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# Convergence of Regulation

## Panel Session

**Dr. Suthiphon Thavechaiyagarn**

National Broadcasting and Telecommunications Commissioner,  
Thailand

# Convergence of Regulation

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## Agenda

- 1. Background at a glance**
- 2. Institutional convergence (procedural regulation)**
- 3. Regulatory convergence (substantive regulation)**
- 4. Example issue of convergence facing in Thailand:**
  - Licensing regime**
  - Spectrum management**
  - ICT environment**
- 5. Conclusion, recommendation**

# Convergence at a glance



**Traditional regulations for old means of transmission**

**New way of providing services**

- Ability to forecast the future due to rapidly changing technology
- Role to achieve maximization of consumer's welfare

- Inconsistency caused by different levels of regulation for each industry

**Regulatory challenge caused by technology advancement**

**Industrial challenge caused by regulatory regime**



# 1. Background at a glance: National context

Thailand as developing country and technology taker

➤ Market liberalization

➤ First time in Thai history 3G auction

➤ Concession contract

➤ Transition period

NBTC is newly established to allocate spectrum

Technology is always faster than regulations

In converging environment, telecoms issues go beyond current traditional regulations



**Challenge of regulator**





# I. Institutional convergence

## **Procedural regulation:**

**Establishment of the National Broadcasting and Telecommunications Commission (NBTC) as a single converged regulator**



## Convergence

Institutional

Regulatory

**One-stop regulator**

- Facilitating the provision of different services over different platforms

**Institutional flexibility**

- Timely decision making process in one converged regulator

**Competition policy**

- Encouraging market entry and promote free and fair competition

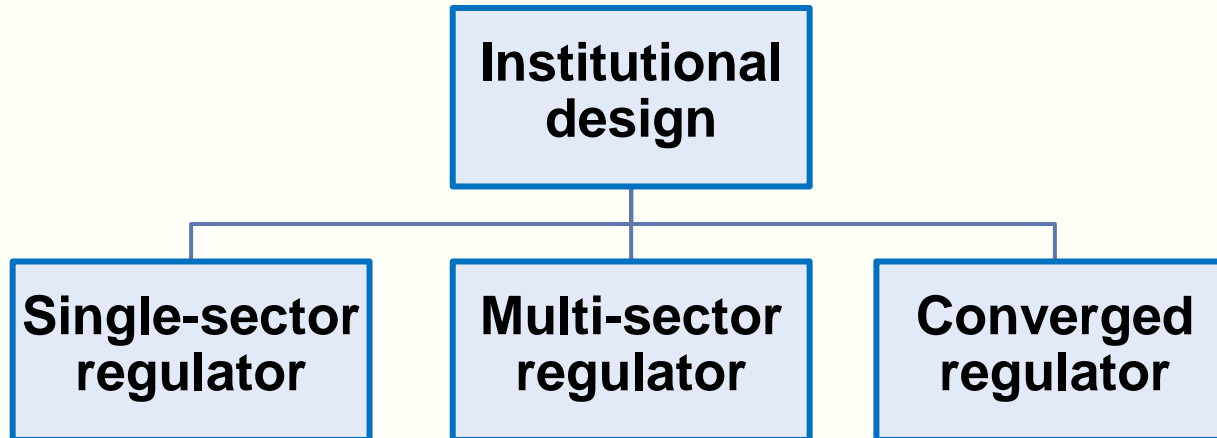
**Removal of uncertainty**

- Removing double standards due to overlaps between functions of regulators

Do existing regulations meet the objective for convergence?



## What type of regulator in Thailand?



- FCC (US)
- OFCOM (UK)
- ACMA (Australia)
- KCC (Korea)
- MCMC (Malaysia)
- AGCOM (Italy)
- TRAI (India)
- OFCA (Hongkong)
- **NBTC (Thailand)**

– converged regulator  
single entity with separated  
commissions



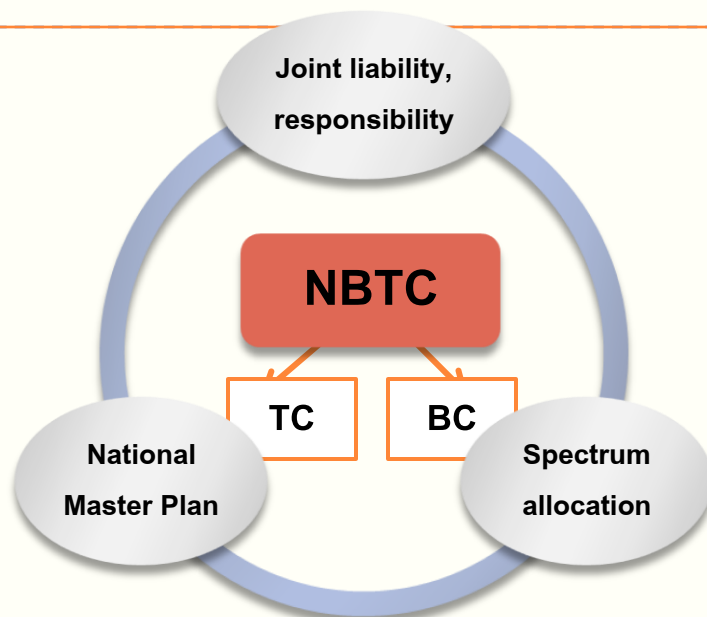
## Different background between both sectors

	Telecom	Broadcasting
Before	Telecoms Commission was established in the year 2005.	There was a first attempt to establish Broadcasting Commission but not successful.
	Telecoms business has been subject to regulatory regime since 2005 and gradually developed.	Non-regulated area by independent regulator before.
Present	Both sectors are merged under a converged regulator but never mutually developed	





# Converged regulator divided into 2 commissions

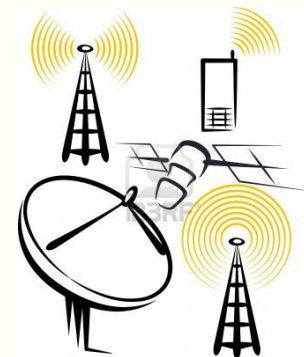


**Single converged regulator**

- Constitution establishes the NBTC and divided into two committees; TC, BC.

**Under same principle of spectrum allocation**

- Spectrum is national scarce resource
- Allocated with an aim to maximize public benefit as a whole, whether telecoms or broadcasting sector.



## Structure and function: Institutional convergence?

Single entity  
Converged  
regulator

**NBTC**

Constitution  
(sec.305)  
separates 2  
committees  
based on skill  
and expertise

TC  
(Telecom)

BC  
(Broadcasting)



### Problematic

- Truly “converged” regulator?
- Each committee performs its own duties within the scope of authorities.
- Each committee cannot intervene into discretionary power of each other.

### Solution

- Good initiation but need more mutual collaborative framework that better fits the model of single converged regulator.



# Summary: Institutional convergence



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When  
and  
How?

- ❑ In developed countries, the model of “converged regulator” has been long time initiated and both sectors are fully developed.
- ❑ In developing countries, such as Thailand, need a proper timing, readiness.
- ❑ There is no “single” model that best fits regulatory, economic, social, technological circumstances for every country.
- ❑ Whatever model, the role of regulator in the age of convergence is to facilitate positive converging environment for delivering the best outcome, greatest benefit to end-consumers (innovation, convenience, greater choices).





## 3. Convergence of regulations



**Substantive regulations:**  
**Separate laws in operating convergent  
businesses**



# Different concept under similar integrated platform



## Convergent regulation

- New means of delivery platform
- Platform competition
- Need new market definition
- Dual regulation model
  - Market access
  - Content regulation



### Telecom sector

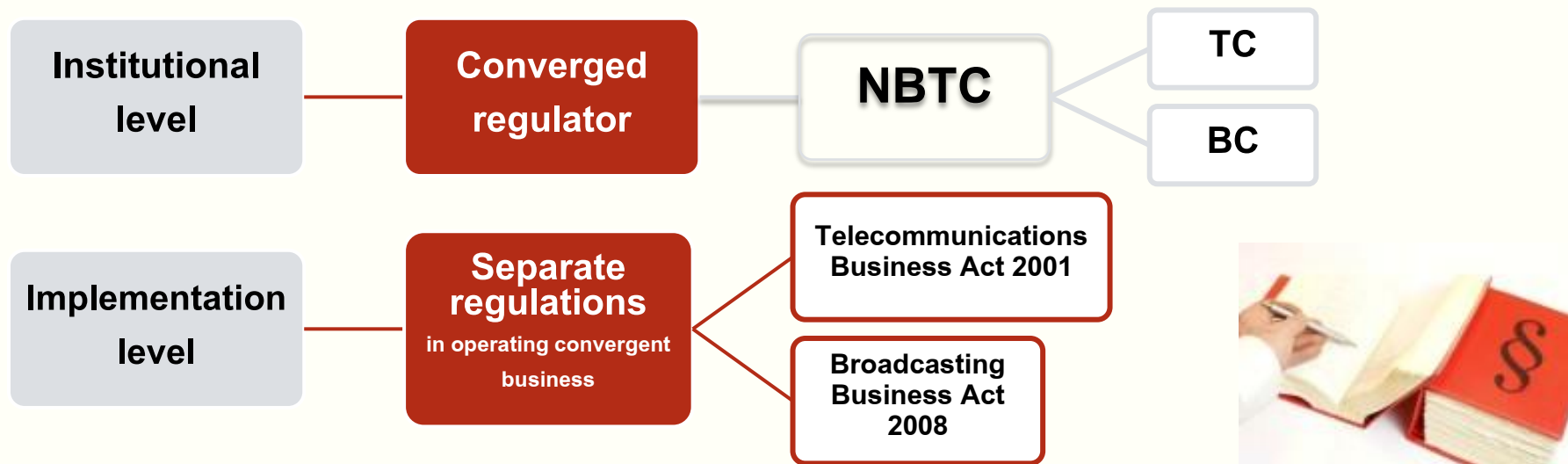
- Guarantee access to communications
  - Rate regulation
  - QoS regulation
  - USO
- Competition in the market
  - prevent abusive and anti-competitive behaviors by dominant operator
- Consumer protection

### Broadcasting sector

- Content regulation
- Public interest goal
  - Freedom of speech
  - Pluralism diversity of content
  - Protection of minor
  - Advertising
- Societal value - Protection of audiences against harmful content



# Converged regulator without convergence of regulations



- In operating convergent businesses, telecoms and broadcasting are regulated separately under different laws.



## 4. Example issues of convergence facing in Thailand



- ❑ **Licensing**
- ❑ **Spectrum management**
- ❑ **ICT environment**



# Licensing regime in a converging environment



- Does the traditional licensing regime suit to new paradigm?
- Services are increasingly provided on an integrated platform
  - VoIP, broadband internet on cable TV
- Thus, licensing regime should be created for converged services



## Existing Licensing regime facilitates converged services enough?

### Problem

- ❑ Thailand's licensing system has not yet combined converged services to fall within one license.
- ❑ Both sectors are regulated in a different manner under different applicable law.
  - Operating telecoms business is subject to Telecoms Business Act 2001
  - Operating broadcasting act is subject to Broadcasting Business Act 2008



### Solution

Modify licensing regime from a traditional one service to broader categories.

Need a simplified, technology-neutral, flexible licensing to encourage market entry and promote competition.

If regulation is overly strict, it means barrier to innovation of new services.

- i.e. unified licensing, notification, automatic license

## Spectrum management: efficiency without inconsistency?

- Under Constitution, spectrum allocation has the same goal but has been implemented in different approaches.



Telecoms	Broadcasting
Only spectrum auction	Either beauty contest or spectrum auction



### Solution

Set the same spectrum allocation approach under one authority.

Remove inconsistency caused by different treatment under regulation.

Allow technologies that use spectrum more efficiently and lessen unused spectrum.

# ICT environment



- Does the existing legal framework contain necessary legislation to support an ICT environment?
- Issue of IPRs protection is associated with the growth of ICT use and innovation.
- ICT areas; Intellectual Property Right protection, privacy, security, etc.

## How NBTC deal with threat in ICT environment?

- ❑ **NBTC has a power to order the operator**
  - **to stop spamming**, advertising causing annoyance
  - **to return money** to consumers that are charged by spamming (advertisement, gambling, etc.)
- ❑ **Joint responsibility between network operator & content provider**
- ❑ **NBTC's preparation for issuing new regulations**
  - ✓ Revising Regulation on **privacy consumer right**
  - ✓ Issuing new regulation on **unfair treatment to consumer**
- ❑ **More cooperation with ICT Ministry in the same direction**
- ❑ **MOU with Consumer Agency for collaborative protection**
- ❑ **Proposed future solution with help of technology advancement**
  - ✓ Filtering, firewall
  - ✓ Right to opt in, opt out



# ICT environment: IPR protection



**IPRs protection**

**Telecom**

Patent, standardization,  
technical standard

**Broadcasting**

**Copyright**

- Thailand has not passed legislation enforcing intellectual property law within the ICT sector.
- Problem on institution concerned with different authorities.

**Solution**

- ✓ Speeding up effective implementation in unity without fragmentation (country-to-country basis).
- ✓ Balancing rights of all stakeholders to ensure best benefit to innovations to consumer and industry in converging environment.

Problem on institution concerned with different authorities

Who should be responsible for implementation?

Global level



Domestic level

Court

Telecoms Regulator

IP authority

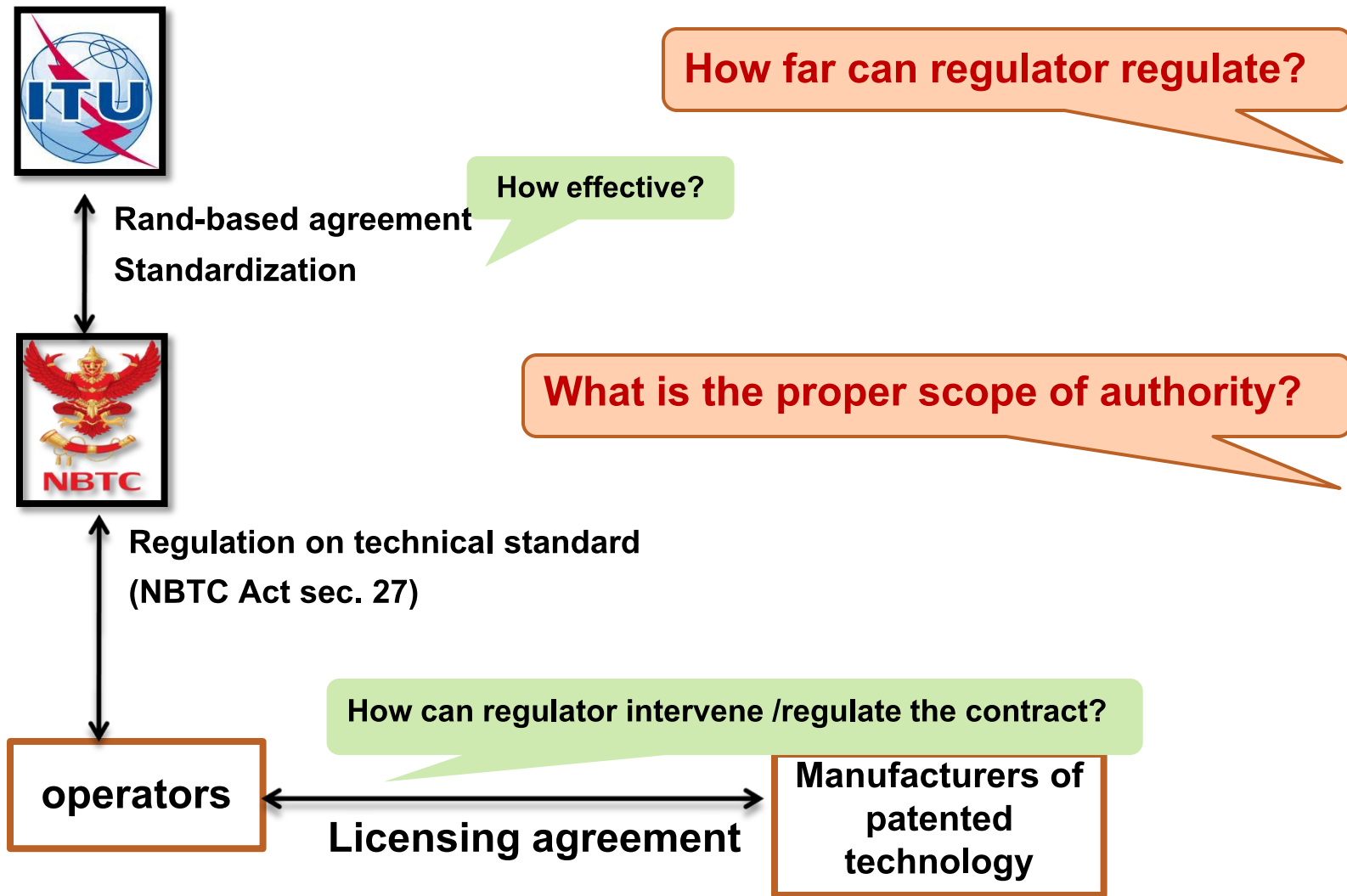
Competition authorities



Multilateral institutions in area of standardization

Fragmentation in implementing

# Problem on limitation on regulatory intervention



# 5. Recommendations

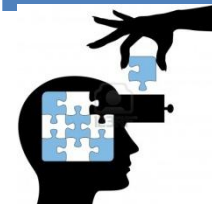
In order to have successful convergence of regulation, we need to have: “5 Elements”



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- ✓ **1. Attitude of regulator** – correct concept towards convergence when facing convergent regulatory issues
- ✓ **2. Action by regulator and legislator** – implement a well-defined, consistent and flexible regulatory framework for telecoms, broadcasting and ICT in the same direction
- ✓ **3. Legislation and regulations are always never-ending process** but need to be further developed and modifies. Also, they never stand still.
- ✓ **4. The role of regulator is not to promote or rush convergence** (as technology is always changing by itself and faster than regulation).
  - Instead, the role of regulator is to **promote free and fair competition, and facilitate positive environment for delivering the best outcome and greatest benefit to end-consumers** (innovation, convenience, greater choices).
  - Regulators should also **seek consultation from all stakeholders** as essential part of the decision-making process.
- ✓ **5. Convergent cooperation**
  - to cooperate with all relevant agencies at both national and international levels.







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Q&A?

Thank you  
ขอบคุณครับ/ค่ะ

