

rights, and the third party is then the one to license the buying entity. The complications that this kind of arrangement entails are a major frustration for multinational companies when approaching the Taiwan market.

If the government's concern is to prevent sensitive software developed for Taiwan (such as in military applications) from being used for contracts with unfriendly governments, that concern could be addressed without applying a broad transfer requirement applicable to all procurement contracts.

In the revised "model contract for public procurement for property" published by the Public Construction Commission (PCC) on June 29, 2005, Article 15 stipulates that procurement agencies can choose to demand unlimited IPR ownership or to negotiate with suppliers on the terms and conditions of using IP rights. Although the PCC has encouraged the procurement agencies to consider refraining from asking for unnecessary IP rights, most government entities still ask for IPR ownership in many IT procurement cases. Usually the foreign IT companies will then either decline to bid, depriving Taiwan of the best services and solutions, or they will go through a time-consuming and frustrating process of negotiating with the government buying agencies over IP ownership questions.

This issue has been raised every year by the Committee since 2006. The Committee once again urges the government to set a clearer policy allowing vendors to retain ownership of IP rights and to take steps to ensure that such policy is clearly conveyed to all procuring entities. The Committee also suggests that the PCC emphasize this issue in its annual training sessions for government procurement officers.

Further, the government needs to adopt appropriate terms and conditions for such procurement contracts. The recommended content would be as follows:

"We, as IT service and product providers, will specify materials or products to be delivered to you. We or third parties are the author of said materials or the inventor of said products and technology, and have the intellectual property rights in the materials or products created during the service performance period or otherwise (such as those that preexist the service). We will deliver one copy of the specified materials to you. We grant you a nonexclusive license to use copies of these materials or products, within your Agency only, for 'x' number of years. You agree to reproduce the copyright notice and any other legend of ownership of the intellectual property rights on any copies made under the license granted in this section. Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either of us, or jointly by both of us, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either of us."

Issue 4: Continue WTO initiatives to uphold Information Technology Agreement commitments.

The Information Technology Agreement (ITA) is a World

Trade Organization (WTO) agreement. Countries joining the ITA commit to eliminate customs duties on the IT products covered by the Agreement (such as personal computers, computer printers, computer monitors, semiconductors, and telecommunications apparatus). The ITA currently has 70 participants, representing an estimated 97% of global trade in the high-tech sector. This landmark agreement has spurred innovation, productivity, trade, and investment among its participants. The ITA has helped Taiwan become one of the leading high-tech centers for global manufacturing.

Since the Agreement entered into force in 1997, more sophisticated or technologically advanced versions of ITA products have entered the marketplace. Unfortunately, the Agreement now faces the risk of being undermined by recent actions by the European Commission (EC). The EC is pushing technologically advanced or more sophisticated versions of ITA products outside the Agreement, subjecting them to duty rates as high as 14%. In the case of some of these products, the difference from existing models involves secondary functions or features, while the essential characteristics remain the same. Despite bilateral and multilateral efforts to engage the EC on this issue and requests that the ITA commitment be honored in letter and spirit, the EC has not changed its practice.

This issue was first raised by the Committee in 2008. On June 12, 2008, Taiwan's Permanent Mission to the WTO formally joined the United States in seeking WTO consultations with EC on this issue. The Committee applauds and appreciates the Taiwan government's decisiveness and prompt action, and encourages Taiwan to continue its efforts on ITA to help ensure that all current and future ITA member countries respect their commitments and eliminate customs duties on covered products.

TELECOMMUNICATIONS & MEDIA

Over the past year, the telecom and cable market in Taiwan experienced flat growth, partially due to the worldwide financial crisis, but mainly because of regulatory uncertainty causing operators to hold off on further development plans. Due to this stagnation, Taiwan missed the opportunity to catch up with other countries in the region that have actively promoted digitalization and enjoyed a steady influx of foreign investment into this industry, contributing substantially to their overall economic growth.

The Committee emphatically urges the National Communications Commission (NCC) to set a clear policy agenda for the coming year and then make it known to the public. We also urge the NCC to engage actively with the industry so as to fully understand the business challenges being confronted; only then can coordinated action can be taken to revitalize the sector. In line with the Ma administration's focus on stimulating the economy and improving the business climate, we encourage the NCC to

review and improve the regulatory environment without further delay. The Committee offers the points below as suggestions on how to ensure that Taiwan becomes a vigorous player in the convergent international telecom and media market.

Issue 1: Liberalize the telecom and media sectors.

The commercial success of Web 2.0 applications based on user-generated content and the considerable investment spurred by that phenomenon have underscored the speed with which the telecommunications and media sectors are integrating to form the next generation of convergent services. The growth of Web 2.0 around the world and the productivity gains from these innovative services have been made possible by regulatory regimes that provide a clear framework for encouraging liberalization and utilizing market competition to foster consumer choice.

Taiwan's early steps toward liberalization were frustrated by the lack of a clearly defined framework and by infighting among government departments that retarded the growth of next-generation services. The Committee strongly encourages the Taiwan government to champion liberalization as a means to broaden consumer choice and service innovation. Such liberalization must be guided by an atmosphere in which all market participants can debate the issues in an open and timely manner. We believe that Taiwan's current antiquated regulatory approach makes Taiwan uncompetitive and causes it to fall further behind its already digitized neighbors.

Specifically, we ask the NCC to allow market forces to dictate the growth or substitution of services as traditional telecommunication and media services inevitably converge. In order to drive innovation in this new world of convergence, a level and fair playing field must be established among all market participants regardless of whether their origins were in telecommunications or media.

The Committee strongly urges the NCC to allow the pricing of telecom and media services to be market-defined rather than set through government-determined price ceilings. These price ceilings continue to create negative economic externalities that prevent the fair market valuation of services. Taiwan's consumers are wise enough to make buying decisions on their own, and ultimately it should be consumer choice that the regulator seeks to foster.

In addition, we strongly encourage the NCC to renew its commitment to developing deep-seated technical-engineering and business-management expertise within the Commission on a wide range of telecom and media technologies, as many of its regional neighbors have already done. The presence of such technological and business expertise within the government is essential for developing and executing national policy that is practical and delivers lasting value and greater choice to the consumer.

Issue 2: Enhance the NCC's efficacy.

The NCC's ability to establish its authority and efficacy

depends on whether the NCC commissioners engage both the public and private sectors in a way that upholds the body's legitimacy and confirms its impartiality. The NCC must first establish a regulatory regime based on implementing well-reasoned business and technology precedents, facilitating fair competition among all players, and eliminating any barriers to competition with respect to distribution or content creation. In addition, the NCC commissioners must have the necessary practical expertise and vision to help transform Taiwan's telecom and media industry to new levels of international competitiveness. The NCC should foster growth for both existing and next-generation telecom services, proactively fostering new technology and avoiding unnecessary regulatory constraints that could in turn hinder new economic expansion spurred by opportunities in the telecom and media sector.

The Committee urges the NCC to facilitate transparency through a policy formulation process that encourages continuous and open dialogue between government and private business. We strongly encourage the NCC to publically articulate its priority issues as concrete action plans, regardless of whether they are achievable in the current political climate. Furthermore, conducting public hearings would ensure that while the NCC continues to perfect its long-term mode of operations, important and urgent issues can still be addressed. Such hearings would also enable the various interested parties to begin to understand the NCC's position, efficiently present their own views, and enter into dialogue with the NCC.

The current process does not provide a detailed enough policy agenda to facilitate concrete discussion and exchanges of views with industry players, nor does it provide enough time for adequate dialogue over key policy proposals. The Committee continues to receive complaints from member companies that they are given insufficient time to understand and respond to NCC rulings or proposed policies before they are finalized. The Committee again strongly encourages the NCC to foster an environment of open dialogue between industry and government.

We further urge the NCC to make clear the relevant rules and regulations before any review process has begun, while refraining from creating any new rules, regulations, and standards during the deliberation of the case. A process of making the rules as you go along not only deprives the affected party of the opportunity to prepare an effective response, but more broadly creates a sense of regulatory uncertainty that causes foreign investment to regard the market as unattractive.

The Committee suggests that the NCC begin addressing the transparency issue by making its official website more user-friendly, with increased English-language content, to facilitate greater accessibility. In particular, the website could be used to provide regular updates on NCC activities and deliberations as well as permitting online tracking of the status of license applications and policy inquiries.

Regulators around the world, including the United States, the United Kingdom, and China, have already streamlined communications and operational services through their official websites.

Issue 3: Establish robust public discourse on the “3-in-1” Converged Telecommunications & Media Law.

The draft “3-in-1” law (which would create a common regulatory framework for telecom, broadcast, and cable companies) continues to be held up. The Committee strongly recommends that the NCC take revision of the 3-in-1 law as its top priority, since further delay would cause Taiwan to lag even further behind in creating a convergent regulatory environment, making it less attractive to international investment.

The Committee strongly encourages the Taiwan government to rely on market forces to promote the growth of convergent services. We call on the NCC to hold public hearings on this subject and to uphold the following principles:

- *Encourage fair competition and the promotion of convergent services among telecom operators, cable operators, and broadcasters to provide consumers with greater choice.* In the convergent world, the NCC must ensure a level playing field, from media acquisition to the distribution of content in the world of triple-play services. Using new technologies, the incumbent telecommunication operator already offers limited digital media services on a restricted nationwide basis. At the same time, geographical restrictions continue to be placed on where cable operators may do business. Access to the right-of-way for upgrading infrastructure networks also needs to be assured to allow these companies to effectively compete with all market participants. Competition in the telecoms and media markets would be greatly facilitated if market restrictions on all parties are lifted in a manner to drive innovation so as all parties can deliver a wide range of bundled triple-play services to the consumer.
- *Ensure equal access to carriage.* The NCC should promote policies to assure that content is carried equally and fairly across all distribution platforms, as well as to attract foreign investment to help return Taiwan’s domestic content production and distribution back to its former glory. This development would foster further investment in Taiwan’s lagging advertising market and domestic content-production capabilities.
- *Implement tiering to facilitate consumer choice.* In Taiwan, cable customers must all take a basic package with a set cap on the monthly fee. In more liberalized regimes, tiering of content enables operators to charge more for expanded service, encouraging further investment in digitalization technology and domestic content development. Consumers in Taiwan can already enjoy HDTV service from abroad, with more than 1,000 channels available via a variety of distribution

methods. The NCC should cease trying to regulate the cable industry as a utility and instead allow market forces to bring about the offering of a variety of service choices satisfying consumers’ differing needs. Now that convergence of the telecom and media industries has occurred, the NCC must allow these businesses to innovate and evolve.

- *Facilitate in-bound investment.* The NCC should avoid adopting a restrictive regulatory approach toward foreign equity ownership in the telecommunication and broadcasting industries. Such a mentality of cultural protectionism will discourage the needed inflow of capital, management skills, technology know-how, and new international content that foreign investment can bring.
- Allow operators to adopt different technologies in offering higher-speed broadband services. The NCC needs to establish rules that provide fair competitive grounds and proper incentives for operators to invest in new technologies. This would enable: 1) cable operators to continue upgrading their networks and offering convergent services, 2) fixed-line operators to continue investing in Fiber-to-the-Premises, 3) fixed-line new entrants and/or Taipower to explore the potential of offering ICT services built upon power-line transmission, and 4) existing operators or new entrants to offer wireless broadband services such as WiFi, WiMAX, and/or LTE services.

Another area of concern is the Lawful Interception (LI) requirement for next-generation telecom services. New service providers should not have a different LI certification standard from existing operations providing the same service. The Committee recognizes the importance of LI capability to the law-enforcement and national security agencies. Acting in the best interest of the service providers, the NCC should coordinate with the entities in charge of the new LI requirements – the Ministry of Justice Investigation Bureau (MJIB) and National Police Agency (NPA) – to establish a single LI requirement that is clear and up-to-date.

Issue 4: Implement policies in technology-neutral fashion.

Coordination among the NCC, the various executive agencies of the government, and the legislative branch will be needed to create a sound environment for the development of convergent services through efficient spectrum allocation and by encouraging the introduction of new technologies. This effort should include appropriate incentives to foster not just the introduction of new distribution technologies but also content and services. Different technology standards should be given fair opportunities to be commercialized in the interest of delivering a wider range of content to consumers. The lines between the telecom and cable business are disappearing, giving Taiwan an unparalleled opportunity to drive innovation and show leadership in regulatory reform in the region.

The NCC also needs to move further to set clear rules, spectrum-allocation measures, and licensing requirements

to facilitate the development of wireless broadband services and TV broadcasting over mobile handsets. Spectrum is a precious resource that must be carefully managed to ensure availability for technologies yet to be commercialized. We urge the NCC to accomplish its goal of making these convergent services a priority and to develop a market-driven, pro-competition regulatory framework that will encourage innovation and attract stakeholder investments in the market. For example, any party interested in deploying a viable mobile TV technology should be eligible to apply for the license. Furthermore, NCC spectrum auctions should be technology neutral, letting the market dictate which technology will be used by the licensees.

Lastly, technology policy should be consistent, from licensing through operational requirements. In spectrum allocation, for example, the Committee supports a licensing approach that does not place overly restrictive requirements on stakeholders in terms of service provision, licensee eligibility, ownership, and/or partnerships. Such an approach would ensure that significant domestic and foreign investments designed to bring consumers more choice in services can continue to mature without being stymied by conflicting regulatory requirements or vulnerability to political influences.

Issue 5: Enhance spectrum management and adopt international best practices.

Growth in this industry is achieved by understanding consumer needs, managing scarce spectrum resources, and leveraging innovative digital technologies that maximize consumer reach and ensure consumer choice. Taiwan has continued to lag behind in implementing technologies that facilitate non-linear viewing and competencies in delivering HD content with high production values. The NCC has too long been distracted from developing the core engineering competencies in the next-generation broadband communications technologies that will drive the convergence of the telecom and media sectors.

Along the lines of our recommendation in Issue 1, the Committee strongly encourages the NCC to begin investing in its spectrum and engineering departments on a wide range of technologies and management techniques used in mature markets. The Committee also urges these departments to actively engage with foreign and domestic operators on technical issues that challenge the industry. These engineering resources within the NCC are the key to ensuring that proposed regulations are consistent with the practical strengths and weaknesses of different technologies. Furthermore, such an effort will help ensure that the NCC focuses not merely on the latest political rhetoric – and not even only on current consumer demand – but on delivering technical expertise and value that enables Taiwan to leapfrog other markets in terms of expertise, consistent with Taiwan's overall goal of becoming a knowledge-based economy.

Issue 6: Facilitate the placement of wireless base stations.

Taiwan telecom and media operators have a commitment to their customers to deliver quality service and complete coverage. As stipulated in their licenses from the NCC, they are also required to deliver broad coverage. But a resurgence of public protests over the location of wireless base stations in residential neighborhoods has turned this matter into a social issue and raised concerns about the prospective impact on existing and new investment. Impartial scientific studies conducted in various parts of the world have consistently shown that electromagnetic fields generated from wireless base stations and mobile phone handsets have no hazardous effects.

The NCC has yet to take the responsibility of working with relevant government agencies to educate consumers based on objective and credible scientific reports and evidence. The Committee suggests that the NCC, together with other relevant government agencies, quickly address this issue by correcting misconceptions and preventing further irrational public reaction that could hinder the development of mobile telephony in Taiwan.

TRANSPORTATION

The Transportation Committee believes that a well-designed transportation system with a global perspective will be a key asset for the continued growth of Taiwan's economy. This Committee includes four arms of the transportation service fields: Express Cargo, Automobile, Aviation, and Shipping. While each of these industry sectors has its own priority issues, the goal of these recommendations is the same – to help cultivate a modern and advantageous transportation and logistics platform that can contribute to Taiwan's overall competitiveness.

The multinational companies in these industries have witnessed rapid improvement in other neighboring countries. If Taiwan is not to be left behind, the government needs to quickly recognize areas of potential weakness, devise feasible strategies, and ensure swift implementation of solutions.

The Transportation Committee looks forward to cooperating closely with the Taiwan government and domestic non-governmental organizations to develop solutions to specific transportation and traffic issues, so as to help make Taiwan more attractive and competitive as a business environment.

EXPRESS CARGO

Issue 1: Remove the weight limitation on express cargo clearance.

Taiwan is one of the few countries in Asia that still applies weight limitations on express consignments. Taiwan Customs' Express Handling Regulations impose a maximum shipment weight of 70 kilograms per item at the Express Handling Units in cargo terminals. The GEA