

제3회 국제 방송통신 분쟁조정 포럼

The 3rd International Communications Conciliatory Forum

지상파방송 재송신 분쟁조정 사례 및 제도

Terrestrial Broadcasting Retransmission Disputes & Conciliation

일시 2011년 11월 3일(목) 14:00~17:30

장소 더 프라자호텔 메이플룸(4층)

주최 방송통신위원회

주관 (사)미디어미래연구소

제3회 국제 방송통신 분쟁조정 포럼

The 3rd International Communications Conciliatory Forum

지상파방송 재송신 분쟁조정 사례 및 제도
Terrestrial Broadcasting Retransmission
Disputes & Conciliation

November. 03. 2011 | Maple Hall, 4F The Plaza Hotel

모시는 글

미디어 환경의 변화로 국내외 미디어 산업 분야의 분쟁이 다양한 형태로 발생하고 있습니다.

미디어 산업의 글로벌화에 따라 국가간 분쟁 또는 다국적 미디어 기업과 국내 시장 참여자와의 분쟁이 발생할 가능성이 증대되는가 하면, 신규 융합서비스의 등장과 미디어 산업의 디지털화로 방송사업자들 간의 마찰도 늘어나고 있습니다.

이에 제3회 국제 방송통신 분쟁조정 포럼을 통해 국가별 지상파방송 재송신 분쟁 조정 제도 및 사례를 공유하고, 미디어 산업 환경 변화로 발생하는 다양한 분쟁 이슈에 대한 해결방안을 논의하고자 합니다. 본 포럼은 주요국 분쟁조정기관 담당자들과의 협력체계를 마련하고 관련 이슈의 논의를 활발히 하는 계기가 될 것입니다. 많은 관심과 참여 부탁드립니다.

2011년 11월 방송통신위원회

위원장 **최시중**

Invitation

With changes in the environment of the media industry, the possibilities of disputes over domestic and abroad mass media industry sector are increasing. Due to globalization of media industry, disputes between multinational media corporations and domestic market participants are also likely to increase as well as between nations. Moreover, new converged services and digitalization of media industry are also heightening the possibilities of disputes between broadcasting service providers. As such, Korea Communications Commission holds "The 3rd International Communications Conciliatory Forum" to exchange information of terrestrial broadcasting re-transmission conciliation systems and cases from nations. In addition, the Forum intends to examine solutions for disputes from dramatic change on digital media industry. Please join us at the Forum as we purpose to provide opportunities to cooperate with network and discuss critical issues in the field of media industry.

November, 2011
Korea Communications Commission
President **Choi, See Joong**

포럼 일정

| 시간 | 세션 | 연사 |
|---|---|--------------------|
| 개회 | | |
| 14:00~14:20 | 개회사 | 김국진 소장 (미디어미래연구소) |
| | 축사 | 양문석 상임위원 (방송통신위원회) |
| 세션 I 지상파방송 재송신 분쟁조정 사례 발표 좌장_최정일 교수 (숭실대 경영학) | | |
| 14:20~14:40 | 일본의 지상파방송 재송신 분쟁조정 | 가가미 요코 (총무성) |
| 14:40~15:00 | 캐나다의 지상파방송 재송신 분쟁조정 | 랜디 허슨 (CRTC) |
| 15:00~15:20 | 영국의 지상파방송 재송신 분쟁조정 | 태이정 (Ofcom) |
| 15:20~15:40 | 프랑스의 지상파방송 재송신 분쟁조정 | 티에리 바쉐이 (CSA) |
| 15:20~16:00 | 한국의 지상파방송 재송신 분쟁조정 | 박동주 (방송통신위원회) |
| 16:00~16:20 | 휴식 | |
| 세션 II 패널토론 좌장_최정일 교수 (숭실대 경영학) | | |
| 16:20~17:20 | 오양호 변호사(법무법인 태평양), 홍대식 교수(서강대 법학), 윤석민 교수(서울대 언론정보학), 최정우 전무(한국케이블TV방송협회), 손계성 정책실장(한국방송협회) | |
| 17:20~17:40 | Q&A | |
| 폐회 | | |
| 17:40~17:50 | 폐회사 | 정종기 국장 (방송통신위원회) |

Forum Program

| Time | Session | Speaker |
|--|---|--|
| Opening | | |
| 14:00~14:20 | Opening Remarks | Kook Jin KIM, Ph.D President, MFI |
| | Congratulatory Message | Moon Seok YANG Standing Commissioner, KCC |
| Session I Terrestrial Broadcasting Retransmission Dispute & Conciliation Cases Chair: Jeong-il CHOI (Professor, Soongsil University) | | |
| 14:20~14:40 | Framework for the System and Dispute Settlement Regarding Rebroadcasting of Terrestrial Television broadcasts in Japan | Yoko KAGAMI (MIC) |
| 14:40~15:00 | Broadcasting Dispute Resolution in Canada | Randy HUTSON (CRTC) |
| 15:00~15:20 | Broadcasting Retransmission Issues in the UK | Yih-Choung TEH (Ofcom) |
| 15:20~15:40 | Terrestrial Retransmission Conciliatory Cases in France | Thierry VACHEY (CSA) |
| 15:20~16:00 | Terrestrial Broadcasting Retransmission Conciliatory Issues in Korea | Dong-Joo PARK (KCC) |
| 16:00~16:20 | Coffee Break | |
| Session II Panel Discussion Chair: Jeong-il CHOI (Professor, Soongsil University) | | |
| 16:20~17:20 | Yang-Ho OH(Lawyer, BKL), Dae-Sik HONG(Professor, Sogang Univ), Sug-Min Youn(Professor, Seoul Nat'l Univ), Jung-Woo CHOI(Executive Vice-President, KCTA), Kye-Sung SON(Managing Director, KBA) | |
| 17:20~17:40 | Q&A | |
| Closing | | |
| 17:40~17:50 | Closing Remarks | Jong-Ki CHUNG Director General, KCC |

Speaker

Japan_ Yoko KAGAMI Commissioner
Telecommunications Dispute Settlement Commission, MIC

Yoko Kagami is a commissioner of MIC's Telecommunications Dispute Settlement Commission since 2010. She is currently a professor of Komazawa University as a faculty of Global Media Studies in Japan.

Canada_ Randy HUTSON Senior Director
Alternative Dispute Resolution, CRTC

Randolph (Randy) Hutson is a lawyer and currently heads the Broadcasting Alternative Dispute Resolution (ADR) division of the Canadian Radio-television and Telecommunication Commission (CRTC). He held various broadcasting policy positions at the CRTC, commencing in 1986, before taking up in 2000 his present position of Senior Director Broadcasting ADR wherein he has played the major role in developing the CRTC approaches to both mediation and arbitration. His present focus is on mediation.

UK_ Yih-Choung TEH Director
Competition Policy Group, Ofcom

Yih-Choung Teh is a Director in Ofcom's Competition Group having worked in economic regulation in Ofcom since its creation in 2003. Since September 2009 he has been the chair of Ofcom's Broadcasting Competition Steering Group, responsible among other things for Ofcom's work on competition issues in the broadcasting sector. The programme of work has included analysis of pay TV markets, TV advertising and new services launched by the BBC. Prior to this role he was responsible for aspects of Ofcom's competition work in the mobile telecoms sector, including the setting of charge controls. Before joining Ofcom, Yih-Choung worked for a strategy consultancy in the telecoms sector, and in academic research in the University of Oxford.

France_ Thierry VACHEY Deputy Director
Audiovisual Operators Direction, CSA

Thierry VACHEY attended the Institut d'études politiques of Lyon, the Graduate institute of international studies of Geneva and Assas University in Paris. He joined the Conseil

supérieur de l'audiovisuel in 1991 where he supervised the local radio broadcasters in Auvergne until 1994, and after in charged of the national radio networks. In 2001, he took part of the DTT project and, thus, of the launching of this new technology in France. Since 2007, he has been appointed head of the TV department near the director for audiovisual operators. This department prepares calls for tenders relating to the use of terrestrial airwaves. It also investigates for the agreements or registrations necessary for an access to the other electronic networks (cable, satellite, DSL..) and investigates commercial distributors' registrations. Thierry VACHEY is the co author of "Télévision, l'ère du numérique", a book published in 2011 at La Documentation française.

Korea_Dong-Joo PARK Director
Deliberation Advisory Team, KCC

Mr. Park, Dong Joo is currently the Director of the Deliberation Advisory Team, which is a part of the Consumer Policy & Enforcement Bureau, at the Korea Communications Commission (KCC). The Deliberation Advisory Team aims to resolve disputes within the telecommunications and broadcasting companies and also assist in the decision making process when determining possible measures to discourage and punish bad practice. He has a Ph.D in Public Management from Renmin University (China), and a Master's degree in Political Science from the Graduate School of Public Administration at Seoul National University.

Panel

Yang-Ho OH Lawyer/Partner, BKL
Dae-Sik HONG Professor, Sogang Univ.
Sug-Min Youn Professor, Seoul Nat'l Univ
Jung-Woo CHOI Executive Vice-President, KCTA (Korea Cable Television & Telecommunications Association) · C&M
Kye-Sung SON Managing Director, Policy Department, KBA (Korean Broadcasters Association)

Chair

Jeong-Il CHOI Professor, Soongsil Univ.

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Dong-Joo PARK *Director*

Deliberation Advisory Team_ KCC

Framework for the System and
Dispute Settlement Regarding
Rebroadcasting of Terrestrial
Television broadcasts in
Japan The 3rd ICCF

Yoko KAGAMI Commissioner

Telecommunications Dispute Settlement Commission_ **MIC**

November . 03 . 2011 | Maple Hall, 4F The Plaza Hotel

Framework for the System and Dispute Settlement Regarding Rebroadcasting of Terrestrial Television broadcasts in **Japan** The 3rd ICCF

Japan has three types of system to settle disputes regarding agreement on rebroadcasting of the terrestrial television broadcasts. The award system of the Minister for Internal affairs and Telecommunications was introduced in 1986, and then, the mediation system and arbitration system of the Telecommunications Dispute Settlement Commission are newly introduced in 2011 to settle disputes among broadcasters, which become diverse and complex.

Japan is divided into some dozens of broadcasting service areas. As a result, there are many applications for rebroadcasting outside the area, and these create a problem. In the past, there have been 55 applications for awards.

Yoko KAGAMI Commissioner

Telecommunications Dispute Settlement Commission_ **MIC**

Framework for the system and dispute settlement regarding rebroadcasting of terrestrial television broadcasts in Japan

November 4, 2011
 Telecommunications Dispute Settlement Commission

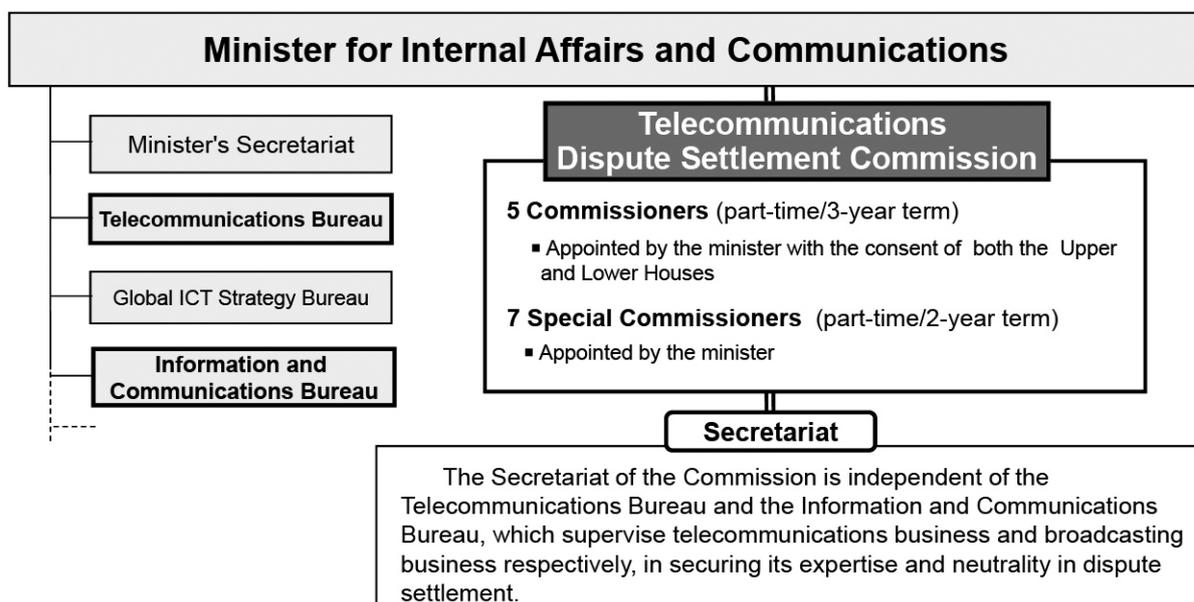


Establishment and Organization of TDSC

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The Telecommunications Dispute Settlement Commission was established on November 30, 2001, as a special agency for prompt and fair settlement of interconnection and other disputes between telecommunication carriers.

(The Commission was renamed in June 2011 according to the law revision.)



- ◆ Disputes regarding interconnections, etc. between telecommunications carriers increased and got complicated as the telecommunication services advanced and become diverse.



November 2001 (Establishment of TDSC)

- Cases regarding agreements on the interconnection/shared use of telecommunications facilities, etc. that cannot be settled through negotiation.

- ◆ Disputes concerning agreements on rebroadcasting of terrestrial television broadcasts have become diverse and complex, requiring prompt and smooth dispute settlement based on expertise.



June 2011 (Revision of the Broadcast Law)

- Cases regarding agreements on the rebroadcasting of terrestrial television broadcasts that cannot be settled through negotiation have been added.

◆ Stipulation of the Broadcast Law about Agreement on Rebroadcasting

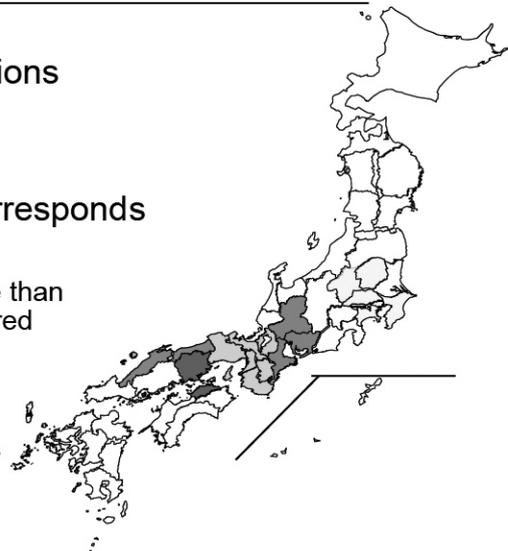
- Broadcasters shall not receive and rebroadcast the broadcasts without other broadcasters' consent.

◆ Broadcasting Service Areas of Terrestrial Television Broadcasts

- Minister for Internal Affairs and Communications sets broadcasting service areas.
- One broadcasting service area basically corresponds to one prefecture.

(there are wider broadcasting regions consisting of more than one prefecture in areas such as Tokyo and Osaka (colored parts in the figure on the right))

- The number of broadcasting channels varies with the broadcasting service area.



◆ Types of Disputes Subjects to Dispute Settlement System

- When a Cable Television Operator, etc. requests a Terrestrial Television Broadcaster to hold negotiations regarding agreement on rebroadcasting, but
 - the requested terrestrial television broadcaster refuses to hold negotiations
 - such negotiations fail

◆ Available dispute settlement system

- Mediation and Arbitration by the TDSC (both parties)
- Award by the Minister for Internal Affairs and Communications (Cable Television Operators, etc.)

◆ Mediation

- Mediation is a process in which the mediation commissioners act as mediators to help the disputants reach a mutual agreement to achieve a prompt resolution. There is no mandatory requirement to adopt a solution.

◆ Arbitration

- Arbitration is a means to solve disputes in which the disputants agree to follow the arbitration award made by the arbitration commissioner. The disputants cannot take the matter to court unless there has been a defect in the process.

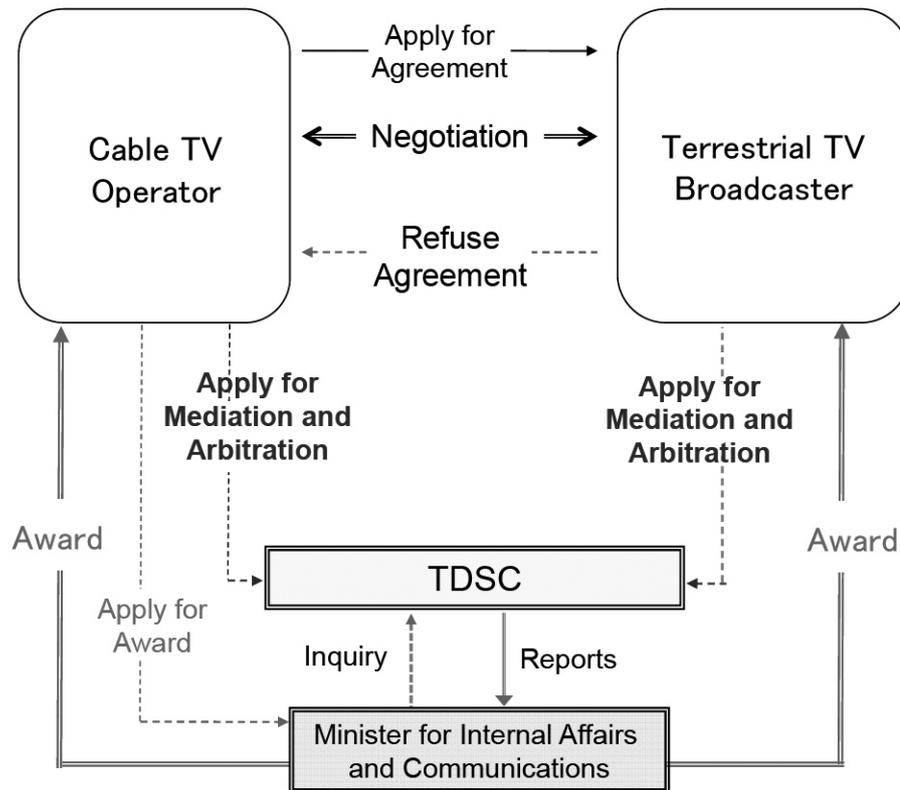
◆ Award

- The minister judges whether the rebroadcasting must be agreed on or not based on legal stipulations.
There is a mandatory requirement to adopt a solution, and the dispute is concluded by the award.

- The minister shall award that the terrestrial television broadcaster must agree on the rebroadcasting unless it has just cause to disagree.
(A stipulation in the Broadcast Law)

- The minister must make a request for advice to the TDSC when rendering an award.

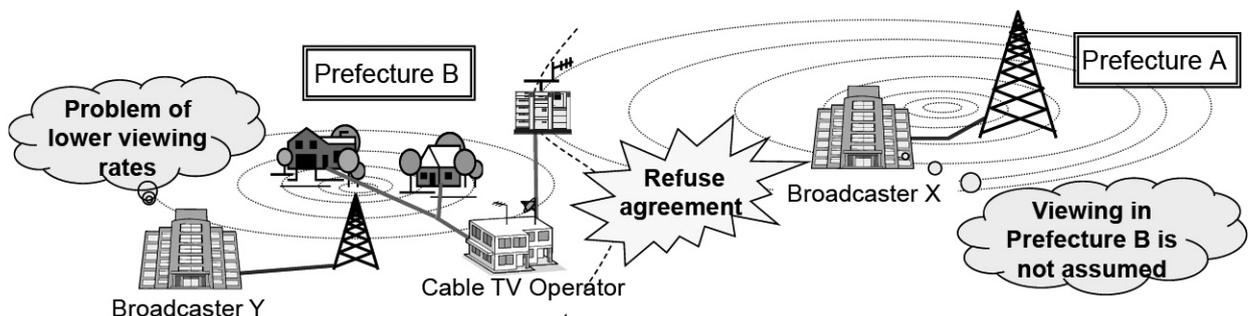
| | Award | Mediation | Arbitration |
|-------------------------------------|--|---|--|
| Dispute settlement entity | <ul style="list-style-type: none"> • Minister for Internal Affairs and Communications (makes, a request for advice to the TDSC.) | <ul style="list-style-type: none"> • TDSC (One or more mediation commissioner(s) appointed) | <ul style="list-style-type: none"> • TDSC (3 arbitration commissioners appointed) |
| Application process/ requirements | <ul style="list-style-type: none"> • The cable television operator, etc. can apply. • Judge whether the case satisfies the application requirements for negotiation process, etc. stipulated by the Broadcast Law. | <ul style="list-style-type: none"> • An application need not necessarily be made by both parties of a dispute (cable television operator, etc., and terrestrial television broadcaster) • The commission notifies the other party of the application and the process commences if it does not refuse. | <ul style="list-style-type: none"> • Both parties of a dispute must apply. (Concurrent applications are not required. One party can apply upon the notification of the other party's application) |
| The criteria for judging | <ul style="list-style-type: none"> Unless there is just cause to disagree, it is awarded that the rebroadcasting must be agreed on. | <ul style="list-style-type: none"> • None (Facilitates mutual agreement without breaching compulsory stipulations and being offensive to public order and morality) | <ul style="list-style-type: none"> • The criteria for judging and applicable laws depend on the agreement between the parties. |
| End of process / effect of judgment | <ul style="list-style-type: none"> • Ends upon award • Petition of objection to the Radio Regulatory Council can be made. | <ul style="list-style-type: none"> • Ends upon agreement reached between both parties through negotiation, proposed mediation being accepted, or termination | <ul style="list-style-type: none"> • Ends upon withdrawal of application due to arbitration award, reconciliation, etc. • Arbitration award takes effect in the same manner as a final decision in a court of law. |



"Rebroadcasting outside the area"
 : Broadcasts of a terrestrial television broadcaster whose broadcasting service area is Prefecture A are received by a cable television operator in a different broadcasting service area, Prefecture B, and then rebroadcasted to households within Prefecture B.

- This increases the number of channels available in Prefecture B, possibly lowering the viewing rate of broadcasts of existing broadcaster in Prefecture B.
- The broadcaster in Prefecture A does not assume that its television broadcasts may be viewed in Prefecture B and therefore cannot compile broadcasting in consideration for viewers in Prefecture B.

➔ The broadcaster in Prefecture A have a negative attitude to rebroadcasting outside the area, which may create disputes.



○Past Awards

| Year | 1986 | 1993 | 2007 | 2008 | 2011 |
|-----------------|---------------------|---------------------|---------------------------------|---------------------------------|---|
| Number of Cases | 1 | 1 | 16 | 32 | 5 |
| Award | should be agreed on | should be agreed on | should be agreed on (all cases) | should be agreed on (all cases) | 1 case : should not be agreed on (※) 4 cases : should be agreed on |

(All are cases of rebroadcasting outside the area)

(※) Case where award did not order agreement

- A cable television operator in Kochi prefecture applied for the rebroadcasting of terrestrial television broadcasts that had been broadcasted in Kagawa prefecture.
- It was awarded that the extent of an infringement of "The intention regarding broadcasting service areas" exceeded the maximum permissible limit, considering that the exchange of people and goods between the broadcasting service area and the area where the cable television operator provides services was marginal and that the receivers within the rebroadcasting area would not enjoy much benefit from the rebroadcasting.
Therefore the award did not order an agreement on the rebroadcasting.

Broadcasting Dispute Resolution in **Canada** The 3rd ICCF

Randy HUTSON Senior Director
Alternative Dispute Resolution_CRTC

November . 03 . 2011 | Maple Hall, 4F The Plaza Hotel

Broadcasting Dispute Resolution in Canada The 3rd ICCF

Terrestrial Broadcasting Retransmission (Value For Signal:VFS), CRTC determined it appropriate to provide TV station licensees with the right to negotiate a fair value for the distribution of their services by broadcast distributors. However, it recognized there was a valid dispute between parties over whether the Commission had the legal authority to impose such a regime. CRTC referred the question of its jurisdiction to the Federal Court of Appeal. If Supreme Court rules CRTC has jurisdiction, VFS dispute resolution will take place as per the processes set out in this presentation. The best intervention is at the earliest stage and with the lightest touch. The win-lose situation of arbitration is the least desired ? but you need it to make mediation work.

Randy HUTSON Senior Director
Alternative Dispute Resolution_CRTC



Broadcasting Dispute Resolution in Canada

3rd International Communications
Conciliatory Forum

November 3, 2011
Seoul, South Korea

Canada

What is the CRTC?

- Canada's independent regulator for broadcasting and telecommunications
 - Seeks to ensure Canadians have access to a variety of Canadian programming
 - Seeks to ensure Canadians have access to high-quality telecommunications services at affordable prices
 - Enforces telemarketing and anti-spam rules



Broadcasting activities

- Regulates more than 2,000 broadcasters (annual revenues of \$15.7 billion)
 - conventional television services
 - pay and speciality television services
 - AM and FM radio stations
 - cable and satellite broadcast distributors
- Issues, renews and amends broadcasting licences
- Makes decisions on mergers, acquisitions and changes of ownership

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Terrestrial Broadcasting Retransmission (Value For Signal - VFS)

- March 2010: CRTC determined it appropriate to provide TV station licensees with the right to negotiate a fair value for the distribution of their services by broadcast distributors.
- However, it recognized there was a valid dispute between parties over whether the Commission had the legal authority to impose such a regime.
- CRTC referred the question of its jurisdiction to the Federal Court of Appeal.

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Terrestrial Broadcasting Retransmission (Value For Signal - VFS)

- February 2011: Federal Court ruled CRTC has jurisdiction to implement a VFS regime.
- September 2011: Supreme Court of Canada granted VFS opponents' request to appeal.
- Decision expected sometime in 2012.
- If Supreme Court rules CRTC has jurisdiction, VFS dispute resolution will take place as per the processes set out in this presentation.

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Vertical integration

- Consolidation in the broadcasting industry = 4 large vertically integrated companies
- Companies can produce content, program it on their TV services, and make it available on all platforms
- In September 2011, the CRTC established new rules to eliminate the potential for these companies to harm competitors or restrict consumer choice
 - TV programs cannot be offered on an exclusive basis to a company's mobile or Internet subscribers
 - Code of conduct ensures negotiations are undertaken in good faith
 - Measures to ensure independent distributors and broadcasters are treated fairly (ex: head start rule)

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Dispute resolution services

- In 2010-2011, the Broadcasting Alternative Dispute Resolution team was involved in 4 formal and 15 informal disputes
- Vast majority of dispute involve the distribution of TV signals.
- Number of disputes or stalled negotiations is expected increase in the coming years
 - Option 1: Voluntary staff-assisted mediation
 - Option 2: Mandatory mediation
 - Option 3: Arbitration

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Mediation: Objectives

- Break impasses that arise between parties in negotiation or in dispute
- Cut through the stated “positions” to assess the interests behind them
- Reduce the number of issues that require full CRTC intervention
- Mandatory prior to final-offer arbitration unless
 - Parties have already sought mediation elsewhere
 - Parties have agreed on a statement of fact

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Option 1 – Voluntary mediation

- Either party may request in confidence staff-assisted mediation
 - Both parties have to agree to mediation
- CRTC staff determine whether the matter is appropriate
- Can be conducted through conference calls or in-person meetings
- CRTC staff establishes time limits (can be extended as required)
- CRTC staff can end the mediation process if ineffective
- If parties agree, CRTC may issue a Staff Mediation Report
 - May be used in final-offer arbitration

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Option 2 – Mandatory mediation

- Parties attend a confidential mediation session presided by a CRTC Commissioner
- At the end, the presiding Commissioner states his or her non-binding views
- Commissioner involved in this process cannot participate in any subsequent substantive disposition on the matter

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Option 3 – Arbitration: CRTC role

- Arbitration used for disputes that are
 - Exclusively monetary
 - Involved only 2 parties
 - Involve one issue or several closely related issues
- Staff that might handle an arbitration must not communicate with anyone involved in mediation on the matter
 - Staff located in separate units
 - Staff divided by an “ethical wall”

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Option 3 – Arbitration: Process

- Either party can request by filing a written application with the CRTC and serving it to the respondent
- Respondent has 5 days to advise the CRTC whether it supports the application
- CRTC has 15 days from filing to agree to proceed
- CRTC sets out matter to be arbitrated and timetable
- Parties have 15 days to submit a final offer
- CRTC forwards to each party a copy of the other party’s final offer

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Option 3 – Arbitration: Decision

- Each party can comment on the other party's offer
- Neither party can change its original offer
- No oral hearing
- CRTC arbitration panel selects one of the offers in its entirety
- In very exceptional cases, the panel can reject both offers

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Best practices

1. Early intervention can be effective

- CRTC staff open to informal conversations prior to a formal complaint submission
- Early assistance by way giving general advice on negotiations
- Also, discussion of CRTC policy and precedent can break impasses

2. Communication is key

- CRTC must understand the commercial realities of the parties in dispute
- Parties must understand the CRTC's regulatory imperatives
- Useful tool: Ask the parties, "What would your business plan be like if there was no regulator?"
 - ✓ Take the answer as a foundation
 - ✓ Build in the statutory and regulatory considerations

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Best practices (cont'd)

3. Focus on the major issue

- Parties don't identify and prioritize issues in the same way
- Focus and achieve consensus on one key issue
 - ✓ Look for an issue worthy of being addressed by everyone
 - ✓ Sometimes this will bring emotions to the fore
 - ✓ It is the greatest contribution a mediator can make
- Arbitrators should limit arbitration to the central issue

4. Tight timelines vs. flexibility

- Some people prefer order and strict timelines
- Others abhor unconstructive rigidity when solving problems
- Design the process to enable both types to function – build in time for “out-of-process” side negotiations
- Goal: both parties will “buy in” to a settlement they arrived at together on their own terms and schedule

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Best practices (cont'd)

5. Always close meetings with agreed next steps

- Disputes may take months – maybe years – to resolve
- Maintain a series of short-term goals
- No meeting should close before the next step(s) are agreed upon
 - ✓ Can be small (date, location, subject matter of next meeting)
 - ✓ Ideally assign “homework” to be performed by one or both parties before the next meeting

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Lessons learned

1. The best intervention is at the earliest stage and with the lightest touch
2. The win-lose situation of arbitration is the least desired – but you need it to make mediation work

Broadcasting Retransmission Issues in **the UK** The 3rd ICCF

Yih-Choung TEH Director
Competition Policy Group_**Ofcom**

November . 03 . 2011 | Maple Hall, 4F The Plaza Hotel

Broadcasting Retransmission Issues in **the UK** The 3rd ICCF

The presentation will provide an overview of TV broadcasting platforms in the UK and then consider the issues with respect to two types of key content for UK viewers - (i) public service broadcasting (PSB) channels, and (ii) premium sports and movies channels. PSB channels command the largest viewing audiences in the UK. To date, PSB channels have been subject to a specific regulatory regime which places PSB programming obligations on them in exchange for analogue broadcast licences and the associated spectrum. The balance of payments between a PSB channel and a platform is influenced by a number of factors: must-offer regulatory provisions applying to PSB channels, must-carry provisions that potentially apply to platforms, regulated charges for technical platform services (TPS), UK copyright law; and commercial negotiations. While Ofcom has not had any recent formal complaints or disputes on retransmission fees, it has dealt with disputes relating to regulated TPS charges and to the charges payable for DTT multiplex capacity. Retransmission fees is currently a topic of active debate, with the BBC arguing that it is timely to review the current arrangements in view of the £10m per year it pays to be on Sky's satellite platform.

Premium sports and movies channels have been key to the success of pay TV platforms in the UK. However these channels have not been widely distributed; in particular they have been absent from DTT pay TV platforms. In 2010, Ofcom required Sky to offer its Sky Sports 1 and 2 channels to retailers to enable these channels to be 'retransmitted' on other platforms, with wholesale prices set so that an efficient competitor should be able to match Sky's retail prices. This regulation has resulted in the launch of new pay TV services on DTT as well as a number of complaints.

Broadcasting retransmission issues in the UK

Dr Yih-Choung Teh, Competition Policy Director, Ofcom

3 November 2011

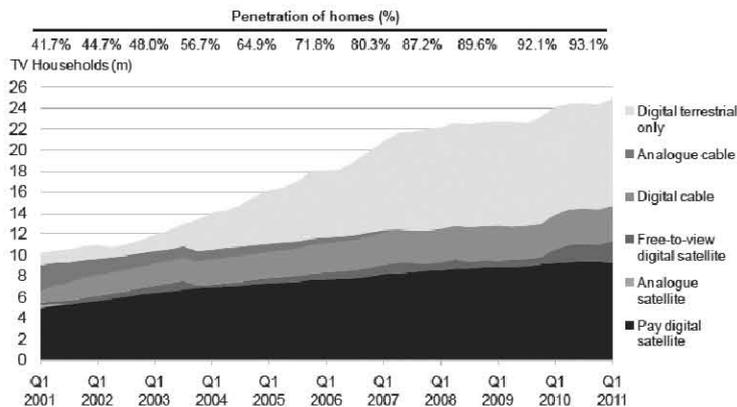
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Agenda

- TV broadcasting platforms in the UK
- Transmission of PSB channels
- Transmission of premium content channels

TV broadcasting platforms in the UK

Take-up of multichannel TV on main sets



Source: Ofcom, GfK, Sky, Virgin Media. Data from Q1 2007 are based on consumer research, previous quarters use platform operator data, research and Ofcom estimates. Note: Digital terrestrial relates to DTT-only homes.

Source: The Communications Market Report 2011, Ofcom

Main platforms

- DTT
- satellite
- cable

Agenda

- TV broadcasting platforms in the UK
- Transmission of PSB channels
- Transmission of premium content channels

Transmission of PSB channels

- PSB channels command the largest viewing audiences in the UK and are available on all major TV platforms both free-to-air (DTT) and pay (satellite, cable)

- Regulatory and legal framework
- Complaints and disputes
- Issues for the future

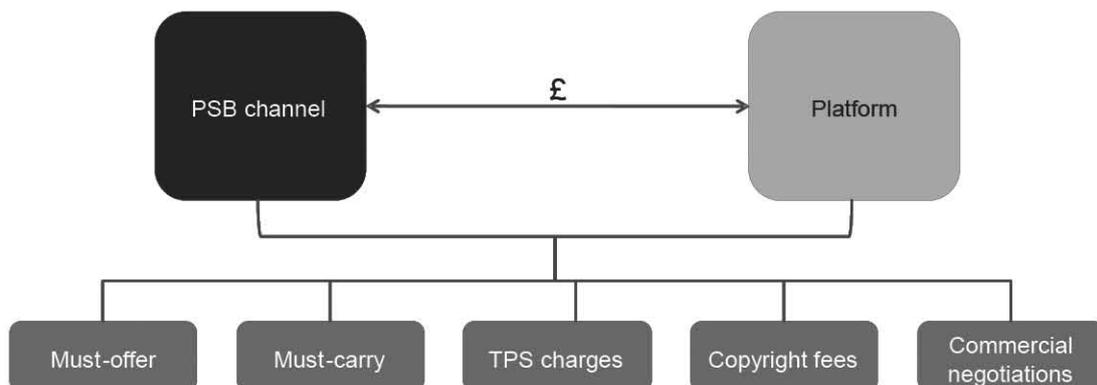
PSB channels



Payments between PSB channels and platforms

- To date PSB channels have been subject to a specific regulatory regime:
 - obligations to broadcast PSB programs
 - in exchange for analogue terrestrial TV broadcast licences (and spectrum)

A number of factors influence balance of payments



Current arrangements for PSB channels in the UK

- **Must-offer**
 - PSB channels to be made available to every appropriate network
 - provisions subject to (i) “*need to agree terms*” and (ii) broadcaster must “*do his best*”
- **Must-carry**
 - ability to mandate a platform to broadcast a PSB channel
- **Technical Platform Services charges**
 - TPS include conditional access, regionalisation, EPG listings, access control
 - applicable platforms must apply fair, reasonable and non-discriminatory terms
- **Copyright Act**
 - no current regulatory requirement for UK platforms to pay PSB channels copyright fees
 - cable platforms effectively exempt from paying retransmission fee for PSB channels
- **Commercial negotiations**
 - balance of payments depends on benefits to platform vs benefits to broadcaster

Related complaints and disputes

- No recent formal complaints or disputes to Ofcom on retransmission
- **TPS charges:**
 - Sky required to ensure that terms, conditions and charges for TPS, including EPG services, are fair, reasonable and non-discriminatory (FRND)
 - dispute brought by Rapture TV against Sky in November 2006
 - Ofcom found in favour of Sky in March 2007
 - Ofcom decision upheld by Competition Appeal Tribunal in March 2008
- **DTT multiplex capacity charges:**
 - certain DTT multiplex licensees must offer reserved capacity to Channel 5 at a price determined by Ofcom if no commercial agreement
 - Ofcom determined price for Channel 5 on SDN multiplex (owned by ITV) in May 2005
 - Ofcom determined price for Channel 5 on D3&4 multiplex (owned by ITV and Channel 4) in July 2010

Active debate on retransmission fees is ongoing

- The BBC (supported by other PSBs) is calling for a review of the current arrangements:

- *“And here's another idea. In Britain, you'll recall, Sky pays nothing for retransmitting the PSB channels, despite the fact that, taken together, they are by far the most watched channels they offer. On the contrary, the PSBs pay an EPG charge for the privilege of being on the platform...”*

Mark Thompson, BBC Director General, MacTaggart lecture, August 2010

- *“To be clear, here in the UK the BBC would not seek to be paid by Sky for the re-transmission of its content - the BBC is already funded by a universal licence fee. But if we did not have to pay Sky £10m a year we would save £50m over the remainder of the licence fee period...”*

John Tate, Director of Policy & Strategy, BBC, October 2011

- Sky holds a different position:

- *“...those distribution costs are no different to paying for electricity, studio facilities or any other services. No one expects satellite operator Astra to provide the BBC or the other PSBs with free transponders or British Gas to provide them with cheap energy, subsidised by its other customers. In these examples, the PSBs pay the same rate as everyone else and do not expect, nor receive, a subsidy.”*

Rob Webster, Group Commercial Director, BSkyB, October 2011

Agenda

- TV broadcasting platforms in the UK
- Transmission of PSB channels
- Transmission of premium content channels

Transmission of premium content channels

- In the past, premium sports and movies channels have been available only on satellite and cable (the major pay TV platforms):
 - more recently the question has been whether these channels should be available ('retransmitted') more widely on other platforms, including DTT

- Regulatory and legal framework

Premium sports and movies channels

- Complaints and disputes



- Issues for the future

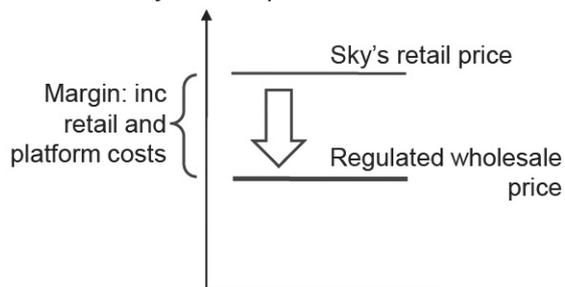


Access to premium sports is key for pay TV

- Live high-quality sports and recent Hollywood movies retain an enduring appeal for many consumers:
 - access to this content has driven the historical development of pay TV
 - will remain crucially important for the development of new platforms and services
- For many years Sky has held the exclusive rights to broadcast many of the most sought-after premium sports:
 - Sky has market power in the wholesale of certain premium sports channels as a result of its control of these live broadcast rights
- Sky exploits its market power by limiting wholesale distribution of its premium channels:
 - restricts competition from retailers on other platforms
 - reduces consumer choice
 - holds back innovation by companies other than Sky

Sky required to offer Sky Sports 1 and 2

- Ofcom's Pay TV Statement, March 2010 requires Sky to offer Sky Sports 1 and 2 to retailers on other platforms:
 - guidance provided on non-price matters
 - supply of HD services to be offered on FRND terms
 - wholesale price for SD services set so that an efficient competitor should be able to match Sky's retail prices
- Decision in Ofcom's Pay TV Statement has been appealed by Sky and other parties
- New pay TV services launched in 2010:
 - BT Vision on DTT 
 - Top Up TV on DTT 
 - Virgin Media HD services on cable 



Complaints re contracts for supply of Sky Sports 1 and 2

- **Top Up TV:** restriction preventing distribution of Sky Sports 1 and 2 to simple linear set-top boxes:
 - Ofcom found in favour of Top Up TV, August 2010 (Appeal to CAT outstanding)
- **Top Up TV:** exclusion of right to distribute Sky Sports 1 and 2 to CI+ conditional access modules (CAMs):
 - Ofcom found in favour of Top Up TV, December 2010 (Appeal to CAT outstanding)
- **BT:** requirement to provide Sky with BT Vision pay TV subscriber and total customer numbers:
 - Ofcom found in favour of BT, March 2011
- **Virgin Media:** terms of wholesale supply by Sky of Sky Sports 1 and Sky Sports 2 HD:
 - Virgin Media withdrew complaint following Ofcom's draft decision, March 2011

Premium movies is also under consideration

- Ofcom referred the movies market to the UK Competition Commission (CC) for investigation in August 2010:
 - concerns regarding the sale and distribution of subscription premium pay TV movies, including the restricted exploitation of subscription video-on-demand rights
- CC provisional findings, August 2011: there are features which prevent, restrict or distort competition such that there is an adverse effect on competition:
 - “*Sky has market power as a retailer of pay TV such that there is ineffective competition in the market for pay TV*”
 - “*...our initial assessment is that Sky has persistently earned profits substantially in excess of its cost of capital...*”
- CC Notice of possible remedies: August 2011
- Statutory deadline for final report: August 2012

Terrestrial Retransmission Conciliatory Cases in **France** The 3rd ICCF

Thierry VACHEY Deputy Director
Audiovisual Operators Direction_ **CSA**

November . 03 . 2011 | Maple Hall, 4F The Plaza Hotel

Terrestrial Retransmission Conciliatory Cases in France The 3rd ICCF

The Conseil supérieur de l'audiovisuel (CSA) has jurisdiction to settle disputes relating to the distribution of radio channels and television services. This is a new competency given to the CSA 7 years ago, in order to favour a better regulation of the audiovisual sector.

The dispute must be related to the distribution and the financial conditions of the broadcast of radio and television services. Besides, the dispute must affect legal and competitive principles, such as the objective, equitable and non discriminatory characteristics of the conditions to provide a service.

Less than 30 requests have been presented in the 7 last years. Only one was related to terrestrial broadcasting retransmission through pay TV platforms. It is the case opposing TV NUMERIC to CANAL J.

TV NUMERIC is a commercial distributor which proposes a pay TV offer to the subscribers of DTT. CANAL J is a pay TV channel, authorized by the CSA in 2005, and available in TV NUMERIC's offer. The channel requested in January 2009 to cancel its authorization for a DTT broadcast, and terminated the contract concluded with TV NUMERIC. The distributor asked the CSA to declare that the termination had occurred without considering the contract.

The CSA examined the grounds of the termination by taking into account the requirements of objectivity, non discrimination and equity.

It considered that CANAL J could not be blamed, because CANAL J was facing a deficit, when operating on DTT, which was weakening the company in its existence; The CSA also noticed that CANAL J had put an end to its contract with all DTT distributors, and not only with TV NUMERIC; and, finally, observed that CANAL J had respected a 4 months period between the notification to TV NUMERIC and the interruption of the broadcast.

Thus, the CSA rejected in July 2009 the dispute settlement presented by TV NUMERIC.

TV NUMERIC appealed to the Conseil d'État, France's highest administrative court, which rejected this appeal, considering that the CSA had taken into account the reasons justifying to accept that the authorization had to be discontinued. The judge also noticed that the dispute settlement between TV NUMERIC and CANAL J was no longer justified after the revocation, by the CSA, of CANAL J's authorization, since this revocation was decided in April 2009, 3 months prior to the decision concerning the dispute settlement.

Yih-Choung TEH Director

Competition Policy Group **Ofcom**



Disputes related to Terrestrial Broadcasting Retransmission through Pay TV Platforms

The french Experience

3rd International Communications Conciliation Forum

Seoul / Korea
November 3, 2011



Audiovisual communication regulation



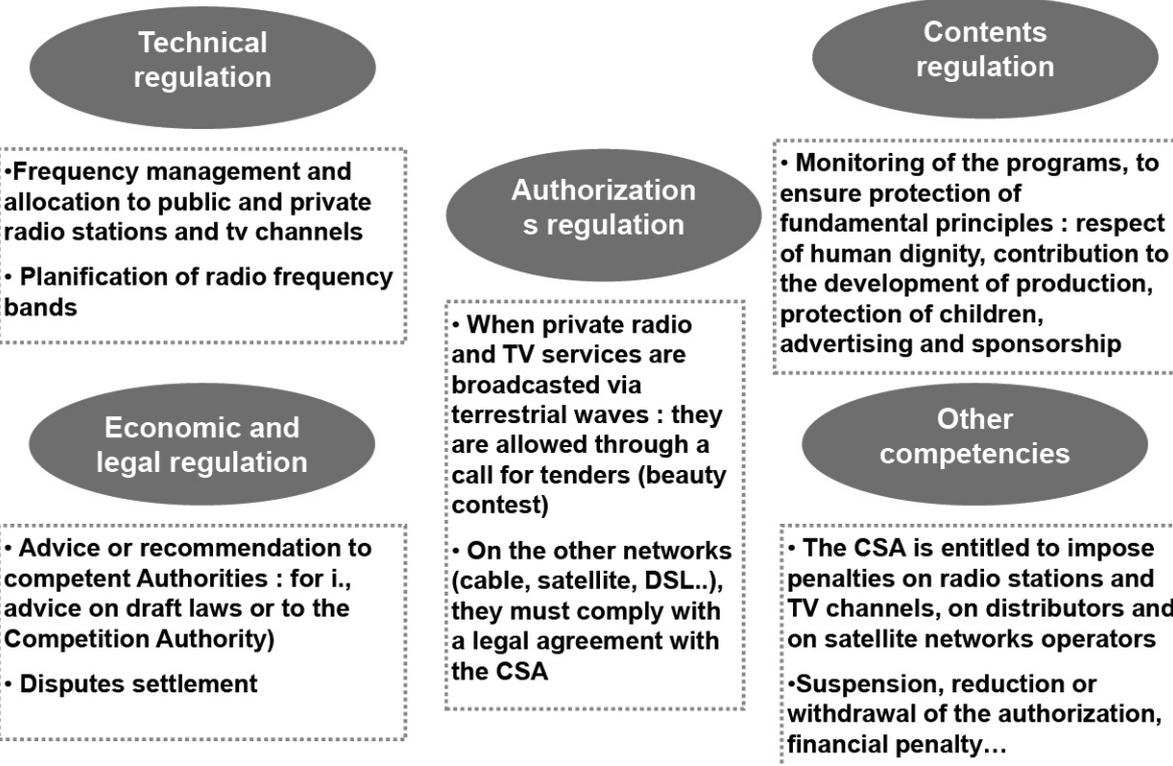
- ▶ **Audiovisuals media services are regulated by an independent authority, the CSA, with the mission of guaranteeing and promoting audiovisual communication freedom in France**
- ▶ **The CSA consists of a nine member board + 280 people working for the Conseil under the authority of the executive director**



CSA'S role and missions



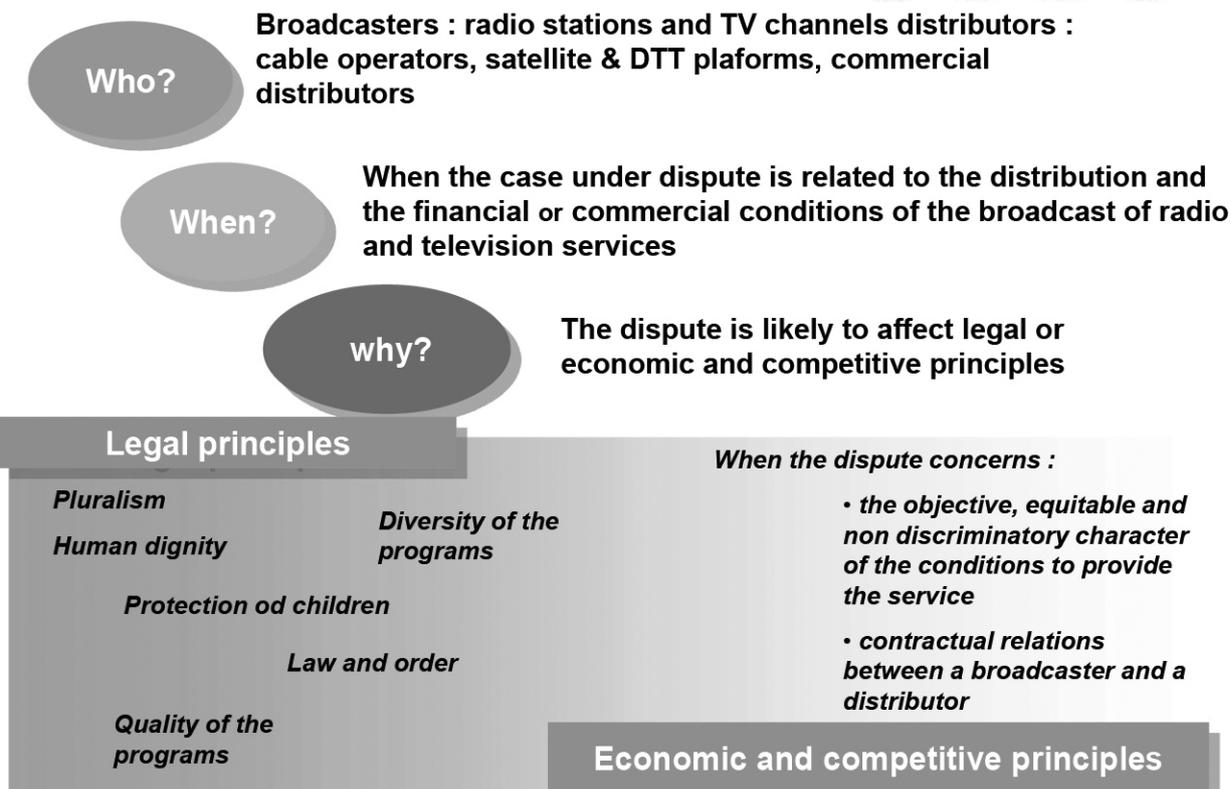
DIRECTION DES ETUDES ET DE LA PROSPECTIVE



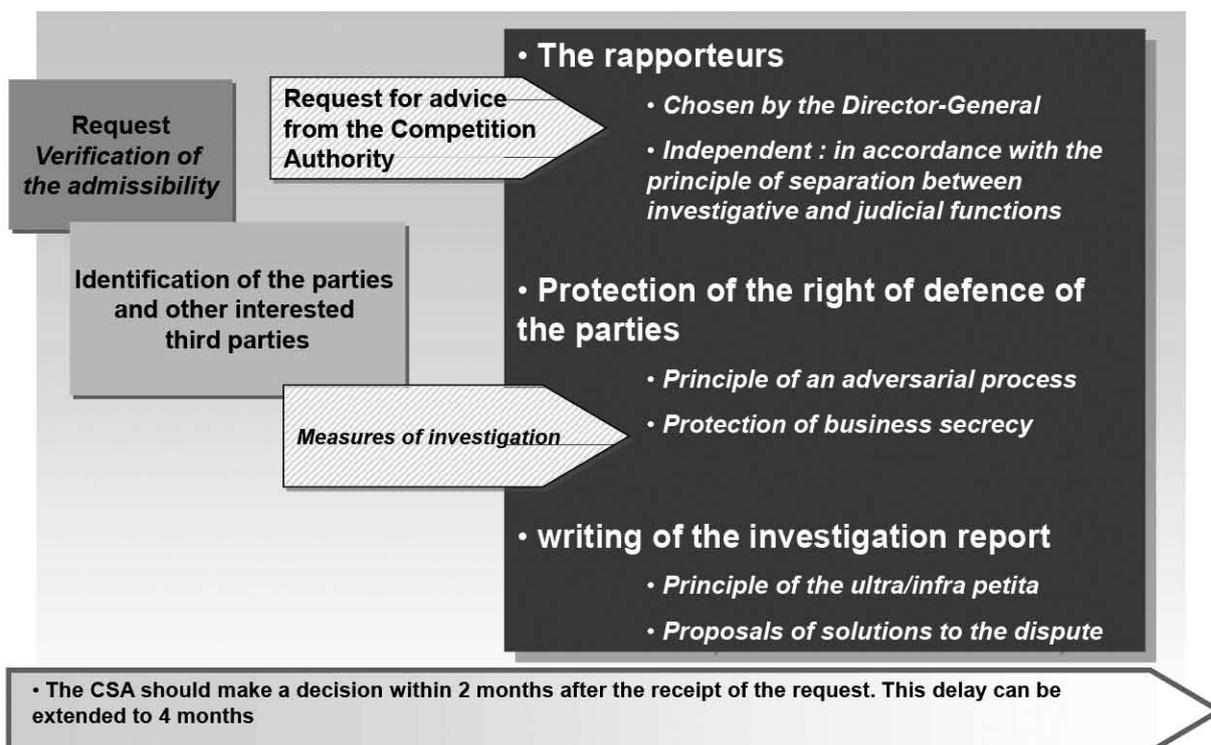
Dispute settlement



DIRECTION DES ETUDES ET DE LA PROSPECTIVE

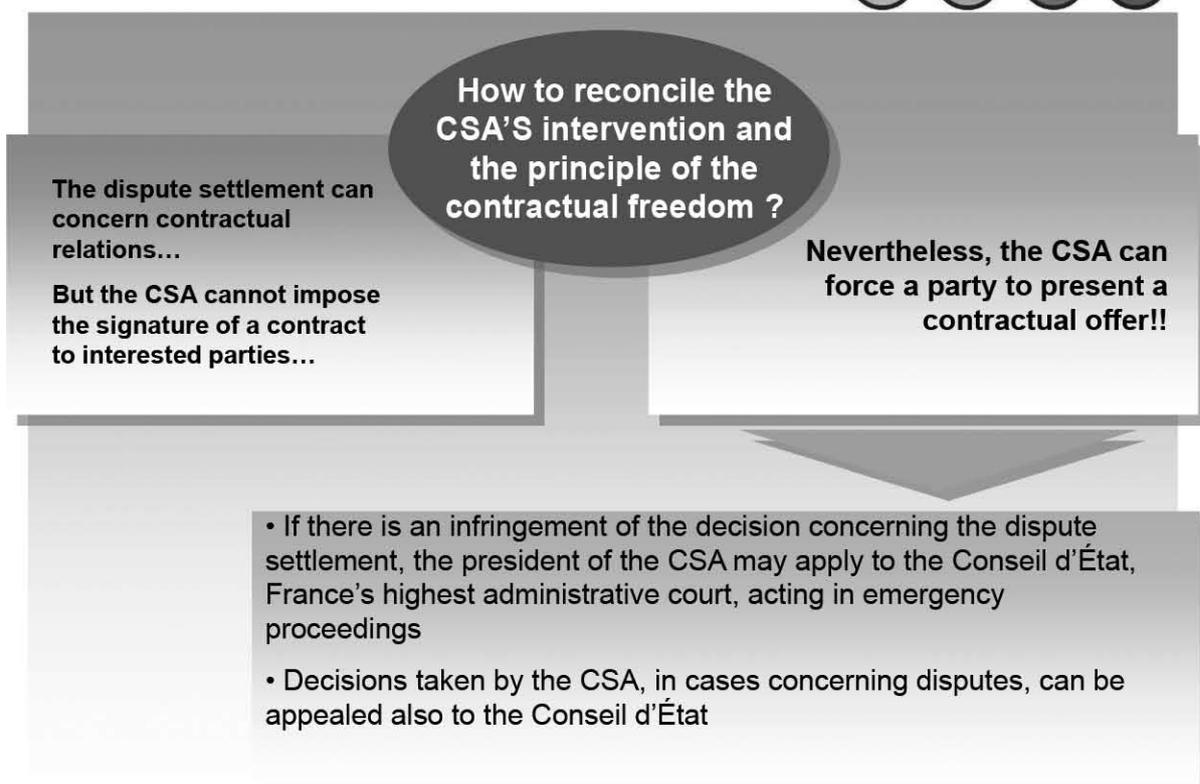


Investigation of the dispute



- 5 -

Regulation and preservation of the contractual freedom



- 6 -

Less than 30 requests in 7 years



- ▶ The dispute settlement procedure for audiovisual matters was introduced in the law 7 years ago (art. 17-1 of the law on freedom of expression)
- ▶ Less than 30 requests have been examined up to now
- ▶ Most of them deal with *the objective, equitable and non discriminatory characteristics* of the contractual relations

Only one was related to terrestrial broadcasting retransmission through pay TV platforms
It is the case under dispute between TV NUMERIC and CANAL J

- 7 -

TV NUMERIC VS CANAL J

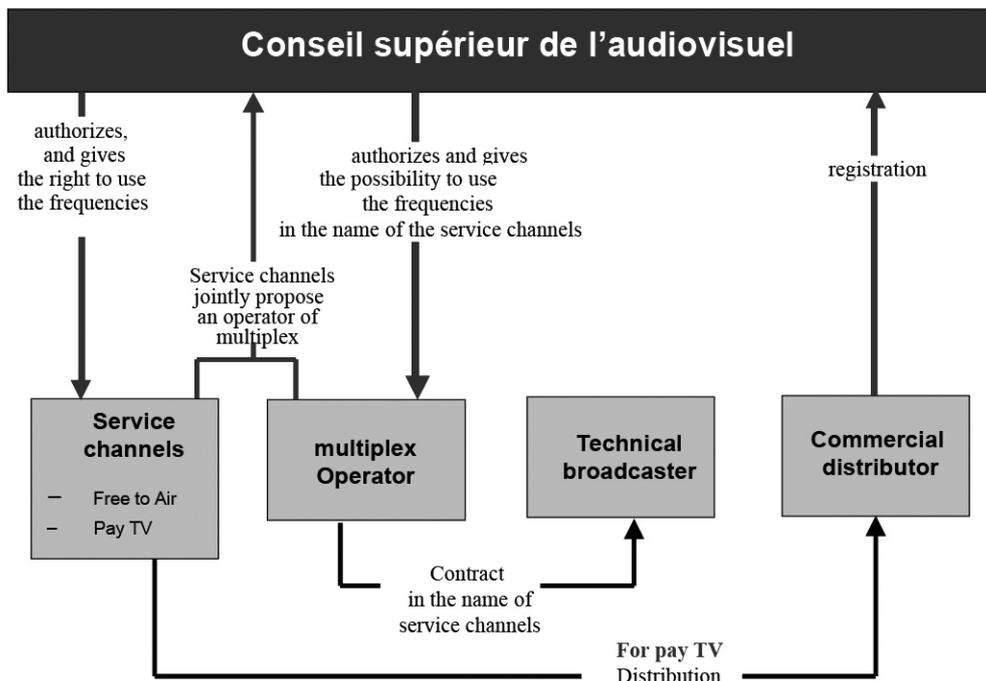


- ▶ TV NUMERIC is a commercial distributor which proposes a 6 channels pay TV offer to the subscribers on DTT
- ▶ CANAL J is a pay TV channel, dedicated to children. The channel was authorized in 2005 to be distributed on DTT
- ▶ CANAL J requested the CSA, on 15 January 2009, to cancel its authorization for a DTT broadcast (This decision was made on 28 April 2009)
- ▶ Consequently, the broadcaster also terminated the contract concluded with TV NUMERIC

On 24 february 2009, TV NUMERIC asked the CSA to declare that the termination had occurred without considering the contract, and that CANAL J must be maintain on DTT until a decision is taken by the CSA

- 8 -

To understand the dispute : The licensing process of TV services on DTT...



- 9 -

TV NUMERIC VS CANAL J



- ▶ The CSA examined the grounds of the termination by taking into account the requirements of objectivity, non discrimination and equity

Objectivity

- ▶ The operating problems were justified by the fact that broadcast costs were higher than revenues. This deficit weakened the company situation not only on DTT, but also on the other platforms
 - ▶ *The CSA considered that CANAL J based its claim upon objective reasons*

Non discriminatory

- ▶ CANAL J had put an end to its contract with all the DTT distributors, and not only with TV NUMERIC
 - ▶ *The CSA considered that CANAL J'S decision concerning TV NUMERIC could not be qualified as discriminatory*

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Equity

- ▶ Canal J had respected a period of 4 months between the notification to TV NUMERIC and the interruption of its broadcast, even if no deadline was stipulated in the contract
- ▶ the removal of CANAL J from DTT reduced to 5 the number of channels composing TV NUMERIC offer on this platform
- ▶ But no figure was provided by TV NUMERIC showing the impact of this removal
 - ▶ *The CSA considered that CANAL J could not be blamed on the ground of equity*

The CSA rejected, on 20 July 2009, the dispute settlement presented by TV NUMERIC

- 11 -



- ▶ TV NUMERIC decided to appeal to the Conseil d'État
 - ➔ The decision by which the CSA accepted that the broadcasting authorization given to Canal J could be revoked
 - ➔ The decision by which the CSA rejected TV NUMERIC request concerning the termination of the contract
- ▶ The Conseil d'État rejected the appeal, considering that
 - ➔ the CSA had taken into account the situation of the broadcasting which justified to accept that the authorization could be discontinued. And, moreover that the situation of TV NUMERIC does not constitute a general interest reason justifying to refuse to revoke the authorization
 - ➔ since this revocation was decided on 28 April 2009, the dispute settlement between TV NUMERIC and CANAL J was no longer justified

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Conclusion



- ▶ **Dispute settlement is the expression of a new economic regulation of audiovisual sector**
- ▶ **This approach needs nevertheless a conciliation, from the CSA, between the competition law and the audiovisual law**
- ▶ **In this specific case, the decision to revoke the authorization was made on the 28th of April 2009, which was 3 months before the decision concerning the dispute settlement (20 July 2009)**

The validation by the Conseil d'État of this schedule shows that there is a hierarchy in the regulation.

If a broadcaster has a valid reason to ask for the revocation of its authorization, the CSA can satisfy its request, even if a dispute settlement concerning this question is still under investigation

- 13 -



Thank you for your attention

Thierry VACHEY
Conseil supérieur de l'audiovisuel
thierry.vachey@csa.fr

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Terrestrial Broadcasting Retransmission Issues in **Korea** The 3rd ICCF

Dong-Joo PARK Director
Deliberation Advisory Team_KCC

November . 03 . 2011 | Maple Hall, 4F The Plaza Hotel

Terrestrial Broadcasting Retransmission Issues in **Korea** The 3rd ICCF

Aims of terrestrial broadcasting retransmission system are to secure universal access and to promote value of broadcasting. Public service broadcasters(KBS1, EBS) are under the must-carry rule. Current issues on terrestrial broadcasting retransmission are (1)solving poor reception, (2)competition, (3)digital transition, copyright and retransmission. To minimize disputes among broadcasters and to strengthen viewer's welfare, KCC has improved terrestrial broadcasting retransmission regime such as expand the range of must-carry, criteria of retransmission payment estimation, and supplement conciliation process.



Terrestrial Broadcasting Retransmission Conciliatory Issues in Korea

3rd Nov. 2011

Park, Dong Joo

Director, Deliberation Advisory Team
Consumer Policy & Enforcement Bureau
Korea Communications Commission



Content

I

Retransmission System of Korea

II

Broadcasting Conciliation System of Korea

III

Cases of Retransmission Disputes of Korea

IV

Improvement in Terrestrial Retransmission
Regime of KCC





Aim of Terrestrial Broadcasting Retransmission System

Secure universal access

- Resolve terrestrial poor reception utilizing subscription broadcasting service network
 - Enables universal provision of public broadcasting - an essential service to enjoy as a citizen, and viewing of public broadcasting programs as merit goods
- Expand coverage of terrestrial broadcasting – a universal service
 - Expand coverage by retransmitting terrestrial broadcasting using an alternative network to secure access upon terrestrial broadcasting being a universal service

Promote value of broadcasting

Promote localism

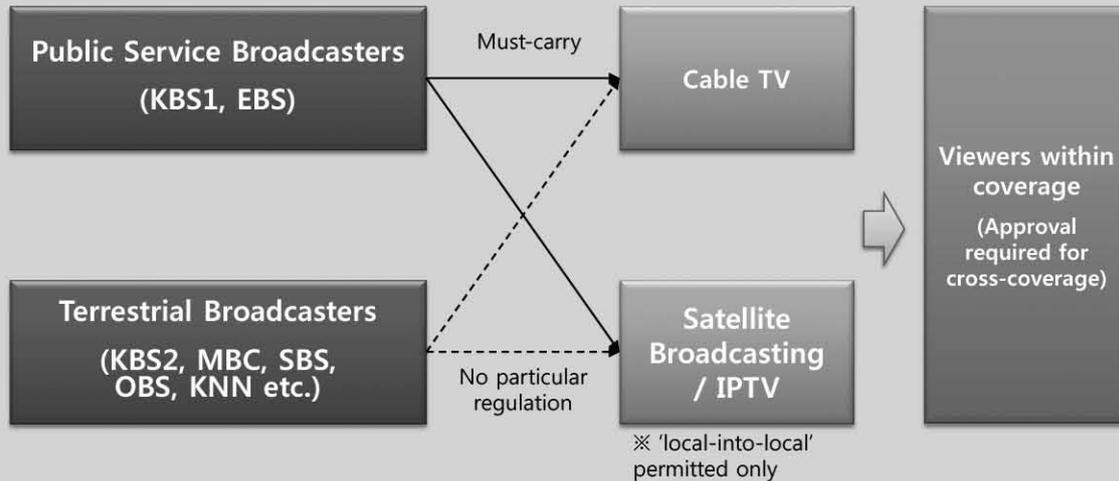
- Preserve localism being one of the core elements of public concept
- Operate approval system to off-coverage retransmission

Promote public value

- Must-carry retransmission to channels of public purpose such as news, public channels, religious channels etc.

Management Overview of Terrestrial Broadcasting Retransmission System

Structure of retransmission



4

Management Status of Retransmission System

Current Status

| Platform | Cable TV | Satellite Broadcasting | Satellite DMB | IPTV |
|---|--|--|--|--|
| Permission status of terrestrial retransmission | <ul style="list-style-type: none"> Retransmission within permitted broadcasting regions Conditional approval limited to independent local broadcasting with over 50% of its own program schedule portion | <ul style="list-style-type: none"> KBS2, MBC, SBS(& local broadcasters)-individual contract between individual broadcasters | <ul style="list-style-type: none"> Retransmission not being rendered due to opposition of local terrestrial broadcasters (including KBS1) | <ul style="list-style-type: none"> KBS2, MBC, SBS(& local broadcasters)-individual contract between individual broadcasters |

➤ Broadcasting Law Article 78 (Retransmission)

§78① : Impose retransmission obligation to all service providers - KBS1 & Cable TV SO and RO of EBS, satellite broadcasting (Must Carry) → Must-carry system as to public broadcasting

§78③ : By the regulation of §78①, copyright regulation application process is exempted for simultaneous retransmission

§78④ : In case of simultaneous retransmission of a broadcast of a terrestrial broadcaster licensed in another broadcasting area, or a satellite broadcaster retransmits a terrestrial broadcast other than those of KBS1 and EBS - KCC's approval is required → Off-coverage retransmission approval system to boost localism

5

II Broadcasting Concillation System of Korea



Overview of Broadcasting Conciliation system

Overview

- A system which KCC conciliates the stake in a neutral stance as to broadcasting related disputes risen between broadcasting service providers

| Classification | Broadcasting Conciliation |
|--------------------------|---|
| Overview | <ul style="list-style-type: none"> ▪ A system which KCC conciliates and derives agreement in a neutral stance as to broadcasting related disputes arising between broadcasters, relay operators, transmission service providers, IPTV broadcasters, and telecommunication operators |
| Legal evidence | <ul style="list-style-type: none"> ▪ Broadcasting Law, 3 of Article 35 |
| Dispute party | <ul style="list-style-type: none"> ▪ Mutually between broadcasting service providers |
| Conciliation subject | <ol style="list-style-type: none"> 1. Related to supply and demand of broadcast programs 2. Disputes related to broadcasting business area 3. Related to property right interest such as relay broadcasting access 4. Issues related to common business of broadcasting service providers 5. Disputes related to management of other broadcasting business |
| Conciliation Institution | Broadcasting Conciliation Commission (propose a scheme) → Korea Communications Commission (decides) |
| Vigor | Vigor of compromise by court |

Broadcasting Conciliation Commission

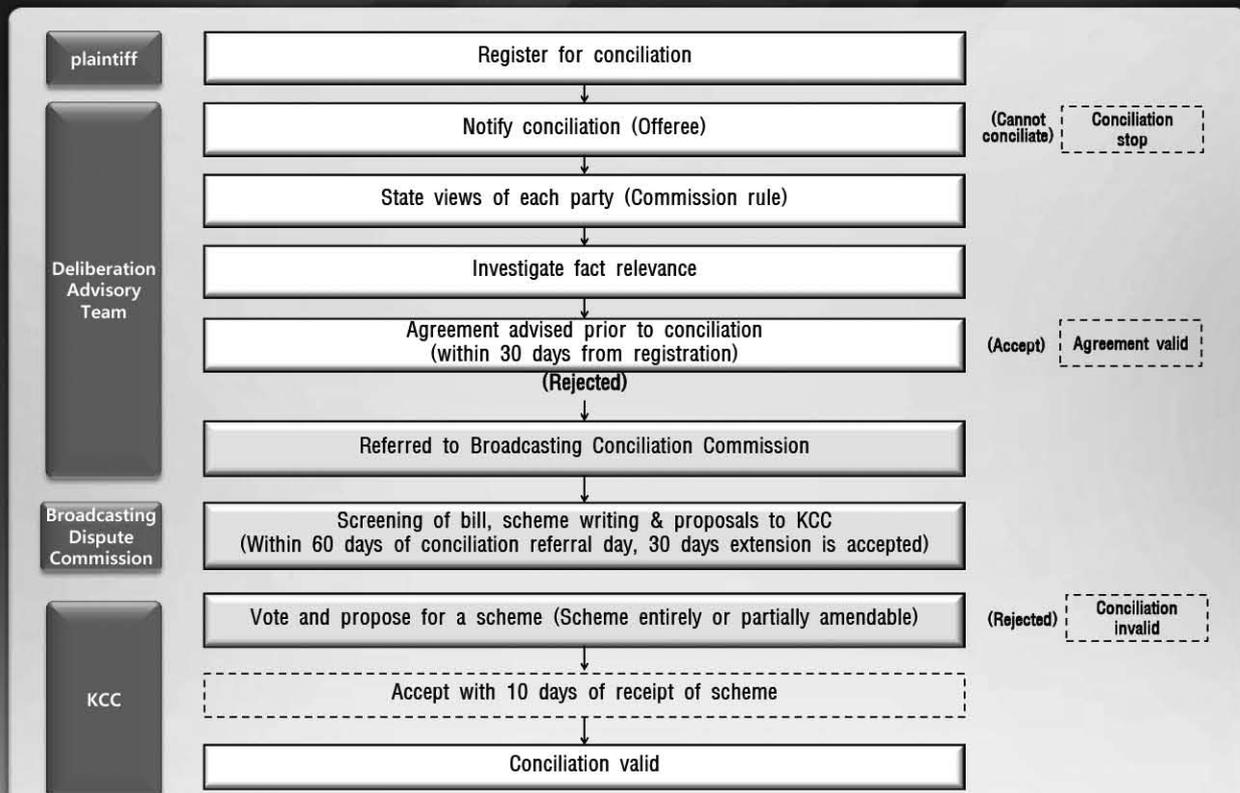
Establishment & management

- Currently, Broadcasting Conciliation Commission is composed of 7 persons of with 17 conciliation issues handled totally

| Classification | Broadcasting Conciliation |
|----------------------------------|---|
| Establishment of Commission | <ul style="list-style-type: none"> ▪ Head of Commission 1 person (A standing member from KCC) ▪ 3 persons in legal sector, 1 in finance sector, 2 in journalism & broadcasting |
| Registered Conciliation & Result | <ul style="list-style-type: none"> ▪ A total of 17 dispute conciliation issues from Jan. 2008 to Sept. 2011 was handled (6 issues of conciliation agreed, 3 issues of conciliation suspended, 8 issues of conciliation agreed before referring to the commission) ▪ By the types of conciliation, channel delivery (9 issues), provision of equipments(2 issues), program fee (1 issue), relay fee (1 issue), broadcasting business management (1 issue), broadcasting right (2 issues), retransmission (1 issue) were handled |

8

Conciliation work process



9



III

Terrestrial Retransmission Disputes of Korea



Disputes on Terrestrial Retransmission in Korea

Case 1

Cable TV arbitrarily halts terrestrial retransmission

- Due to the dispute between Pohang SO and Pohang MBC(terrestrial broadcaster) in year 2003, Pohang SO requested for Pohang MBC to transmit signals with optical cable for the signal quality problem of Pohang MBC
- An example of temporary suspension of retransmission - Pohang MBC's stance was in conflict, that it was impossible to transmit directly with an optical cable due to the characteristic of terrestrial broadcasting

Case 2

Copyright dispute between terrestrial broadcaster and Cable SO

- In Aug. 2005, Korea Broadcasting Association filed an action against the 5 Cable SOs those illegally retransmitted terrestrial programs through their own channels for violation of copyright law, since then, SO's rebroadcasting of popular programs of terrestrial channels came to an halt

Case 3

HD content payment dispute between SBS and KT Skylife

- HD content retransmission dispute between a terrestrial broadcaster, SBS, and KT Skylife, a satellite broadcaster in Apr. 2011
- It was withdrawn through agreement between the parties before the commission referred the bill after registering for conciliation

Dispute status of recent Terrestrial retransmission

Recent Dispute Status

- **Legal lawsuit was filed between terrestrial broadcasters and Cable TV SOs with the evidence of copyright infringement**
 - In Sept. 2009, 3 terrestrial broadcasters filed an appeal against SOs for violation of copyright law by illegal retransmission action of terrestrial channels, and filed a suit against prohibiting the action of simultaneous retransmission of terrestrial broadcasting as to new subscribers of digital broadcasting
 - Judicial decision: Broadcasting to subscribers with prior consent of terrestrial broadcaster is infringement of simultaneous broadcast right, Cable TV SO's infringement of copyright of terrestrial broadcasters was admitted

- **20th July, 2011, terrestrial retransmission was disapproved to new subscribers of Cable TV, as the copyright of terrestrial broadcaster was admitted in the verdict of the original bill related to the dispute**
 - Retransmission of terrestrial broadcasting to new subscribers was disapproved as Cable TV's infringement of copyright of terrestrial broadcaster was agreed
 - Compulsion order: 28th Oct, 2011, CJ Hellovision, a Cable SO, should compensate terrestrial broadcasters for compulsion claim(KRW 50 million)/day for everyday)

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Key Issues of Current Disputes

Current Issues

| | Issue | Terrestrial Broadcaster | Cable TV (SO) |
|---|--|---|---|
| Solving poor reception | Contribution retransmission as to solving poor reception | Terrestrial broadcasters can directly implement the policy aim of solving poor reception as completion of digital transition | Digital transition is not a solution to poor reception, and SOs have been contributed to solve poor reception through terrestrial retransmission |
| Competition | Content based competition | Content-based competition would occur when compensation of fair level is rendered | Retransmission is required to create fair competition environment at multimedia, multichannel environments |
| Digital Transition | Validity of covering the expense by digital conversion with retransmission payment | Terrestrial HD content has contributed to SO's profit and subscriber increase, SOs should pay for HD contents to terrestrial broadcaster | Retransmission price and fees for digital transition and digital content production are separate |
| Copyright & Retransmission Payment | Validity of cost paying for universal service of terrestrial broadcasting | In case of analog broadcasting, exceptions can be admitted by the objective of retransmission policy of solving poor reception, however, it is argued for reasonable price for digital broadcasting | As the aim of retransmission lies upon realizing universal duties, benefit of majority viewers should be prioritized before terrestrial broadcasters' copyright |

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IV

Improvement In Terrestrial Retransmission Regime of KCC



Improvement in Terrestrial Retransmission Regime

Principle

- Minimize disputes among broadcasters on terrestrial retransmission
- Secure universal access to strengthen viewer's welfare

Expand the range of must-carry

- Push ahead with revision of the Broadcasting Law to expand the range of 'must-carry rule'

Criteria of retransmission payment estimation

- Prepare adequate price estimation criteria on retransmission with the principle of free agreement between the service providers
 - Consider comprehensively such as expense and profit raised by retransmission
 - Consider mutual contribution between terrestrial broadcasters and Cable SOs to solve poor reception and to increase profit

Improvement in Terrestrial Retransmission Regime

Supplement conciliation process

- **Withdraw 'non-acceptance procedure' from the current conciliation system and prepare provision of 'authority conciliation' when a critical dispute occurs**
 - In case an important issue such as severe infringement to viewership right is expected, KCC solves the dispute through 'authority conciliation' decision
- **Introduce 'arbitration' system to the conventional broadcasting dispute conciliation system**

Other policies/systematic issues

- **Withdraw within-coverage retransmission from terrestrial broadcasting approval system of satellite broadcasters**
 - Improvement in procedure is needed to enable exclusively for approvals within/cross-coverage retransmission of terrestrial broadcasting in order to create fairness of regulations between broadcasters

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