcasting and Telecommunications Commission (NBTC) having powers and duties to assign the frequencies and to regulate the broadcasting and telecommunications security and other public interests as well as free and fair competition. The NBTC has established a policy on spectrum management and use of spectrum which are national communications resources, considering the utmost public benefits at national and local levels in education, culture, State security and other public interests including fair and free competition, as well as the procedures that will ensure thorough and appropriate distribution of benefits to various services and in line with State policy for the development of digital economy. The NBTC also considers that the mobile telecommunications service is a key factor of industrial, economic and social development which will elevate Thailand’s telecommunication development in line with the global evolution and will promote the public right to communicate and the advancement in receiving information, as well as in compliance with the fundamental telecommunications business policy of the country.

Additionally, the NBTC has driven the development of rules for mediation in the telecommunication business to alternative dispute resolution for consumers which is considered as pioneer of the dispute resolution systems in Thailand’s Telecommunication sector and issued the NBTC’s Notification on Maximum Rate of Telecommunications Service for Mobile Phone Services on Voice B.E. 2548 (2005) [2] which led to limit local mobile phone service providers to charge not more than 0.99 baht per minute fee, effective from January B.E. 2556 (2013) onwards.

However, the NBTC has adopted the Universal Basic Telecommunications Service and Social Service Plan B.E. 2555-2559 (2012-2016) [3] to serve as a guide for operation in the period of 5 years. This plan will lead to the expansion of high speed internet services and more than 80 percent of Thai people expected to have access to high-speed telecommunication networks.

The NBTC has also issued the NBTC’s Notification on Universal Basic Telecommunications Services and Social Service B.E. 2555-2559 (2012-2016) to guide to set the areas, target group and time frame of the operation, including the appointment of the Executive Committee of Research and Development Fund for Broadcasting and Telecommunications Business for Public who will set the policy framework, guidelines on the management of the Fund to be more efficient in accordance to the law. This showed that the NBTC had focused on consumer protection from being exploited and fostering free and fair competition among operators continuously.

In granting the spectrum license for telecommunications service, the NBTC strives to achieve the regulatory balance composing of three equally important principles in order to bring about the greatest benefits to the people and the country. These principles are:

1) The most efficiency of spectrum assignment. Since the spectrum is a national communications resource, the assignment process must ensure that the spectrum will be assigned to the person who can best utilize it, whereby the most efficient spectrum assignment method is the auction. Furthermore, the spectrum assignment must also be able to catch up with the usage demand from both operators and end users;
2) Free and fair competition. The regulation must help creating the regulatory environment that is conducive for market entry and have appropriate competition measures in place to prevent the abuse of market power. The regulation must also be proportionate and not place undue burden to the licensee;

3) State benefits that reflect the value of the resource. The State benefits come in the form of revenues from the spectrum auction and business operation taxes, as well as the socio-economic benefits and the development brought about by the spectrum utilization.

To achieve the objective of this study, the paper organizes as follows. Section II provides a status of Thai telecommunications market. Important regulatory issues are presented in section III. In section III, free and fair competition/social benefits and consumer protection issues are focused in details. The conclusion is in the last section.

2. THAI TELECOMMUNICATIONS MARKET

ICT and telecommunications are generally seen as facilitators of growth, especially in terms of labor and multifactor productivity, increased competitiveness and cost reduction across the whole economy. The development of ICT services has also had a dramatic effect on consumer behavior in Thailand, as well as delivering important social benefits. Table 1 below provides a summary of key economic data for Thailand for 2012 to 2014 [4].

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP current prices (THB billion)</td>
<td>12,355</td>
<td>12,910</td>
<td>13,149</td>
</tr>
<tr>
<td>GDP per capita (THB)</td>
<td>-</td>
<td>193,395</td>
<td>196,240</td>
</tr>
<tr>
<td>GDP growth (%)</td>
<td>6.5</td>
<td>2.8</td>
<td>0.9</td>
</tr>
<tr>
<td>Headline inflation (%)</td>
<td>3.02</td>
<td>2.18</td>
<td>1.89</td>
</tr>
<tr>
<td>Core inflation (%)</td>
<td>2.09</td>
<td>1.00</td>
<td>1.59</td>
</tr>
<tr>
<td>Unemployment rate (%)</td>
<td>0.7</td>
<td>0.7</td>
<td>0.8</td>
</tr>
<tr>
<td>Total Government debt (% of GDP)</td>
<td>44.5</td>
<td>43.9</td>
<td>45.8</td>
</tr>
<tr>
<td>Current account balance (USD billion)</td>
<td>-1.5</td>
<td>-3.9</td>
<td>13.4</td>
</tr>
<tr>
<td>Budget cash balance (% of GDP)</td>
<td>-317.7</td>
<td>-239.0</td>
<td>-384.3</td>
</tr>
<tr>
<td>Treasury cash balance (% of GDP)</td>
<td>561.3</td>
<td>605.1</td>
<td>495.7</td>
</tr>
<tr>
<td>Exports (USD billion)</td>
<td>225.9</td>
<td>225.4</td>
<td>224.8</td>
</tr>
<tr>
<td>Imports (USD billion)</td>
<td>219.9</td>
<td>218.7</td>
<td>200.2</td>
</tr>
<tr>
<td>Net international reserves (USD billion)</td>
<td>181.6</td>
<td>167.2</td>
<td>157.1</td>
</tr>
</tbody>
</table>

Source: Bank of Thailand, Ministry of Finance, National Economic and Social Development Board

Thailand is similarly ranked according to the ITU’s ICT price basket when compared to other Asian and South-East Asian countries (see Table 2) [5]. This is indicative of the success of Thailand’s reform process over many years, including the facilitation of market entrants, the establishment of an effective spectrum management framework and a commitment to open and transparent processes.
Table 2: ICT Price Baskets for Selected Asian Markets

<table>
<thead>
<tr>
<th>Country</th>
<th>Rank in 2013 (2012)</th>
<th>IPB</th>
<th>Fixed telephone sub-basket % of GNI</th>
<th>Mobile cellular sub-basket % of GNI</th>
<th>Fixed broadband sub-basket % of GNI</th>
<th>GNI (USD) 2013 or latest year available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>2 (4)</td>
<td>0.3</td>
<td>0.2</td>
<td>0.2</td>
<td>0.4</td>
<td>54,040</td>
</tr>
<tr>
<td>Australia</td>
<td>14 (25)</td>
<td>0.6</td>
<td>0.6</td>
<td>0.3</td>
<td>1</td>
<td>65,520</td>
</tr>
<tr>
<td>Brunei</td>
<td>36 (27)</td>
<td>1</td>
<td>0.5</td>
<td>0.7</td>
<td>1.9</td>
<td>33,002</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>39 (44)</td>
<td>1.1</td>
<td>1.1</td>
<td>0.4</td>
<td>1.6</td>
<td>3,170</td>
</tr>
<tr>
<td>Malaysia</td>
<td>57 (53)</td>
<td>1.4</td>
<td>1</td>
<td>0.8</td>
<td>2.4</td>
<td>10,400</td>
</tr>
<tr>
<td>New Zealand</td>
<td>49 (62)</td>
<td>1.3</td>
<td>1.3</td>
<td>0.5</td>
<td>2.1</td>
<td>35,875</td>
</tr>
<tr>
<td>Thailand</td>
<td>81 (90)</td>
<td>2.5</td>
<td>1.4</td>
<td>1.2</td>
<td>5</td>
<td>5,370</td>
</tr>
<tr>
<td>India</td>
<td>84 (92)</td>
<td>2.6</td>
<td>1.9</td>
<td>2.2</td>
<td>3.7</td>
<td>1,570</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>102 (101)</td>
<td>3.8</td>
<td>3.5</td>
<td>1.5</td>
<td>5.9</td>
<td>900</td>
</tr>
<tr>
<td>Indonesia</td>
<td>98 (103)</td>
<td>3.5</td>
<td>2.7</td>
<td>2.1</td>
<td>5.9</td>
<td>5,220</td>
</tr>
<tr>
<td>Vietnam</td>
<td>69 (112)</td>
<td>1.9</td>
<td>1.3</td>
<td>2.5</td>
<td>2</td>
<td>1,730</td>
</tr>
<tr>
<td>Philippines</td>
<td>117 (119)</td>
<td>6.1</td>
<td>6.1</td>
<td>3.7</td>
<td>8.6</td>
<td>3,270</td>
</tr>
<tr>
<td>Nepal</td>
<td>119 (123)</td>
<td>6.4</td>
<td>4.4</td>
<td>4.4</td>
<td>10.4</td>
<td>730</td>
</tr>
<tr>
<td>Cambodia</td>
<td>128 (130)</td>
<td>9.2</td>
<td>4.8</td>
<td>7.9</td>
<td>15</td>
<td>950</td>
</tr>
</tbody>
</table>

Source: Measuring the Information Society Report 2014; ITU

The mobile market as a whole has seen strong growth in revenue since 2011, although margins have generally fallen in line with a downturn in economic activity. Expectations for sector growth are generally positive, underpinned by an improvement in the Thai economy and lower regulatory costs associated with the 3G licensing regime and the broader regulatory environment. Earnings momentum is expected to continue as operators continue to migrate customers from the concession networks to their own licensed networks, which leads to significant cost savings.

However, competition is expected to remain strong due to factors such as latent demand in broadband services and recent cuts in termination rates. Furthermore, the expiries of concession contracts mean that operators will have to migrate customers to their new networks under the license system, so competition is expected to remain strong.

As of Q1/2015, according to NBTC’s data, the number of 3G subscriptions stands at approximate 85.6 million or about 91.7% of the total mobile subscriptions. Such numbers indicate that there is plenty of room for operators to grow the 3G/4G and beyond markets in the coming years [6]. Such growth requires planning and assigning the available spectrum holdings in the most efficient and future proof way possible.

The mobile market is led by three main players which together have a combined market share of 98.4% based on subscribers. As of Q1/2015, the AIS group, which consists of AIS, DPC and AWN, is the clear market leader with a market share of 45.0%, followed by DTAC group, which consists of DTAC and DTN, with a share of 30.5%, and True Mobile Group (True, Real Move and True Move H), with a share of
23.1%. CAT and TOT have market shares of 0.9% and 0.7% respectively. Figure 1 Market Shares of the Mobile Market (based on subscribers) [6].

![Figure 1: Market Shares of the Mobile Market (based on subscribers)](image)

**Source:** NBTC

Based on the above numbers, the Herfindahl-Hirschman Index (HHI) of the mobile market as of Q1/2015 is 3,483 (see Figure 2) [6].

![Figure 2: HHI of Mobile Market](image)

**Source:** NBTC

The Herfindahl-Hirschman Index (HHI) is a useful indication of the degree of market concentration and is commonly used in economic and market analysis as well as competition and anti-trust issues, e.g. to analyze the impact of a merger or acquisition. The statistic is calculated as the sum of squared market shares for each firm in the market. If market shares are expressed as a percentage, this provides an index range of between 0 and 10,000, with 10,000 being a monopoly with 100% market share [6].
3. IMPORTANT REGULATORY ISSUES
The NBTC highlights the public’s equal, pervasive and reasonably priced access to diverse telecommunications services through modernized networks on a fair competition basis and with efficient use of telecommunications resources as the core network to support the national development into an intellectual and creative society, with a view to narrowing the rural-urban disparities, continually enhancing the country’s competitiveness in terms of telecommunications infrastructure, as well as developing efficient consumer protection measures.

3.1 To Promote Free and Fair Competition
(1) Monitoring and ensuring fair business operations in all markets where a monopoly or a reduction or restriction of competition is prevalent, at both national and local levels; and preventing the major operators or the operators with significant market power from abusing their market powers or any single one or group of them from manipulating or distorting market mechanism which could relatively lead to inefficient competition, so as to ensure fair competition and people’s access to telecommunications services on a fair and reasonably-priced basis.

(2) Allowing the licensed operators to operate telecommunications services on a free and fair competition basis; encouraging the deployment of modern technologies based on technological neutrality; and coordinating with concerned authorities in the formulation of licensing rules, guidelines and conditions for satellite communication services, in order to promote competition and diversification of telecommunications and broadband services.

(3) In order to promote free and fair competition and to bring the quality and efficient service to the consumers, the NBTC has prescribed the Notification Regarding Infrastructure Sharing for Mobile Network B.E. 2556 (2013) [7] which requires the licensee (Type III and the mobile operators under concessions) to permit other licensees to share its own infrastructure for mobile network. The Infrastructure sharing includes tower and mast, base station area, transmission network between base station and base station controller. In sharing its own network, the licensees must treat other licensees on a fair, reasonable and non-discriminatory basis and the infrastructure sharing charge can be determined among licensees on a fair, reasonable and non-discriminatory basis. In addition, this Notification has also prescribed criteria and procedures for contract negotiation and dispute resolution where an agreement cannot be reached among the licensees.

(4) The NBTC has prescribed the Notification Regarding Mobile Virtual Networks Service B.E. 2556 (2013) to promote free and fair competition as well as to promote market entry for small entrant in order to escalate mobile service competition and provide service alternatives to customers [8]. The Notification requires the licensee (Type III mobile operators and mobile operators under concessions) who is a wholeseller to treat Mobile Network Operators (MVNOs) on a fair, reasonable and non-discriminatory basis and charge can be determined by the agreement between the wholeseller and MVNOs on a fair, reasonable, and non-discriminatory basis as well as must be reasonable comparing with the retail rate paid by the wholeseller’s customers. In addition, this Notification has also prescribed criteria and procedures for contract negotiation and dispute resolution where an agreement cannot be reached among the licensees.

(5) The NBTC implements two types of competition regulation – the ex-ante and ex-post regulation. Ex-post regulation is governed by the NTC Notification on
Measures to Prevent Monopolistic and Unfair Competition Practices in Telecommunications Business B.E. 2549 (2006), which aims to ensure free and fair competition among telecommunications service providers and to promote and support competition in and development of the telecommunications industry in an efficient and sustainable manner [9]. The Notification prohibits operators who have been deemed to have Significant Market Power (SMP) from carrying out certain anti-competitive practices such as service subsidization and cross service subsidization for the service or the business under competition in the market, acquisition of business of the same service type; and any conduct deemed as abuse of market power in the manner of monopoly, or reduction or restriction of competition. The Notification also institutes a process of inquiry dealing with the licensee who acts or behaves in such manner, as a standard of practice for the NBTC. For the ex-ante regulation, in 2014 the NBTC issued two key notifications. The first is the NBTC Notification on Market Definition and Relevant Markets in Telecommunications B.E. 2557 (2014), and the second is the NBTC Notification on Criteria and Procedures for Identifying Operators with Significant Market Power in Telecommunications Business B.E. 2557 (2014) [10]. According to these Notifications, the Office of the NBTC must prepare a report on analysis of the level of competition in the relevant markets and propose a list of operators with SMP in each relevant market for the NBTC’s consideration. This will be used as a basis for outlining measures for the supervision of anti-competitive behaviors in telecommunications market in alignment with the above-mentioned Notification, and also for formulating a guideline to prevent the operators with SMP from abusing their market power to restrict or hinder free competition in the market.

The NBTC additionally issued the Notification Regarding Criteria and Procedure for Accounting Separation in Telecommunications Business as a tool to support the implementation of measures for the prevention of monopoly or unfair competition in telecommunications business. Under the Notification, the operators with SMP are required to undertake accounting separation for the NBTC’s analysis. This aims to:

- Identify the anti-competitive behaviors such as predatory pricing, margin squeeze, etc.
- Identify the discriminatory behaviors such as cross subsidization, a case in which the operators with SMP set an overly high price in a market where they have powers and use the received profit for cross subsidization in another market where they are inferior to their rivals; and
- Be a basis for determining the cost-based wholesaling and retailing rates without excessive return/profit

3.2 Social Benefits and Consumer Protection

(1) Implementing measures to promote operators to make available the universal basic telecommunications services in the target areas; encouraging the provision of basic telecommunications services to the underprivileged in accordance with the plan on universal basic telecommunications services and social services to ensure the access to quality services at a reasonable price; fostering the provision of telecommunications services for social development and quality of life improvement; and promoting the capacity enhancement of telecommunications device and service industry for the disabled and the underprivileged in the society. Subsequently, the NBTC has issued the NBTC’s Notification Regarding the Criteria and Procedure for Revenue Collection to Fund the Provision of Universal Basic Telecommunications
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Services and Social Services which prescribes the criteria and procedure for revenue collection from telecommunications service licensees for contribution to the Broadcasting and Telecommunications Research and Development Fund for the Public Interest. This is in order to secure funding for the implementation of the said Plan on Universal Basic Telecommunications Services and Social Services. The basic telecommunications services selected to be offered are telephone service and high speed internet service with no limitation of technology employed and the applications which include terminal equipment, software or other necessary peripherals. The goal is also include promotion and improvement of knowledge and skill which will benefit to the public for the appropriated and efficient access to the basic telecommunications services. Moreover, the licensees with their own network are required to annually contribute to the Fund at the amount of 3.75% per year of their net income from their telecommunications services as defined in the said notification.

(2) Enhancing the awareness among consumers of their basic rights in telecommunications service, benefits from consuming various types of telecommunications services, needs to keep abreast of technological advancement to ensure their efficient use of services, understanding of their right and freedom in consuming telecommunications services, and efficient access to complaint channels; and devising measures to step up roles of the operators in providing services in an ethical manner and with responsibility for consumers and the society.

(3) The NBTC regulates service fees in accordance with the “NBTC’s Notification Regarding Maximum Rate of Service Tariff and Advance Collection of Service Tariff in Telecommunications Business B.E. 2549 (2006) [11].” The said notification aims at protecting service users and promoting efficient competition in Thai telecommunications market on a free and fair basis. The Notification specifies the methods for determining maximum rate of service tariff that is fair to operators and users, as well as specifies the duty of operators to report the service tariff which enables the NBTC to monitor whether the service tariff is in appropriate level or conducive to any anti-competitive or discriminatory practices and affect the service users or not. In addition, the Notification also specifies criteria and procedures to obtain the NBTC’s permission for advance collection of service tariff. Following the above-mentioned Notification, in 2012 the NBTC issued the Notification Regarding Maximum Rate of Service Tariff for Domestic Mobile Voice Service B.E. 2555 (2012)” [12] which determines the maximum rate of mobile voice service tariff at 99 Satang per minute, applicable solely to the operators with significant market power (SMP) according to the NBTC’s order in 2010. Later on, in granting the 2.1 GHz spectrum licenses in December 2012, one of the license conditions mandates that the tariffs of voice and non-voice services must be reduced in average by at least 15% of the average market price at the day the licenses are granted. Such condition is however presumed as a specific measure for regulating service tariff for service on 3G network. Currently, the NBTC is reviewing overall mobile service tariff regulation to be up to date and suitable with the market environment. In doing so, the NTC has approved in principle for the determination of the maximum rate of service tariff by using Price Cap methodology which is expected to become effective within year 2015.

(4) The Licensee must prepare its Corporate Social Responsibility (CSR) plan covering the electronic waste management, users’ health, risk management plan for rapidly changing technologies, and services for disabled which include at least special tariff and special invoice or contract with large font or in Braille at no additional
charge. In this regard, the Licensee must submit such CSR plan to the NTC prior to launching its service and must implement according to its plan within 1 year as from the date of launching its service.

(5) The Licensee must prepare a consumer protection plan covering measures to handle complaints free of charge, measures to handle unsatisfactory service, procedure to develop understanding among the public regarding the establishment of radio communications stations, as well as building the consumer recognition regarding rights to use telecommunications service which include publication of consumer rights in consuming mobile phone service as specified by the Office of the NBTC. In this regard, the Licensee must submit the consumer protection plan to the NTC prior to launching its service and must implement according to its plan immediately after the launch of its service.

(6) The Licensee must heedfully prevent any person from using its network for illegitimate activities or disseminating any information that may undermine peace or morality of the people, and must support the state and private agencies in any act intending to protect rights of consumers for the safety of society and the State security.

4. CONCLUSION
In Thailand, the telecommunications regulator (NBTC) has established a policy on telecommunications licensing and use of spectrum which are national communications resources, considering the utmost public benefits at national and local levels in education, culture, State security and other public interests including fair and free competition, as well as the procedures that will ensure thorough and appropriate distribution of benefits to various services and in line with State policy for the development of digital economy. Therefore, in granting the spectrum license for telecommunications service, the telecommunications regulator strives to achieve the regulatory balance composing of three equally important principles in order to bring about the greatest benefits to the people and the country which are the most efficiency of spectrum assignment, free and fair competition, and social benefits. In summary, the NBTC has achieved various performances which are crucial to its effectiveness and transparency, creating fair and free competition among the operators and providing public the variety of services via advanced telecommunications network at reasonable prices thoroughly and equally on the basis of fair competition with worthy resource utilization as well as providing a thorough basic telecommunications services and social service and imposing the measures for effective consumers protection.

REFERENCES


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