

NCC invites public comments on amendment to Cable TV Act

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Introduction

Following its unsuccessful attempt in 2020 to introduce mandatory binding arbitration into the Cable TV Act, the National Communications Commission has proposed an alternative dispute resolution scheme for entertainment licensing between channel operators and cable system operators. In May 2021 the NCC will initiate a public consultation on the proposed amendment to the Cable TV Act, which will advocate a new conciliation scheme to be followed by an arbitrary NCC decision on content licence fees. The proposed amendment will also put content brokers on the radar.

Background

For entertainment licensing between channel suppliers and cable system operators, the Cable TV Act yields to the Copyright Act in that the NCC exercises no authority on dispute resolution in relation to carrying channels on cable TV systems and, subsequently, copyright licensing agreements. Instead, the NCC offers and chairs voluntary mediation to avoid the need for court action. However, the NCC has rarely had success in dispute resolution in the past few decades and the number of disputes regarding copyright licensing is increasing annually. Such disputes often result in channel blackouts due to content brokers refusing to supply (in most recent cases, refusals are triggered by sellers' agents).

As of 31 March 2021, 101 channel suppliers are registered with the NCC. These suppliers offer 254 channels to be distributed on 64 cable TV systems in Taiwan. The majority of content licensing is not conducted directly by the channel suppliers to each cable TV system but is dominated by a few seller's agents – notably, major multiple system operators (MSOs) (eg, Homeplus, KBRO and ERA). While the NCC is trying to close the regulation gap by further amending the Cable TV Act, which should rein in such MSOs and sellers' agents, the Fair Trade Commission has officially sent an alert regarding vertical power affecting horizontal competition in the cable TV market by revising its guidance on cable TV business from 28 April 2021.

Proposed amendments

The NCC proposes extensive conciliation provisions to amend the existing Cable TV Act which would:

- facilitate negotiation between all parties involved in content licensing disputes before the NCC; and
- result in the formation of an advisory board to be attended by designated NCC officials and academics for determining content licensing fee rates.

Such fee rates would be effective and binding on the disputed parties until a final court judgment is available. Most importantly, no channel blackouts would be allowed during the conciliation process before the NCC comes to a decision on the licensing fee rate dispute. A penalty of up to NT\$2 million could be applied if any party fails to follow the regulation.

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