The Regulation of Pay Television in East Asia: A Comparative Study

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Abstract
This paper examines the way in which new media technologies have compelled policy-makers to adapt regulatory frameworks in order to accommodate technological change and to restructure television broadcasting in selected countries in East Asia, namely Hong Kong SAR, Japan and South Korea. It is primarily concerned with how the state and the players – old and new – in these countries have responded to emerging new media technologies (cable, satellite and Internet television). Based on a comparison of the regulatory history and the structural changes noted in the recent development of pay television in these countries, this paper argues that although the growing array of new technologies fragments and diversifies the industry, there is a significant variation in the degree to which the regulatory framework incorporates all types of pay television. It also argues that the de-regulatory frameworks in Japan and South Korea have been less effective than in Hong Kong SAR in incorporating all types of pay television.

Introduction

Television broadcasting in many countries has traditionally been protected on the assumption of spectrum scarcity. Thus, regulatory frameworks have been based on a set of old rules that have safeguarded (terrestrial) television broadcasting as a distinct industry, and governments have created barriers to entry to protect these privileged monopolies (Pepper 2004). This traditional justification, however, has been destroyed with the development of new transmission technologies. The role of governments in the process of accommodating new media technology has become more complicated as the number of delivery systems has increased and as alternative sources of finance become available.

This paper examines the way in which new media technologies have compelled policy-makers to adapt regulatory frameworks in order to accommodate technological change and restructure television broadcasting in selected countries in East Asia, namely Hong Kong SAR, Japan and South Korea (Korea hereafter). Indeed, incumbent (terrestrial) television broadcasters in the three countries have,

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to varying degrees, enjoyed a monopoly for several decades. In Hong Kong SAR, two commercial broadcasters – TVB (Television Broadcast Limited) and ATV (Asia Television Limited) – have constituted the television industry since the 1970s. In Japan, the dual structure of public broadcaster – i.e., NHK (Nippon Hoso Kyokai: Japan Broadcasting Corporation) – and five Tokyo-based commercial broadcasters (NTV: Nippon Television Network, TBS: Tokyo Broadcasting System, ATV: Asahi National Broadcasting, Fuji: Fuji Television Network, Tokyo Broadcasting) has remained unchanged for nearly four decades. Unlike Hong Kong and Japan, Korea has seen dramatic changes in its television structure. However, even through these changes, two broadcasters (KBS: Korean Broadcasting System and MBC: Munhwa Broadcasting Corporation) dominated the industry until 1991 when a new commercial broadcaster (SBS: Seoul Broadcasting System) started.

All three countries have, to varying degrees, been at the forefront of the development of new media technologies. Korea has been one of the leading countries in high-speed broadband Internet, while Hong Kong has been one of the pioneering countries in Internet television – a new form of television requiring a high speed connection. Japan started the world's first Direct-to-Home satellite service, and currently has the most sophisticated and diverse satellite television services. Therefore, the comparison of the regulation of pay television in these countries should provide an insight into the way in which new media technologies have impacted not only on the regulation and structure of television broadcasting, but also on the shaping of national media policies.

Methodology

The regulation of pay television in the three countries is analysed by examining the context in which new transmission technologies have emerged and impacted upon the structure of television broadcasting in each country. This involves comparisons of the features shared by all countries, and the factors which have motivated the state in accommodating new technologies in the 1990s and 2000s. Differences are discussed with reference to the specific conditions which gave rise to the different roles of the state in shaping a new regulatory framework in each country.

This paper is primarily concerned with how the state and the players – old and new – in these countries have responded to emerging media technologies (cable, satellite and Internet television). It first provides an overall contextual background that explains the way in which new broadcast media emerged, and the way in which the state in each country responded to these emerging media. This will be followed by an examination of the way in which the current pay television industry has been shaped. The level of participation of existing terrestrial broadcasters and

telecommunication companies in the pay television and the broadcasting business, respectively, will be assessed.

Hong Kong became a Special Administrative Region (SAR) of the People's Republic of China (PRC) on July 1, 1997. The Basic Law – the constitutional document of the Hong Kong SAR – sets out the basic policies of the PRC regarding Hong Kong and the way in which the HKSAR is to be administered for 50 years beyond 1997 (HKSAR Government 2001, 7). Strictly speaking, the case of Hong Kong is different from the other two discussed in this paper. Hong Kong is not a state but a special region controlled by the PRC after July 1997. However, under the Basic Law, the HKSAR enjoys a high degree of autonomy except in defence and foreign affairs, and exercises executive, legislative and independent judicial power, including that of final adjudication (HKSAR Government 2001, 7). In line with this, Hong Kong has maintained competence over broadcasting matters since 1997.

The State's Response to Emerging New Technology

The major regulatory issue raised by the new means of television service delivery in all three countries has been how to incorporate them into the existing structure under which free-to-air television broadcasters had been carefully protected by the state administration, and their oligopolistic rents justified on spectrum scarcity grounds. Regulatory concerns soon surfaced when the state in each country tried to incorporate new media into the existing regulatory framework that was designed for terrestrial television. In the process, the redefinition of regulations was made necessary by a combination of converging factors: the emergence of new technologies and the need for control and coordination; the growing perceptions of the power of television broadcasting in influencing the economic, cultural, and political context; and the potential of television broadcasting in promoting and/or mobilising local industries. While these factors still remain largely constant in all three countries, the new technologies have not significantly altered the established structures of television broadcasting and the underlying regulatory frameworks in the 1990s.

Prior to looking at the regulatory changes made to incorporate new media, it is worth examining how the state in each country initially responded to the new media. The Japanese state has been responsible for, rather than responsive to, the new media, as seen in its involvement in the development of satellite broadcasting with NHK since the mid 1970s, and its initiatives in the testing of urban-type cable television in the 1980s. The state's stance of favouring NHK in satellite television (NHK launched its local and international satellite television services in 1989 and 1994, respectively) created tensions with the commercial television broadcasters. Unlike Japan, the state in Korea has been responsive to, rather than responsible

for, technological development. The introduction of cable television in Korea in 1995, for example, was an immediate response to the overspill of satellite broadcasting from Japan (Kwak 2002). Being aware that the Japanese programmes would be a potential threat to national culture and domestic industry, the Korean government believed the introduction of diverse cable channels would weaken the viewers' desire to turn to Japanese programmes. Detailed comparison of state approaches to new media is difficult. However, it is clear that in all three countries deregulation has been prompted by the growing interaction of national policies, which have become embodied in international as well as domestic forces. This is also reflected in broadcasting policies in each country which have emphasised the growth of all forms of old (free-to-air) and new (cable and satellite) television.

The difference in state perception of new media in the three countries has also been reflected in different responses to the new media. Although no particular pattern of state control over new broadcast media has been observed, comparison of national priorities in the three countries shows that each nation has given a somewhat different priority in reforming its television infrastructure. This has been clearly visible in Hong Kong, where the role of the state has been more to balance existing and new broadcasters rather than to protect particular interests. The underlying philosophy informing the Hong Kong government's regulation of television broadcasting has been one of 'positive non-intervention' which values 'diversity' and 'fair and equal regulation' (RCB 1995). This was evidenced in the fact that while the existing free-to-air television broadcasters, TVB and ATV, were allowed to engage in overseas satellite broadcasting, an exclusive monopoly licence was provided to Wharf Cable (renamed as Hong Kong Cable Television Ltd. in 1998, and then i-Cable in 2002), the first pay television in Hong Kong. The 1993 licensing conditions of the cable television provider guaranteed Wharf's monopoly for three years (Lovelock and Goddard 1999). When Wharf's exclusive licence expired in 1996, however, the Hong Kong government extended Wharf's monopoly of pay television for another two years, until 1998. Furthermore, Wharf was allowed to air commercial advertisements on its channels from mid-1997. This was done in order to protect the existing monopoly of pay television, as it was feared that liberalisation would further increase the losses of Wharf Cable, which then attracted fewer than half the subscribers needed to break even (Stein and Smith 1996). The Hong Kong government's attempt to balance the interests of existing broadcasters was also noted in 1998 when it relaxed the restrictions imposed upon satellite television broadcasting, such as foreign ownership and residency requirements (ITBB 1998).

In Japan and Korea, on the other hand, more emphasis has been placed on the promotion of new channels – satellite television in Japan and cable television in Korea. This has been done mainly by limiting the participation of terrestrial television broadcasters in the new media. In Korea, terrestrial broadcasters'

participation in cable television (whether in station operation, program production, or network transmission) has been prohibited, as has their direct participation in satellite television. In Japan, unlike NHK, commercial terrestrial television broadcasters were not allowed to have their own satellite television services for the local market. Therefore they had reluctantly to make a consortium with Japan Satellite Broadcasting (JSB, *WOWOW* channel), a commercial satellite television operator with more than 200 subsidiaries (White 2005; JSB 1995). An observation which can be made from the initial period of pay television is that in Korea and Japan the state's interest in the new media has not coincided with that of television broadcasters (commercial ones, in the case of Japan), whereas the reverse has been true in Hong Kong.

Yet, it is important to note that in all three countries such interests remained subordinate, to a greater or lesser extent, to political imperatives. This was particularly true of Hong Kong in the middle of the 1990s, when sovereignty was about to be transferred to China. Recognising the difficulties of regulating new broadcast media under the existing Television Ordinance – for example, satellite, cable, video-on-demand, and pay television – the (British) Hong Kong government drafted a new Broadcasting Bill in order to incorporate laws covering the different forms of television in a uniform set of licensing standards and a code of practice for all types of broadcasters. The Bill, however, was shelved in early 1996 mainly because it could have created a conflict with Beijing ahead of Hong Kong's return to Chinese sovereignty in 1997 (*The Asian Wall Street Journal* 24 January 1996). The deregulation of television broadcasting in Hong Kong was clearly against the wishes of China, which has been sensitive towards foreign media influence in its mainland. The Bill may have eased the restrictions on foreign ownership of television broadcasting infrastructure, such as satellite uplink facilities. Similarly, the Hong Kong government's protection of Wharf Cable's monopoly after mid-1996, in contrast with its original intention, can be seen as another example of a politically-motivated decision. The Hong Kong government decided not to issue more licences fearing that this could have upset China (*South China Morning Post* 30 March 1996).

Regulation of the new types of television broadcasting in Korea provides another powerful illustration of the importance of the political context. In Korea, the new broadcast media was introduced with the expectation that it would provide channel diversity, shield Korean viewers from the exposure to foreign culture, especially Japanese, and promote economic competitiveness, both locally and internationally. However, attempts at achieving these aims by re-regulating television through the proposed New Broadcast Law at the end of 1995 were bitterly overshadowed by political imperatives (Kwak 1999). In the run up to the General Parliamentary Election in April 1996, both the government and the opposition had to minimise the potential damage caused by a series of political

scandals. In this political context, the hasty passing of the controversial New Broadcast Law could have worsened the position of the government. The New Broadcast Law, however, was shelved in 1997 and again in 1998 when other political issues, such as the President's son's acceptance of political slush funds, dominated politics in Korea. At the same time, the government, facing the 1997 Presidential Election, needed to have a good relationship with the media in order to secure favourable coverage.

Reshaping the Regulatory Framework

The introduction and development of pay television has followed a different pattern in each of the three countries. Given the diversity and complexity of the national contexts in which pay television was introduced and developed, it is not easy to single out any one general feature common to all of the three countries. Nor is it easy to categorise the national differences along a single continuum. This is particularly true when we consider that pay television in each country started using different technologies of television distribution. In Hong Kong, pay television started with cable in 1993. Two years earlier, STAR-TV (Satellite Television Asia) launched its regional satellite broadcasting service (transmitting only outside Hong Kong). In Korea, pay television started with cable in the absence of any other new technologies. In Japan, urban type cable television started earlier than the satellite service and was subscription-based. However, it has been largely a community-based service providing a retransmission function to technically poor-reception areas. Nevertheless, a closer examination of the regulatory changes made in the process of incorporating pay television into the existing broadcasting structure in the three countries reveals a number of similarities as well as differences.

Despite the growing recognition of new broadcast media, the level of regulatory change made initially was minimal. Indeed, the new broadcast media in all three countries were placed under the same regulatory framework designed for the existing terrestrial television broadcasting. This is most visible in Korea where the same regulatory framework as that adopted by the government to control terrestrial television broadcasting was imposed on cable television. The regulatory structure designed for cable television – the Cable Broadcast Law in 1989 (revised in 1991 and 1993) and a separate regulatory body for cable television, the Korea Cable Broadcasting Commission (KCBC) – was identical with that of terrestrial television. This regulatory structure remained unchanged until 1999. The major framework of the Cable Broadcasting Law and the specifications contained in it, in the area of control measures in particular, were surprisingly similar to the Broadcast Law which regulated terrestrial broadcasting. To put it another way, the Korean government regulated cable television under a similar framework and logic to that applied to terrestrial television broadcasting (Lee et al. 1999). This means

that the aim of the government's regulation was mainly to control, rather than to promote and develop, the new cable television industry.

The development of both cable and satellite television in Korea has been government-led. Their introduction was not driven by consumer demand. Rather the aim of the government was to provide consumers with more channel choice. Prior to this, the existing terrestrial broadcasters had dominated the industry. When cable television was introduced in 1995, cable operators believed that as long as they had licences from the government, their future would be guaranteed. However, a series of problems emerged in the initial phase, such as poor government management and regulation, and then economic crisis, forcing the Korean government to deregulate the industry (Kwak 2002, Lee and Joe 2000). This was a major turning point from which the government began to recognise that broadcasting was subject to similar economic imperatives as other industries. As a result, major deregulation occurred in ownership, and the terrestrial broadcasters were allowed to participate in the cable business in the late 1990s.

New broadcast media in the 1990s in Hong Kong – namely satellite and cable television – were introduced without altering the commercial nature of the existing television structure, operated by two commercial broadcasters, TVB and ATV, and more importantly without changing the regulatory framework provided for by the Television Ordinance. The Hong Kong government regulated the cable television operator (Wharf) through a temporary measure, known as the Memorandum of Understanding (MOU). A great degree of confusion caused by the lack of comprehensive guidelines on new forms of television inevitably led the Hong Kong government to redefine television, incorporating the emerging broadcast technologies. As a result, in March 1997, the Television Ordinance was amended to create a new category of television licence for the introduction of the VOD (Video-on-Demand) programme service. At the end of 1997, a VOD programme service licence was granted to Hong Kong Telecom VOD. Additional deregulation was also undertaken in the area of satellite television in early 1998, when the government removed the restrictions on foreign ownership of satellite broadcasting services (ITBB 1998). Recognising that partial deregulation would not be a panacea for resolving the emerging issues related to new forms of television, a comprehensive review of the television industry in Hong Kong was carried out in the 1998 Television Policy Review, which provided the basis for the implementation of the Broadcasting Ordinance.

Unlike Korea and Hong Kong, where pay (cable) television started without the presence of an alternative new technology designed for local use, new technologies, i.e. cable and satellite, emerged roughly at the same time in Japan. Here, cable television started as early as the 1950s, but it developed slowly and was regarded as a less attractive medium until 1993. Prior to the introduction of urban-

type cable television in 1987, the Ministry of Posts and Telecommunication (MPT) maintained the view that the sole value of the cable television system was as a retransmission service, and expected that this retransmission function would disappear as the number of free UHF stations increased or as the direct satellite broadcasting service began (Ito 1986). Also, the development of cable was largely neglected by the Japanese government whose priority was the development of NHK-led satellite television.

Despite the MPT's attempt to promote the cable industry, however, the majority of cable operators in the first half of the 1990s were still small-scale businesses providing a retransmission service only. Apart from the small number of cable facilities – less than 5% were authorised facilities in 1995 (MPT 1995) – with low diffusion rates, also worth noting is the fact that about half of the cable systems with permits were owned by non-profit organisations such as local governments and public organisations (Sugaya 1995). 1995 was a key year in Japan for telecommunications regulation as the government, in an effort to establish competition with NTT (Nippon Telegraph and Telephone), rewrote their laws to allow for the creation of cable MSOs (Multi-Station Operators). The relaxation of regulations also allowed foreign companies to participate in the cable industry. At the time, Japan took very pioneering steps allowing for significant foreign ownership (up to 49%) of cable MSOs, while crafting very favourable franchise licensing conditions (Noble 2000). This policy in favour of foreign ownership resulted in major changes in the shareholder composition of MSOs. For example, two US-based cable companies, Jupiter Telecommunications and Titus Communications, became the major MSOs in Japan. Prior to 1995 there was virtually no consolidation in the Japanese cable industry. The industry was fragmented with businesses springing from cable stations which were locally owned, financed and operated. In the early days, the major concept of cable maintained by the Japanese government centred more on the creation of local programming to be carried over cable networks than on the development of the networks themselves (Armstrong 2004).

Amendment of the Broadcast Law (1989) in Japan also provided a basis for the start of satellite broadcasting using communication satellite (CS). Unlike the regulatory framework for the analogue satellite broadcasting (using broadcasting satellite [BS]), which requires both programming and satellite operation to be provided by a single entity, the Broadcast Law separates the facility-supplying broadcaster from the programme-supply broadcaster for CS satellite broadcasting (Nakamura 2001). The former is the entity which owns and operates satellite(s) and delivers the signal to the user, while the latter is responsible for preparing the content and the line up for delivery and retains power over deciding what content is actually broadcast. The function of linking the consignee and consignor is done by the platform provider. Since the inception of CS broadcasting a particularly

troubling issue has been platform regulation. Despite its centrality to the operation of CS broadcasting (as a link between satellite operators and programme providers), the platform has been outside the compass of the Broadcast Law (Hanada 1999, 27). The current Broadcast Law classifies 'platforms' as neither facility-supplying broadcasters nor programme-supplying broadcasters, totally disregarding the 'platform' as a broadcaster. Therefore, in terms of regulation, Japanese government policy has been ineffective in promoting pay television, satellite in particular. The longstanding restrictions on the major commercial broadcasters and the government's ongoing support for NHK's satellite service as observed in BS television have proven to be counterproductive for the development of satellite television in Japan (Kwak forthcoming 2007). Also, from the start of CS television, the Japanese government has restricted the operation of the CS television service, by isolating it (the platform) from the 'broadcaster'. Under this peculiar legal arrangement, SkyperfecTV, the sole satellite platform, has had little control over the programmes it transmits, and has not been allowed to decide on programme packages.

Table 1: Pay Television Subscribers (as of December 2006)

TV Type Country	Cable (in 000s)	Satellite (in 000s)	Internet (in 000s)	Total subscribers	Total subscribers rate (in %)
Hong Kong	783 (55%)	75 (5%)	570 (40%)	1,428 (100%)	63%
Japan	6,295 (60%)	3,715 (36%)	405 (4%)	10,415 (100%)	22%
Korea	14,720 (88%)	1,980 (12%)		16,700 (100%)	94%

Source: Compiled from MPA 2006.

Cable television has been regarded as the most popular form of pay television in all three countries (Table 1). Yet its development has been particularly dramatic in Korea and Japan. Triggered by deregulation, and the growing popularity of internet connection services via cable lines and the digitalisation of cable television, cable operators in Korea and Japan have seen a gradual increase in the number of subscribers. However, the high level of fragmentation of the cable industry followed by deregulation, together with the convergence of communication and telecommunications technologies, has led the cable industry to undergo an unprecedented process of consolidation. In Korea, for example, integration was realised between station operators (SO) and programme providers (PP). During

the period 2001-2004, 23 SOs and 14 PPs were merged to form four MSPs (Multiple SOs-PPs) (KCTA 2005). As of early 2005, there were 117 SOs and 60% of the SO sector is owned by seven SOs (KCTA 2005). In Japan's case, consolidation occurred not only amongst cable operators, but between the cable and telecommunications service sectors. For example, after it consolidated four operators in 1999, Jupiter Telecommunications merged with Titus Communications, the second largest MSO, in 2000. More recently, consolidation in the cable industry has been further led by J-COM Broadband (formerly Jupiter Telecommunications, renamed in September 2001). J-COM, Japan's largest MSO, provides cable television, high-speed internet access and telephony services, and had attracted 1.7 million subscribers as of September 2003 (J-COM 2003). The services provided by J-COM have been attractive to the smaller operators who have been eager to have additional services such as internet and telephone subscriptions, in order to maintain and develop their business.

In the initial phase of development of new broadcast media, pay television in all three countries has been loosely accommodated into the existing regulatory framework. Deregulation was inevitable in all three countries in the reshaping process. However, there were significant differences in the nature of deregulation carried out in each country. The most salient one was in the legal structure. In Hong Kong and, to a lesser extent, Korea, the regulation of pay television was incorporated into newly established laws – the Broadcasting Ordinance (2000) in Hong Kong, and the Broadcast Law (2000) in Korea – which provided a solid regulatory basis for the operation of pay television. In contrast to Hong and Korea, Japan has not seen major changes in its legal structure. Although there have been a series of revisions in the Broadcast Law, the Cable Broadcasting Law and the Telecommunications Law, these changes were minor and made under the same legal structure.

The Participation of Terrestrial Broadcasters in Pay Television

One of the major features emerging from the analysis of how the new broadcast media industry has been restructured in the three countries is the different level of participation of existing broadcasters. Table 2 (next page) shows a great variation. It also shows that the participation of Japanese terrestrial broadcasters is centred on one medium – satellite television – while their counterparts in Hong Kong and Korea are engaged in diverse forms of broadcast media.

Table 2: Terrestrial Broadcasters' Participation in New Broadcast Media

	Incumbents	Cable	Satellite	DMB	IPTV
Hong Kong	*TVB*	Yes	Yes	No	Yes
	ATV	No	No	No	No
Japan	*NHK(p)*	No	Yes (BS)	No	No
	NTV	No	Yes (BS & CS)	No	No
	Fuji	No	Yes (BS & CS)	No	No
	TBS	No	Yes (BS & CS)	No	No
	Asahi	No	Yes (BS)	No	No
	TV Tokyo	No	Yes (BS)	No	No
Korea	*KBS(p)*	Yes	Yes	Yes	No
	MBC(p)	Yes	Yes	Yes	No
	SBS	Yes	Yes	Yes	No

Notes: *(p):* Public service broadcaster; DMB: Digital Multimedia Broadcasting, IPTV: Internet Protocol Television.

In Korea, the influence of the terrestrial broadcasters has been strong. They have dominated the audio-visual industry for a long time. In such circumstances, the early prediction was that the new types of broadcast media, both players and technologies, would merely play a secondary and supplementary role. This has largely proven to be true when we consider the extent to which the existing terrestrial broadcasters have been involved in the emerging new delivery platforms. All three terrestrial broadcasters (KBS, MBC and SBS) have been actively involved in the cable television business as programme providers with their own cable channels, mainly drama and sport channels that get the highest ratings. Furthermore, all terrestrial broadcasters are the major shareholders of the newly started satellite broadcaster, *Skylife* (KDB: Korea Digital Satellite Broadcasting), and more recently each of them was granted a licence for a terrestrial DMB (Digital Multimedia Broadcasting) service. In Korea and, to a lesser extent, Japan, the introduction of new broadcast technology has provided an opportunity for existing terrestrial broadcasters to further strengthen their position by cautiously becoming involved in infrastructure whilst continuing to focus on their most important asset – programming, which can be conveyed by any number of technical modalities.

It is worth examining why the participation of Japanese terrestrial broadcasters in new broadcast media has been limited to satellite television. First and foremost, regulation on media concentration has blocked terrestrial broadcasters from entering into other types of broadcasting, e.g. cable operations. Current Broadcast Law prohibits commercial broadcasters from operating a cable business. Apart from this regulatory barrier to entry, however, one should also consider the lack of interest by terrestrial broadcasters in the cable business. Although the cable penetration rate has risen to 60 percent of total pay television households in Japan

as of December 2006 (see Table 1), when cable television was in progress in the 1980s and 1990s, the cable business hardly attracted terrestrial broadcasters. This is in contrast with commercial terrestrial broadcasters' attitude towards satellite television. The commercial broadcasters' request to launch their own satellite service to counter NHK's satellite service (using BS: Broadcasting Satellite) had been rejected by the government. As mentioned before, however, the commercial broadcasters' demand was negotiated and later partially accepted, resulting in the launch of *WOWOW*. Unlike their aggressive attitude towards satellite television, commercial broadcasters showed little or no interest in the cable business largely due to its small scale economy, huge amount of investment needed for infrastructure, and limited foreseeable profits (Kanayama 2004).

In Japan, with the exception of NHK, which provides only BS satellite service (analogue and digital), all five Tokyo-based commercial broadcasters have been involved in both BS and CS satellite. They have participated collectively in the *WOWOW* satellite service, and individually as programme providers in BS digital and CS 110°E services. Furthermore, most of them (Fuji-TV, TBS and NTV) have been involved in the management of the infrastructure of the new broadcasting business, mainly as major shareholders of the CS platforms, *SKYPerfecTV* (SKY Perfect Communications 2006). The commercial broadcasters' willingness to participate in all types of available television and infrastructure – CS in particular – makes sense in light of the state's previous asymmetrical regulation favouring NHK vis-à-vis the commercial broadcasters. Their objections to the extremely close relationship between the state and NHK (particularly apparent in the development of analogue satellite television broadcasting) having been ignored, commercial broadcasters turned to BS digital and CS satellite television as a new opportunity. In particular, the commercial broadcasters aimed at an early entry into CS, a service not provided by NHK due to restrictions on becoming involved with pay television. Well aware of the possibility that the restrictions on NHK's participation in CS service could be relaxed, commercial broadcasters willingly participated in the CS business despite negative predictions about its popularity (Kwak forthcoming 2007). Their participation in all available broadcast media and platforms is thus a long-term investment in potentially lucrative businesses.

The Japanese terrestrial (commercial) broadcasters' basic strategy has been to invest in both (satellite) infrastructure and content. Indeed, they have participated in all available satellite services on the one hand, whilst saving and securing their core programmes – reserving them mainly for terrestrial services – on the other. This dual strategy extends to their involvement in different types of broadcasting services, such as Internet television. Recognising the growing popularity of the Internet, terrestrial broadcasters started distributing their programmes through the Internet (*The Japan Times* 10 March 2006). This was clearly an attempt to counter

popular online content distribution services by cable broadcaster Usen Corporation and Internet firms like Softbank Corporation.

In stark contrast to Japan and Korea, terrestrial broadcasters in Hong Kong had been less enthusiastic in their involvement in the local pay television industry until the late 1990s when the Hong Kong government introduced the technology-neutral Broadcast Ordinance. Terrestrial broadcasters' late involvement in the pay television industry, however, has been further hampered by a set of restrictions imposed by the government. In the case of TVB, Hong Kong's dominant terrestrial television broadcaster, the government has restricted its participation by imposing a number of conditions – cross-media restrictions, ownership restrictions, a later start than other operators, and the separation of management from the Board Directors. This was a clear indication that the Hong Kong Government favoured the non-terrestrial broadcasters, either existing or new players. This is in contrast to patterns noted in Japan and Korea, where existing terrestrial television broadcasters have played a major role, by being actively involved in various forms of new television – satellite television in the case of Japan, and both satellite and cable in the case of Korea.

The different level of terrestrial broadcasters' participation in pay television can also be noted in the regulation of the 'retransmission' of terrestrial broadcasters' programmes on new delivery platforms. Given the fact that terrestrial broadcasters in the three countries have dominated the broadcasting industry with their long experience and expertise in programming, the issue of 'retransmission' has become a determining factor that could dictate the future of new operators. Comparison of the regulation on retransmission shows an interesting contrast. This contrast has been notable in Hong Kong and Korea.

From the outset, Galaxy, TVB's pay television platform in Hong Kong has lacked programme drivers (MPA 2005), aside from its news and drama channels. Galaxy's programming has further suffered under the current regulatory regime, which does not allow TVB to retransmit its own programmes through Galaxy. Under its licensing conditions, Galaxy is prohibited from including TVB-produced programmes in its pay television service within 12 months of the last broadcast date of the programmes on TVB's two terrestrial channels without the approval of the Broadcasting Authority (Department of Justice 2004). This restriction is one of the special conditions incorporated into Galaxy's licence as a safeguard to ensure an effective firewall between TVB and Galaxy.

In Korea, the retransmission of terrestrial programmes has been the key issue in the development of satellite television, and more recently the satellite DMB service. The programmes provided by terrestrial broadcasters have been favoured in the new delivery platforms. The popularity of terrestrial broadcaster-owned pay

channels (programme providers) is a clear indicator that shows the superiority of terrestrial programmes. Indeed, their drama and sports channels have been the most popular channels in both the cable and satellite line-up (KOBACO 2004; Skylife 2005). The 2000 Broadcast Law allows a satellite operator to retransmit programmes broadcast by terrestrial broadcasters, KBS1 and EBS (Education Broadcasting System), without any modification (Article 78:1). The law, however, does not specify whether the operator could also retransmit programmes broadcast by other terrestrial channels, KBS2, MBC and SBS, all of which are more entertainment-oriented. In terms of the establishment and development of satellite broadcasting in its introductory phase, it would be ideal to promote it by allowing KDB to carry terrestrial broadcasting. This is particularly so if the Korean government wants KDB to be competitive with other media, such as cable and terrestrial broadcasters, in the early stage of introduction. On the one hand, it could be seen as a way to further benefit terrestrial broadcasters, who are the major shareholders in KDB. On the other hand, if the government prohibits KDB's retransmission of terrestrial broadcasting, this contradicts government national policy which aims to promote new media.

In Japan, the issue of retransmission has not been seriously considered until recently when the government allowed experimental retransmission of terrestrial digital broadcasting via communications satellite. The underlying implication behind this move is that satellite redistribution would be beneficial for broadcasts to remote areas that are hard to reach over terrain or fibre optic cables, and to metropolitan areas where skyscrapers obstruct broadcasting waves (Gvido 2006). Indeed, commercial terrestrial broadcasters have controlled the retransmission of their programmes on cable and digital BS channels. Under the current law, cable operators are required to obtain permissions from the terrestrial broadcasters to air their programmes. As for the digital BS channels, each of the five Tokyo-based commercial broadcasters has selected the programmes for broadcast in its own BS channel. Undoubtedly, the government expects retransmission would encourage potential subscribers to CS channels. However, it is highly questionable whether the five Tokyo-based commercial broadcasters would provide their high-rating programmes through CS satellite channels which attract a relatively small audience.

The issue of retransmission has posed a serious problem to regional network terrestrial broadcasters in Japan and Korea. If the government allowed Skylife (Korea) and *SkyperfecTV* (Japan) to retransmit programmes broadcast by terrestrial broadcasters, the existence of terrestrial broadcasters' local networks and regional commercial terrestrial broadcasters would be at stake. In Korea, KBS and MBC have 25 and 19 local networks, respectively, and each of 8 regional commercial broadcasters has been broadcasting in the area to which it belongs. In Japan, each of the five Tokyo-based key commercial broadcasters has affiliate relations with regional broadcasters. In both countries, the main role of the local networks has

been to promote local culture by producing programmes which reflect local interests and issues. In reality, however, the amount of local programmes produced by local networks has been less than 15% (KBC 1999) in Korea, and 20% in Japan. This means that all local networks have heavily relied on the programmes provided by their head stations in Seoul and Tokyo. Therefore, if the programmes produced by the major terrestrial broadcasters are retransmitted across the nation, which in the past has been the domain of the regional networks, the very existence of the networks would be in jeopardy. However, the issue of retransmission in these countries has been more complex. In the case of *Skylife* in Korea, the three terrestrial broadcasters, together with Korea Telecom, are the major shareholders of KDB, while Fuji-TV, TBS and NTV are the major shareholders of *SkyPerfecTV*. Under this structure, it is highly questionable how eager would be their involvement in the new platform, given that it could be their major competitor in the future.

The Participation of Telecommunication Companies in the Television Business

In many countries, telecommunication companies' participation in the broadcast business has been, to varying degrees, visible with the emergence of new technologies. While the level of their participation has been largely decided by government policy and regulations that were designed to accommodate the convergence of telecommunications and broadcasting, governments in many countries have allowed or plan to allow the telecommunication companies who have already established the delivery network infrastructure to enter the television business. The involvement of telecommunications companies in the broadcasting business in the form of pay television is a significant departure from the past regulatory structure in all three countries, conceived and maintained with a view to protect existing terrestrial broadcasters.

Comparison of government policies on telecommunication companies' participation in the three countries shows an interesting contrast. In Hong Kong, the participation of telecommunication companies in the pay television business was allowed following the adoption of the Broadcasting Ordinance (BO) (2000), which provided a complete regulatory structure of the pay television industry. Unlike in Hong Kong, the telecommunications carriers in Japan and Korea have been either prohibited or limited from participating in the broadcasting business, as a result of the state's strategic policy to protect broadcasters, and/or strong opposition from the broadcasters.

In Hong Kong, the BO in 2000 replaced the existing Television Ordinance. One of the most salient features of the BO was the distinction between broadcasting and telecommunications, and the separation of transmission (carriers) and content

provision (service providers). By separating licensing frameworks for 'service providers' and 'carriers', the Ordinance broke up vertical integration, which in the past, required broadcasters to provide transmission facilities and carry programmes at the same time. The BO also opened up the market for competition. In the past, the number of pay television operators was limited. Indeed, as already mentioned, until 1998, when VOD services were allowed, Wharf had been the sole pay television service operator in Hong Kong. When Wharf Cable started its subscription television service in 1993, it was given exclusivity for three years, and then in 1996 the Broadcasting Authority (BA) extended its monopoly for another two years. With the implementation of the 2000 Broadcasting Ordinance, the pay television market was opened up to free competition and the freeze on pay and VOD service licenses was brought to an end.

Telecommunications operators in Hong Kong were allowed to participate in the broadcasting business from the beginning of the new domestic pay television scheme under the 2000 BO. Except for i-Cable, all players (NOW Broadband, HK Broadband, and ex-TV [Galaxy]) are using similar transmission technology – internet broadband – for broadcasting their programmes. Galaxy's recent strategic change in delivery platform – its alignment with PCCW (formerly Pacific Century CyberWorks Ltd, the largest provider of communications services in Hong Kong) for networking – is expected to intensify the competition between telecommunication and cable distributors. This is particularly so because all four domestic pay television operators, utilising their delivery networks, provide not only pay television but internet access and telephony (voice) services to consumers. To put it in another way, these players are likely to compete in the same market where alternative delivery platforms – such as transmission via satellite – prove to be less competitive.

Internet television in Japan has until very recently been underdeveloped. While satellite and cable television in Japan have achieved significant development in terms of numbers of subscribers and the quality of technologies, Internet television was virtually absent in the Japanese broadcasting landscape until the early 2000s, largely because of the slow growth of broadband penetration. Since the early 2000s, the Japanese government's push for a high penetration of broadband has been a major priority under the national information-technology strategy. This is clearly a response to the fact that despite the government's policy of shaping the most advanced information network, when it comes to broadband Internet penetration, an input vital in accelerating the policy aim, Japan has fallen behind Korea, Hong Kong SAR and Singapore. In these countries, terrestrial broadcasters have established new businesses, either as affiliates or as major shareholders, to provide programming and interactive services via the Internet. With the aggressive steps taken by the Japanese Government to assure the development of an infrastructure for broadband, the number of broadband users

has dramatically increased in recent years, jumping from 1.7 million in 2001 to over 14 million in 2004 (MPHPT 2004). Yet, despite the increase, the broadband penetration rate in households was still less than 30% as of December 2003. With such low penetration, it has not been viable to provide television programmes via the Internet in addition to data services. A further complication has been that an Internet television broadcast reaching even a small area requires several Internet Service Providers (ISPs). This means that securing the number of ISPs necessary to deliver programmes to a mass audience via the Internet has been an arduous and expensive process for terrestrial broadcasters.

Recognising the growing importance of broadband Internet and its potential usefulness in broadcasting, some commercial broadcasters (Fuji, TBS and Asahi), in cooperation with the NTT, the largest telecommunication carrier in Japan, jointly established *Tresola Corp* in 2003. Behind the cooperation amongst television broadcasters that had long been in fierce competition for audience ratings lies the intention to assess how interactivity can be used in their favour rather than against them (Yasui *et al.* 2003). *Tresola Corp* is a pay TV service operating on the Internet and aiming to distribute television programmes over high-speed broadband lines, mainly NTT's. NTV and Television Tokyo have also established their own units for providing programmes via the Internet. These services, however, are largely VOD services with streaming methods.

In Korea, the start of satellite DMB (Digital Multimedia Broadcasting) in 2006 signalled the beginning of the telecommunications companies' participation in the broadcasting business. The Korean government facilitated broadband development through an early commitment to high-speed infrastructure with specific programmes, such as low interest loans, and this policy made Korea one of the leading countries in broadband. As the country's broadband market reached an 85% penetration rate in the mid 2000s, telecommunications companies have been keen to provide broadcasting services utilising their high-speed Internet service networks. However, their participation in the broadcast business had not been allowed until very recently and it was in early 2005, that the Ministry of Information and Communication (MOIC) announced that the telecommunication companies would be allowed to provide broadcast services. However, two conditions were imposed: firstly, they would not be allowed to start before 2007; secondly, they would only be allowed to offer 'internet content-on-demand' service in the interim. The justification of the MOIC's deliberate hold-up of telecommunications companies' broadcasting business is to give the cable industry enough time to deploy digital set-top boxes and achieve digital subscriber penetration of at least 2.23 million by 2007, and roll out new services such as telephony and broadband services (MPA 2005). Undoubtedly, the participation of major telecommunication companies – such as KT (Korea Telecom) and Hanaro – will further increase competition in the pay television industry in Korea. However,

under the current dual regulatory structure – broadcasting regulated under the Broadcast Law by the Korean Broadcasting Commission (KBC), with telecommunications largely regulated under the Telecommunications Law by the MOIC – it is not clear whether the telecommunications companies' full participation can be realised. The ambiguous boundaries of regulatory structure concerning IP television has resulted in conflict between the MOIC and the KBC. Korea's case clearly shows that the lack of consensus among the state regulators can be an important constraining factor in the development of IP television.

Conclusion

Regulation of television has varied across transmission technologies (terrestrial, cable, satellite, DMB, Internet) (Galperin and Bar 1999). For different regulatory and political reasons (e.g., NHK's legacy in the public-commercial dual structure of television in Japan, *laissez-faire* in Hong Kong, and politicisation of television in Korea), incumbent terrestrial broadcasters' participation in pay television in the three countries has been subject to the highest level of regulatory intervention. This conclusion is well supported from the regulatory experience in Hong Kong and Japan, where a number of restrictions imposed upon terrestrial broadcasters have either weakened (Hong Kong) or limited (Japan) the pay television business. In stark contrast, regulatory intervention in Korea has been designed to protect the interests of the terrestrial broadcasters. This has been clear from the fact that terrestrial broadcasters have been allowed to participate in various delivery platforms; the retransmission of their programmes on other platforms has been prohibited; and the possibility for telecommunications companies to participate in the broadcasting business has been delayed.

This paper has reviewed the development of the pay television industry in Hong Kong, Japan and Korea, focusing on the degree to which new entrants and existing players have participated in the development of its technological infrastructure. One of the most salient features noted in the developmental process of pay television is that there has been a significant change in government approaches towards the emerging pay television industry over time. In Hong Kong, the approach has changed from 'balanced' development of all types of television services as noted during the Colonial Government period, to 'competition' when the 2000 Broadcasting Ordinance broke up the boundaries between telecommunications and broadcasting, and allowed telecommunications carriers to have an early start. Compared to Hong Kong, the level of deregulation witnessed in Japan and Korea has been unbalanced in application, and limited in scope. Indeed, in Korea terrestrial broadcasters have been favoured, and in Japan, *SkyperfecTV*, the sole CS pay television platform, has been placed in an unfavourable position. Based on the observations made in this paper, it is fair to say that in Japan and Korea, although the pay television industry saw a gradual yet

significant deregulation in the 1990s, the de-regulatory framework has not been effective in incorporating all types of pay television.

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