LEGAL PROBLEMS ON REGULATING OVER-THE-TOP (OTT) SERVICE BY NATIONAL BROADCASTING AND TELECOMMUNICATIONS COMMISSION (NBTC)

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Abstract - This paper presents legal problems of regulating over-the-top (OTT) service by National Broadcasting and Telecommunications Commission (NBTC) due to the coming of new media environment. Recently, government agency on broadcasting and telecommunications and media company face technological turning point called OTT services such as facebook, linetv, youtbe, iflix etc. which cause viewers to reach content at anywhere and at any time. The situation, as a result, tremendously affects digital television industry. Due to AGB Nelson, famous survey and rating company, it showed that advertisement income for television continuously decrease as well as the burden of paying fee for digital TV license stands still. While newborn digital television is in the dark, OTT service agency is now in the bright light. Not only are the viewers on their side, but also the advertisement company. Advertisement income for digital media in OTT services are raised up continuously and luckily, since the model of OTT service does not fall in frequency used service, it, therefore, is not in control of media government agency. Thus, NBTC made an attempt to close such gaps and brought OTT services agency to the same playground as other media platform by applying existing legislation on OTT services. However, there still are problems of regulating OTT. First is a government agency 'to control' whether be NBTC or others. Second is the legal framework to regulate OTT services since there are some differences between OTT and digital television. Lastly, regulating OTT might bring effects in aspect of social and economics in media industry.

Index Terms - Over-the-top service, NBTC, Legislations, Regulation, Media

I. INTRODUCTION

The coming of internet brings advantage to Thai society in various aspects such as to provide knowledge, to help people start their career, to be a tool for reaching information etc. (Matichon, 2017). Recently in Thailand, the internet as such steps up to the new level by offering the service so called Over-The-Top or OTT described as the platform where pictures, sounds, contents are produced and can be communicated among people via application on internet such as Facebook, Youtube, Netflix etc (Mathichon, 2017).

Simply put, one man and internet can build and pass on his/her content to others independently, in no time, without extra payment rather than internet fee. Consequently, the coming of OTT conveys negative effects to media industries especially digital Television in two main features. First is the rating. According to AGB Nelson (2016), majority of consumers who are 15-25 years of age paid less attention on Television and they instead shifted to online platform. This subsequently followed by the downsizing of the income in traditional media platforms.

National Broadcasting and Telecommunications Commission namely media regulator in Thailand (Nititornyada, 2015) reported that advertisement value on terrestrial digital television was around 67,429 million baht. In big picture, those on various media platforms except online one were 107,000 million bath decreasing from 2015 around 16,000 million baht. (Sutthimas, 2017). Conversely, advertisement budget is continuously rising in online media platform. Regarding the report by Digital Advertisement Association (Thailand) (2016), advertisement budget on internet media platform is 17% bigger than last year. The OTT service namely, Facebook and Youtube, raked first and second as agency attractions in term of commercial budget. Undeniably, OTT service stormed in and changed media environment pushing traditional media platform in critical situation. Digital TV providers stated that while they had to pay in order to run the service such as fee for license or infrastructure investment, online platform paid less (Matichon, 2017) and did not fall under variety of legislations liked other media had to.(Matichon, 2017) Then, NBTC seek for answer by trying to control OTT in its own way.
On June 6th, 2016, administrators of several Facebook pages and youtubers were informed that they should prepare for consequences since NBTC planned to regulate them. (The Momentum, 2017) With doubts and ambiguity of what kind of regulation will be, NBTC took another step by calling companies such google and facebook to register as OTT services within 30 days. (The Momentum, 2017) Though the approach eventually was unsuccessful, it underlined the intention of government agency to control such services. However, before that, there were three legal issues to be clarified. Firstly, NBTC is whether the agency 'to control'. Secondly, which kind of legal framework tend to be used in current situation. Lastly, whether the legal control of OTT will affect social and economic circumstance.

II. REVIEW LITERATURE

A. Definition of Over-The-Top (OTT) services

Over-the-top or OTT are described as services that provide media, content through network that unintended to manage such services. (Kamal,2016) For example, shifting voice to OTT is VoIP (telephone via internet), shifting video to OTT is streaming website (Netflix, Hulu) etc.There are 6 types of OTT based on their services as described in Table1.

Table1: Types of OTT

No.	Types of OTT
	OTT VoIP
	OTT Massaging
	OTT Media
	OTT E-Commerce
	OTT Cloud Service
	OTT Social Media

OTT VoIP (Voice over Internet Protocol) is technology aiming to deliver voice over internet instead of telephony infrastructure. (Kamal, 2016) Some examples of such service are Skyp, Facetime, Viber. As for OTT massaging, this is similar to VoIP but it can be separated by the ability to send real-time massage to third party over the internet lining in the applications such as Line, WhatsApp. Additionally, the media OTT is the distribution of medias for example video, audio which once were reached by satellite, cable via internet right to user devices. (Kamal, 2016) Other than that, we have OTT E-commerce where the users can shop instead of going to department store, websites such as Amazon, Shopee, Alibaba can help them find what they want. In term of data storage, HDD or thumb drive is now no need since there is cloud storage, google drive, one drive for example. Lastly, people are connected via OTT like social media eg. Facebook, Inkin, Instagram etc. (Mnakri, 2015)

It can be seen that OTT plays an important role in society and also cause many challenges in traditional telecommunications service providers, TV station, publisher, for example.

B. National Broadcasting and Telecommunications Commission

The Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Service B.E. 2553 (2010) which has become effective since 20 December 2010 prescribed that there shall be the National Broadcasting and Telecommunications Commission (NBTC). The organization have powers and duties to allocate the frequencies and to regulate the broadcasting and telecommunications businesses to fulfill public benefit at national and local levels in education, culture, state security, and other public interest along with free and fair competition. However, Section 80 of the Act prescribed that during the absence of the NBTC under this Act, the National Telecommunications Commission (NTC) who was appointed under the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2543 (2000) shall continue to perform the duties as the NBTC under this Act except for the Broadcasting Business Act, which shall be in accordance with that law.

On 7 October 2011, the Royal Proclamation appointed the National Broadcasting and telecommunications Commission, under Section 17 of Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2553 (2010).

The NBTC has commenced on their duties since 7 October 2011 onwards. However, during the absence of the NBTC, from 1 January to 6 October 2011, the NTC who was appointed under the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services B.E. 2543 (2000) had acted on behalf on the NBTC for all duties and responsibilities as prescribed be the Transitory Provision of the above-mentioned Act. (National Broadcasting and Telecommunications Commission, 2018)

C. Regulatory Challenges for OTT

Clearly, OTT derives from technological development in order to fulfill the needs of customers. The arrival of OTT does bring media industry to the situation where OTT service providers are able to provide similar services to users like the traditional one, while the latter need to bare various burdens from additional cost to regulations.

On Table2, there are the lists of regulatory imbalances comparing between OTT and traditional services providers. (Telecom Authority of India, 2015, p.43)

Table2:Regulatory Imbalances between Telecom Services Providers and OTTs

Area of Regulation	Telecom services providers	OTTs
Spectrum arrangement	Bare costs and abide by the rules	No need
Licensing	Fall under different kinds of licenses and associated costa	No need
Interconnection	Required	No need
Quality of Services	Required	No need
Infrastructures sharing	Bare costs	No need
Monitoring Services	Required	No need

From Table1, it can be seen that while traditional telecom services providers bare the burdens in almost

areas, OTTs escape loads of responsibility in significant areas.

Moreover, if looks closely in the sector, red flag issues come around in the sector that allow OTTs to take over as seen in Table3.(Telecom Authority of India, 2015, p.45)

Table3：Regulatory Challenges in services area that allow OTTs

Sector	Regulatory Challenges
Media	Copyright issues
E-commerce	Consumer Protection
Cloud Services	Physical Control of data
Social Media	Social Interaction

In Table3, we can see the shortcoming of OTTs arrival lies in the challenges in many areas of law such as intellectual property, electronic transaction, data protection, and harassment plus social issues.

Regulatory framework for OTTs in foreign countries

Regulators worldwide face difficulties due to OTTs in a different and specific way. Obviously, they deal with them in a unique style. Logically, regulators encounter two regulatory issues. First is the treatment of non-communication players which offer the same services as traditional services providers. Second is the treatment of non-communication a respective trades as traditional one. Usually, a country treats those problems normally being analyzed on case to case basis. (Telecom Authority of India, 2015,p. 61) For example, U.S decided to attack network neutrality while French demanded OTTs to register as Telecom operator. Liked U.S. South Korean reacted by announced the guideline for network neutrality and internet traffic management. As for China, the country adopted unique tactics by charging OTT services for termination of traffic to their customers. (Telecom Authority of India, 2015, pp.61-67)

D. Regulatory framework for OTTs in Thailand

Thai regulator made an attempt to control OTTs services by push them to registration regime. However, there was less cooperation from big OTTs players such as google, Facebook, and Netflix. After that, Asia internet coalition worried that the policy would broad negative effects to OTTs industry. Moreover, public hearing regarding this issue has not yet been done and also do not comply with General Agreement on Trade in Services (GATS) under Word Trade Organization (WTO) which Thailand allows others to reach database or online data beyond territories. (Brandbuffe,2017, p.2)

III. RESULT AND DISCUSSION

A. The Analysis of foreign countries' regulatory framework on OTTs

Universally, regulators worldwide are clear about the problems they need to deal with and get right to the point within their authority. U.S, for example, is using network neutrality principle to enforce service providers to utilize variable pricing model. (Telecom Authority of India, 2015, p.61) France tried to make clear on the definition of OTTs though it was hard to classify some of services. However, this led to the conversation in European parliament and developed "Digital Bill" in first quarter of 2015 consisting of network neutrality principle. (Telecom Authority of India, 2015, p.65) In 2011, Korean delivered network neutrality and internet traffic management guidelines to sustain ICT ecosystem consisting of principle of transparency, no blocking, no unreasonable discrimination, and reasonable traffic management. (Telecom Authority of India, 2015,p.66)

B. The Analysis of Thai regulatory framework on OTTs

Thai regulatory framework on OTTs remains unclear. After an attempt to control OTTs service providers received lesser responses than expect from big player like Facebook, Netflix etc. Thai regulator (NBTC) tried to interpret the term "OTTs" as Television so that they can regulate them under existing law and within its authority. However, Ms. Supinya Klangnarong, former NBTC's member thought that the idea seemed incompatible with the current legislation since Operation of radio and television broadcasting business Act only complied with traditional one(Brandbuffet,2017,p.3) Recently, the policy to "enforce" OTTs services provider to register under Thai law was revoked. (Brandbuffet,2017, p.4)

CONCLUSION

Simply put, legal problems on regulating OTT service by NBTC are as follow:

1) The definition of OTT in Thai law remains unclear so that the NBTC as the regulator need to clarify the term in context of Thailand's ICT ecosystem.
2) NBTC as the regulator failed to balance national security to the competition of the country in the field and internet development.

Therefore, the choice of regulate OTTs might not be the way to be strict on them but to deregulate the tradition one, one way or another.

ACKNOWLEDGEMENT

The authors would like to thank Suan Sunandha Rajabhat University, Bangkok, Thailand to provide funding support to attend the dissemination of research on this and thank family, friends, and colleagues for cooperation in research, all of you.

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